WSR 06-06-001

PERMANENT RULES

DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION

[Filed February 15, 2006, 3:15 p.m., effective March 18, 2006]

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

Purpose: The office of archaeology and historic preservation became an independent department of archaeology and historic preservation (DAHP) effective July 24, 2005, per chapter 333, Laws of 2005. Rules are needed for the entirety of the department's functions, to implement its authority and serve its constituents and to function as a separate state agency pursuant to SB 5056 (chapter 333, Laws of 2005). All rules contain housekeeping changes, such as updated department contact information. Chapter 25-48 WAC will implement changes made to chapter 27.53 RCW by HB 1189 (chapter 211, Laws of 2002). The rules will create guidelines under which the DAHP may issue penalties for violations of chapter 27.53 RCW and set standards and procedures for notification and hearings on those penalties.

Citation of Existing Rules Affected by this Order: Repealing WAC 25-12-040; and amending chapters 25-48, 25-46, 25-42, and 25-12 WAC.

Statutory Authority for Adoption: RCW 27.34.220, 27.53.140, 43.21C.120.

Adopted under notice filed as WSR 05-20-077 on October 4, 2005.

Changes Other than Editing from Proposed to Adopted Version: WAC 25-48-130 will allow law enforcement officers to view permits if requested; defined "repository"; clarified that a private landowner should signify his/her intent to keep an archaeological collection from his/her property in writing; and clarified items required of a permit applicant by using more appropriate an accurate vocabulary.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 58, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 58, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 12, Amended 44, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 15, 2006.

Allyson Brooks, Ph.D.
State Historic
Preservation Officer

AMENDATORY SECTION (Amending Order 88-06, filed 11/4/88)

WAC 25-48-010 Purpose. The purpose of this chapter is to establish application and review procedures for the issuance of archaeological excavation and removal permits and for the issuance of civil penalties as provided for in chapter((~~s 27.44 and~~)) 27.53 RCW.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

WAC 25-48-020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Archaeology" means systematic, scientific study of ((~~man's~~)) the human past through ((~~his~~)) material remains.

(2) "Historic" means peoples and cultures who are known through written documents in their own or other languages. As applied to underwater archaeological resources, the term historic shall include only those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 889-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(3) "Prehistoric" means peoples and cultures who are unknown through contemporaneous written documents in any language.

(4) "Professional archaeologist" means a person who:

(a) Has designed and executed an archaeological study as evidenced by a thesis or dissertation((~~,~~)) and ((~~has~~)) been awarded an advanced degree such as an M.A., M.S., or Ph.D. ((~~from an accredited institution of higher education~~)) in archaeology, anthropology, ((~~or~~)) history or other germane discipline with a specialization in archaeology from an accredited institution of higher education; and

(b) Has a minimum of one year of field experience with at least twenty-four weeks of field work under the supervision of a professional archaeologist, including no less than twelve weeks of survey or reconnaissance work((~~,~~)) and at least eight weeks of supervised laboratory experience. Twenty weeks of field work in a supervisory capacity must be documentable with a report on the field work produced by the individual ((~~on the field work~~)).

(5) "Public lands" means lands owned by or under the possession, custody, or control of the state of Washington or any county, city, or political subdivision of the state; including the state's submerged lands under the Submerged Lands Act, 43 U.S.C. Sec. 1301 et seq.

(6) "Site restoration" means to repair the archaeological property to its preexcavation vegetational and topographic state.

(7) "Amateur society" means any organization composed primarily of persons who are not professional archaeologists, whose primary interest is in the archaeological resources of the state, and which has been certified in writing by two professional archaeologists.

(8) "Archaeological object" means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, and technological by-products.

(9) "Archaeological site" means a geographic locality in Washington, including but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

(10) "Archaeological resource" means any material remains of human life or activities which are of archaeological interest((~~. This shall include~~)), including all sites, objects, structures, artifacts, implements, and locations of prehistorical or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to, those pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and their habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls, and grinding stones, knives, scrapers, rock carvings and paintings, and other implements and artifacts of any material.

(11) "Historic archaeological resources" means those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(12) "Of archaeological interest" means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation.

(13) "Director" means the director of the department of ((~~community development~~)) archaeology and historic preservation or his or her designee.

(14) ((~~"Office" means the Washington state office of archaeology and historic preservation, department of community development.~~

~~(15)~~)) "Department" means the department of ((~~community development~~)) archaeology and historic preservation.

(15) "State historic preservation officer" means the director, who serves as the state historic preservation officer under RCW 43.334.020.

(16) "Suspension" means the abeyance of a permit under this chapter for a specified period of time.

(17) "Revocation" means the termination of a permit under this chapter.

(18) "Mitigation" means:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(f) Monitoring the impact and taking appropriate corrective measures.

(19) "Abandonment" means that the resource has been deserted and the owner has relinquished ownership rights with no retention, as demonstrated by a writing, oral communication, action, or inaction.

(20) "Person" means any individual, corporation, partnership, trust, institution, association, or other private entity; or any officer, employee, agent, department, or instrumentality of the state or any county, city, or other political subdivision of the state.

(21) "Permittee" means any person who holds an active archaeological excavation permit issued under RCW 27.53.060 and this chapter.

(22) "Respondent" means any person who has received a notice of violation under WAC 25-48-041, a notice of permit denial under WAC 25-48-105, a notice that a right of first refusal has been extinguished under WAC 25-48-108, or a notice of suspension or revocation under WAC 25-48-110, and who has filed an application for an adjudicative proceeding.

(23) "Repository" means a facility, including but not limited to, a museum, archeological center, laboratory, or storage facility managed by a university, college, museum, other educational or scientific institution of a federal, state or local government agency or Indian tribe that provides secure, environmentally controlled storage, for archaeological collections and their associated records making them available for scientific, educational and cultural needs.

(24) "Archaeological value" means the cost comparable volume archaeological excavation would be, including retrieving scientific information from the site before it was vandalized. This includes field work, lab analysis, background research and reporting, and curation of the collection and records.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

WAC 25-48-030 Scope and coverage of this chapter. (1) This chapter ((~~is applicable~~)) applies to any person, ((~~corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the state, county, or city, or a political subdivision of the state~~)) as defined in WAC 25-48-020.

(2) This chapter ((~~is applicable~~)) applies to the alteration, digging, excavating, or removal of archaeological objects or sites or historic archaeological resources which have been abandoned thirty years or more, and to the removal of glyptic or painted records or archaeological resources from native Indian cairns or graves.

(3) This chapter does not apply to the removal of artifacts found exposed on the surface of the ground which are not historic archaeological resources or sites except when there will be removal of glyptic or painted records, or archaeological resources from native Indian cairns or graves.

(4) ((~~This chapter is applicable as follows~~)) The following sections of this chapter apply to the removal of sample artifacts as provided under WAC 25-46-060 (1)(d):

WAC 25-48-010.
WAC 25-48-020.
WAC 25-48-030.
WAC 25-48-050.
WAC 25-48-060 (1)(a)((~~;~~)) except for the requirements of a completed inventory form, (1)(d), (f), (g), (h), (m), (n), and (5).
WAC 25-48-090.
WAC 25-48-100.
WAC 25-48-105.
WAC 25-48-120.

NEW SECTION

WAC 25-48-035 Delegation to state archaeologist and assistant state archaeologist. (1) The director's authority to determine violations of chapter 27.53 RCW and to impose civil penalties under RCW 27.53.095 and this chapter is delegated to the state archaeologist and the assistant state archaeologist, subject to review by the director as provided in WAC 25-48-120. This delegation of authority to the state archaeologist and the assistant state archaeologist is in addition to any other delegation granted in statute, by rule, or otherwise in writing by the director.

(2) The director retains authority to review determinations made by the state archaeologist or the assistant state archaeologist under this chapter and to hear appeals of those determinations.

(3) The state historic preservation officer may delegate to subordinate staff in the office the functions and duties assigned in this chapter to the state historic preservation officer.

AMENDATORY SECTION (Amending Order 11, filed 6/5/86)

WAC 25-48-040 Agency policy. The overriding policy of the ((~~office~~)) department is to assure the protection of the archaeological resources of the state. This policy results from:

(1) The legislated duty of the ((~~office~~)) department to preserve and protect the heritage of the state in a manner that does not impair the resources (RCW 27.34.220); and

(2) ((~~Recognition of the fact that the public has an interest in the knowledge of the state's heritage and a responsibility to contribute to the preservation and enhancement of that heritage~~)) The public interest in the conservation, preservation, and protection of the state's archaeological resources, and the knowledge to be derived and gained from the scientific study of these resources (RCW 27.53.010).

NEW SECTION

WAC 25-48-041 Notice of violation—Penalties. (1)(a) It is unlawful for any person to knowingly and willfully remove, alter, dig into, excavate or remove an archeological object or site or archeological resource without a permit required by RCW 27.53.060.

(b) It is unlawful for any person to knowingly and willfully fail to comply with the provisions of a permit issued by the state historic preservation officer under RCW 27.53.060.

(2) Pursuant to RCW 27.53.095, the state archaeologist or the assistant state archaeologist may issue a notice of violation to any person who knowingly and willfully violates RCW 27.53.060 or the provisions of a permit issued under RCW 27.53.060 and this chapter.

(3) The notice of violation shall impose a monetary penalty of five thousand dollars; provided, however, that the state archaeologist or the assistant state archaeologist may decrease the penalty for the first or second violation upon a determination, supported by specific findings, that the circumstances of the violation warrant a lesser penalty than the statutory maximum. This determination shall be based on the factors set out in WAC 25-48-044. The monetary penalty for any subsequent violation will be five thousand dollars.

(4) In addition to any civil penalty imposed under this section, the notice of violation also shall require the respondent to pay the following costs, as determined under WAC 25-48-043:

(a) Reasonable investigative costs incurred by a mutually agreed upon independent professional archaeologist investigating the alleged violation; and

(b) Reasonable site restoration costs.

(5) The notice of violation shall set forth the conduct determined to violate RCW 27.53.060 or a permit issued thereunder, the damage for which restoration is required, the amount of civil penalty assessed, and, if appropriate, the findings warranting a lesser penalty than the statutory maximum. If the reasonable investigative costs incurred by a mutually agreed upon independent professional archaeologist investigating the alleged violation and the reasonable site restoration costs have been determined, they shall be set forth in the notice of violation; if those costs are determined after the notice of violation has been issued, those costs may be levied against the respondent by a later addendum to the notice of violation or in a final order following an adjudicative proceeding.

(6) The notice of violation shall inform the respondent of its right to request a hearing to contest the notice of violation.

(7) In addition to, and/or independent of any civil penalty imposed under this section, the state archaeologist or the assistant state archaeologist may refer any alleged violation to any federal, state, or county authority with jurisdiction over the act or acts alleged to constitute the violation.

NEW SECTION

WAC 25-48-043 Procedure for selecting a mutually agreed upon independent professional archaeologist investigator and for determining site restoration costs. (1) Pursuant to RCW 27.53.095, a person found to have violated chapter 27.53 RCW or a permit issued under RCW 27.53.060 shall pay the reasonable investigative costs incurred by an independent professional archaeologist investigating the alleged violation who has been mutually agreed to by the state archaeologist or the assistant state archaeologist and the respondent. The state archaeologist or the assistant state archaeologist and the respondent may agree to investigation by a qualified employee of the department.

(2) If the state archaeologist or the assistant state archaeologist determines an agreement cannot be reached with the

respondent under subsection (1) of this section, the independent professional archaeologist investigator shall be selected as follows:

(a) The state archaeologist or the assistant state archaeologist shall notify the respondent that an agreement cannot be reached and instruct the respondent to provide to the department, within five working days, the name, address, and telephone number of a professional archaeologist together with a summary of the professional archaeologist's professional qualifications. The respondent is responsible for all fees and costs billed by the professional archaeologist the respondent selects.

(b) The state archaeologist or the assistant state archaeologist shall select a professional archaeologist who is not employed or contractually bound to the office. The department is responsible for all fees and costs billed by the professional archaeologist the state archaeologist or the assistant state archaeologist selects.

(c) The professional archaeologists selected by the respondent and by the state archaeologist or the assistant state archaeologist shall jointly select a third professional archaeologist to investigate the alleged violation. Their selection must be communicated to the state archaeologist or the assistant state archaeologist and the respondent within ten working days. The state archaeologist or the assistant state archaeologist shall provide the professional archaeologist investigator with written authorization to conduct the investigation.

(d) The respondent is responsible for all fees and costs billed by the professional archaeologist investigator.

(3) The professional archaeologist investigator agreed to under subsection (1) or (2) of this section shall assess damage and disturbance to the archaeological resource or site caused by the conduct alleged in the notice of violation and prepare a written report containing the following information:

(a) A map and description of the site, indicating the location and extent of damage or disturbance;

(b) An estimate of the volume of soil disturbed;

(c) An inventory of artifacts and archaeological context and data damaged or disturbed;

(d) An estimate of the archaeological value of artifacts and samples damaged or disturbed;

(e) A summary of the site restoration actions required because of damage or disturbance;

(f) An estimate of site restoration costs, supported by a narrative or numerical explanation; and

(g) Any other information the state historical preservation officer reasonably may require.

(4) The written report required under subsection (3) of this section must be provided to the department, the respondent, the affected tribes, local government, and the property owner, within sixty calendar days of the date the professional archaeologist investigator is authorized by the state archaeologist or the assistant state archaeologist to conduct the investigation.

(5) In determining the site restoration actions required because of damage or disturbance, the professional archaeologist investigator shall include the following, as necessary and appropriate:

(a) Landscaping to return the site to its original geography and configuration;

(b) Recovering, analyzing, and reporting on all archaeological materials damaged or disturbed by the alleged conduct;

(c) Data recovery excavations, if appropriate, or other type of mitigation activity;

(d) Preparing the archaeological materials for curation and the cost of curation or, if appropriate, reburial.

NEW SECTION

WAC 25-48-044 Penalties—Adjustments. (1) The state archaeologist or the assistant state archaeologist may decrease the penalty imposed under WAC 25-48-041(3) for the first or second violation upon a determination, supported by specific findings based on the following factors, that the circumstances of the violation warrant a lesser penalty:

(a) Whether the respondent's act or acts resulted in actual or potential harm to an archeological site, resource, or object, or to human remains;

(b) Whether the respondent's act or acts involve more than one human remains, the damage or disintegration of human remains, or the use of human remains for profit or other financial gain;

(c) Whether the notice of violation encompasses multiple acts that constitute separate violations of this chapter or chapter 27.53 RCW;

(d) Whether the respondent's act or acts reasonably appear to be part of a pattern of the same or similar conduct, whether or not that conduct previously resulted in any state or federal sanction;

(e) Whether the respondent voluntarily disclosed or reported an act or acts constituting a violation of this chapter or chapter 27.53 RCW;

(f) Whether the respondent voluntarily takes remedial measures to provide increased protection for an archeological site, resource, or object or for human remains;

(g) Whether the respondent voluntarily takes measures to reduce the likelihood the violation will be repeated.

(2) The state archaeologist or the assistant state archaeologist may negotiate an agreed settlement of the penalty with the respondent, on such terms and for such reasons as the state archaeologist or the assistant state archaeologist deems appropriate. Any prior negotiated settlement may be considered by the state archaeologist or the assistant state archaeologist in determining the appropriate penalty for a subsequent violation.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

WAC 25-48-050 Application requirements and forms. (1) Any person or entity covered by this chapter ((~~and described in WAC 25-48-030~~)) proposing to dig, alter, excavate, and/or remove archaeological objects and sites or historic archaeological resources, or proposing to remove glyptic or painted records of tribes or peoples, or archaeological resources from native Indian cairns or graves shall apply to the ((~~office~~)) department for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued.

(2) Each application for a permit from the department shall be submitted on the archaeological excavation and removal permit application form approved by the ((~~director. These~~)) state historic preservation officer. An application form((~~s~~)) may be obtained from the ((~~Office~~)) Department of Archaeology and Historic Preservation, ((~~Department of Community Development, 111 West 21st Avenue KL-11, Olympia, WA 98504; telephone (206) 753-5010~~)) P.O. Box 48343, Olympia, WA 98504-8343; telephone 360-586-3065.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

WAC 25-48-060 Summary of information required of an applicant. (1) Each application for a permit shall include:

(a) Sufficient background information and summary of previous field investigation, research and data gaps about the site(s) proposed for excavation such that the reviewers have a comprehensive understanding of the site(s) and current research questions to be able to review the proposal as a complete document.

(b) The nature and extent of the work proposed, including how and why it is proposed to be conducted and the methods proposed for excavation and recovery, number and placement of excavation units, proposed excavation volumes, proposed time of performance, locational maps, and a completed site inventory form.

((~~(b)~~)) (c) Summary of the environmental setting and depositional context, with an emphasis on vegetation, past and present available natural resources, geomorphology and formation processes, and their relationship to the archaeological deposits.

(d) An artifact inventory plan detailing the character of the expected data categories to be recovered including the proposed methods of inventorying the recovered data and proposed methods of cleaning, stabilizing, and curating of specimens and recovered data consistent with the Secretary of the Interior's standards for archaeological curation in 36 CFR Part 79.

(e) If human remains are proposed for recovery, a plan for their removal and disposition must be provided; if human remains are not proposed for recovery, a plan for responding to the inadvertent discovery of human remains must be provided.

((~~(c)~~)) (f) A professional, scientific research design, including research questions, demonstrating that the work and reporting will be performed in a scientific and technically acceptable manner ((~~taking into account current scientific research issues~~)) utilizing methods and techniques designed to address current scientific research questions and cultural resource management plans.

((~~(d)~~)) (g) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in this chapter.

((~~(e)~~)) (h) The name and address of the individual(s) proposed to be responsible for carrying out the terms and conditions of the permit, if different from the individual(s) enumerated under ((~~(d)~~)) (g) of this subsection.

((~~(f)~~)) (i) Financial evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities and evidence of financial support for analysis and report writing.

((~~(g)~~)) (j) A plan for site restoration following excavation activities and evidence of plans to secure bonding to cover the cost of site restoration.

((~~(h)~~)) (k) Evidence of an agreement for the proposed work from the owner, agency, or political subdivision with management responsibility over the land.

((~~(i) Evidence of filing of the proposed work with the Washington archaeological research center.~~

~~(j) For amateur society application, evidence of review and recommendations from the Washington archaeological research center.~~

~~(k)~~)) (l) A site security plan to assure the protection of the site and its contents during the public permit review and excavation process.

((~~(l)~~)) (m) A public participation plan detailing the extent of public involvement and dissemination of project results to the public, as appropriate. Examples of appropriate public dissemination can include, but not be limited to: *Archaeology Month* lectures, slide shows, anthropological conferences, school presentations, newspaper articles, if warranted.

((~~(m)~~)) (n) A completed environmental checklist as required by WAC 197-11-100 to assist the ((~~office~~)) department in making a threshold determination and to initiate SEPA compliance.

((~~(n)~~)) (o) Evidence of abandonment: Abandonment will be presumed where the applicant presents information that thirty or more years have elapsed since the loss of the resource. If it appears to the ((~~office~~)) department from any source that the resource has not been abandoned or may not have been abandoned, and in the case of all United States government warships, aircraft, or other public vessels, the ((~~office~~)) department will find that the presumption does not arise and will require proof of abandonment. Proof may be satisfied by submission of a statement of abandonment from the owner, his or her successors, assigns or legal representatives, or through final adjudication by a court of law.

(p) Disclosure by the applicant of any previous violation of this chapter or any federal or state law regulating archaeological objects or sites, historic archaeological resources, glyptic or painted records, or native Indian cairns or graves. The applicant shall disclose any such violation by the applicant, by the individual(s) proposed to be responsible for conducting the work, or by the individual(s) proposed to be responsible for carrying out the terms and conditions of the permit, and shall provide details, dates, and circumstances of each violation.

(q) Disclosure by the applicant of outstanding archaeological excavation permits issued by the department to the applicant.

(2) Where the application is for the excavation and/or removal of archaeological resources on public lands, the name of the Washington university, museum, repository or other scientific or educational institution meeting the Secretary of the Interior's standards for archaeological curation in

36 CFR Part 79, in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work other than human skeletal remains and funerary objects. The applicant((s)) shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard, preserve, and allow for the future scientific access to these materials as property of the state.

(3) Where the application is for the excavation and/or removal of archaeological resources on private land, the name of the university, museum, repository, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work and all collections in the event the landowner ((does not wish)) wishes to take custody ((or otherwise dispose of the archaeological resources)) of the collection. The applicant shall submit written certification from the landowner stating this intention. If the landowner does not wish to take custody of the collection, the name of the university, museum, repository, or other scientific or educational institution in which the collection will be curated. The applicant((s)) shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work and to safeguard, preserve, and allow for the future scientific access to these materials.

(4) An applicant may temporarily curate a collection identified in subsection (2) or (3) of this section in a repository that meets the Secretary of the Interior's standards for archaeological curation in 36 CFR Part 79 until the appropriate Indian tribe has available facilities meeting the Secretary of the Interior's standards for archaeological curation in 36 CFR Part 79 into which the collection may be curated.

(5) Where the application is for the excavation and/or removal of a historic archaeological resource that is an historic aircraft, the name of the Washington museum, historical society, nonprofit organization, or governmental entity that proposes to assume curatorial responsibility for the resource. The applicant((s)) shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the resource and all associated records, data, photographs and other documents derived from the proposed work and to safeguard, preserve, and allow for the future scientific and public access to these materials.

(((5))) (6) After review of the application, the ((office)) department may require additional information to properly evaluate the proposed work and shall so inform the applicant. Field investigation or research may be required of the applicant or conducted by the ((office)) department at the applicant's cost. A bond in an amount specified by the ((office)) department may be required of the applicant to ensure payment of the professional expenses incurred by the ((office)) department. Advance notice of any anticipated cost shall be given to the applicant.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

WAC 25-48-070 Notification to Indian tribes. (1) Upon receipt of a completed application form for archaeological excavation of ((a)) an archaeological site, native Indian cairn or grave, or the removal of glyptic or painted records, the ((office)) department, at least thirty days before issuing such a permit under this chapter, shall notify ((the)) any affected Indian tribe which may consider the site to be of historic or cultural significance.

(2) Notice by the ((office)) department shall be sent to the chief executive officer or other designated official of the native Indian tribe. Any native Indian tribe or other native American group may supply the ((office)) department in advance with sites or locations for which such tribe or group wishes to receive notice under this section.

(3) Upon request during the thirty-day period, the ((office)) department may meet with official representatives of any native Indian tribe or group to discuss ((their)) its interests, including, but not limited to, the proposed excavation methods. Comments received from tribal representatives shall be considered by the department in the issuance or denial of the permit and the issuance of terms and conditions. Mitigation measures requested by the tribal representatives, including stipulations pertaining to the disposition of human remains, may be incorporated into the terms and conditions of the permit.

(4) When the ((office)) department determines that ((a)) an emergency permit applied for under this chapter must be issued immediately under WAC 25-48-095 because of an imminent threat of loss or destruction of an archaeological resource, the ((office)) department shall so notify the appropriate tribe(s).

(5) The tribes with whom the ((office)) department has consulted shall be promptly notified in writing of the issuance of the permit.

AMENDATORY SECTION (Amending Order 11, filed 6/5/86)

WAC 25-48-080 Public notice. (1) The ((office)) department will give public notice of a pending permit application by one or more of the following methods as appropriate for the specific circumstances in order to solicit public and scientific comment:

(a) Notifying public((,)) and private groups, tribes, and agencies with ((a)) known interest in a certain application or type of application being considered;

(b) Notifying individuals with known interest in a certain application or in the type of application being considered;

(c) Publication in a newspaper of general circulation in the area in which the application will be implemented;

(d) Notifying the news media; and/or

(e) Posting on the property site in question.

(2) Comments ((from such notified agencies, groups, entities or individuals)) on a pending application must be received by the department within thirty days of the notice. Comments may be mailed or faxed to the following address: Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, WA 98504-8343. Arrangements for

alternative delivery of comments may be made by calling 360-586-3065.

(3) Comments timely received shall be considered by the department in the issuance or denial of the permit application and the imposition of terms and conditions in the permit.

(4) In the discretion of the state archeologist or the assistant state archaeologist, a fifteen-day extension may be granted for additional comments. The party requesting the extension must make the request in writing within the original thirty-day comment period.

AMENDATORY SECTION (Amending Order 88-06, filed 11/4/88)

WAC 25-48-085 Applications for excavation and removal of previously registered shipwrecks and historic aircraft. Where the completed application is for the excavation and/or removal of an historic archaeological resource that is a shipwreck or historic aircraft that has been registered with the department by ((~~an entity~~)) a person other than the applicant, the ((~~office~~)) department will:

(1) Notify the ((~~entity~~)) person by certified mail, return receipt requested, that registered the historic archaeological resource with the department that it shall have sixty days from receipt of notice to submit its own permit application and exercise its first refusal right, or the right shall be extinguished.

(2) Notify the applicant that its permit application will not be acted upon until the ((~~entity~~)) person that has registered the historic archaeological resource has exercised its right of first refusal by submitting a permit application or has allowed its right to be extinguished.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

WAC 25-48-090 Issuance of permit. The ((~~office~~)) department will normally act upon a permit application within sixty days of receipt of a complete permit application, except in the case of an historic archaeological resource where the applicant is not the holder of the right of first refusal. Such applications shall be subject to the provisions of WAC 25-48-085. ((~~The director may issue a temporary permit immediately where delay could cause damage to an archaeological or historic archaeological resource or site. Said permit shall be valid only for thirty days.~~)) The ((~~office~~)) department may issue a permit((~~,~~)) for a specified period of time appropriate to the work to be conducted((~~,~~)) upon determining that:

(1) The applicant, or in the case of an amateur society((~~,~~)) or other group or organization((~~,~~)) the individual proposed to be responsible for conducting the archaeological work((~~, is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological methods and theory, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also~~)):

(a) Meets the minimum qualifications as a professional archaeologist specified in WAC 25-48-020(4);

(b) Possesses demonstrable competence in archaeological methods and theory, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed; and

(c) Has complied with current and past permits issued under RCW 27.53.060.

(2) The proposed archaeological work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data.

(3) The proposed archaeological work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of public lands concerned.

(4) Any Washington university, museum, repository, or other scientific or educational institution proposed as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records.

(5) Where the application is for a state-owned historic archaeological resource, a contract between the applicant and the department has been executed. Such a contract shall include but not be limited to the following terms and conditions:

(a) Historic shipwrecks:

(i) The contract shall provide for fair compensation to a salvor. Fair compensation means an amount not less than ninety percent of the appraised value of the objects recovered following successful completion of the contract.

(ii) The salvor may retain objects with a value of up to ninety percent of the appraised value of the total objects recovered, or cash, or a combination of objects and cash. In no event may the total of objects and cash exceed ninety percent of the total appraised value of the objects recovered. A salvor shall not be entitled to further compensation from any state sources.

(iii) The contract shall provide that the state will be given first choice of which objects it may wish to retain for display purposes for the people of the state from among all the objects recovered. The state may retain objects with a value of up to ten percent of the appraised value of the total objects recovered. If the state chooses not to retain recovered objects with a value of up to ten percent of the appraised value, the state shall be entitled to receive its share in cash or a combination of recovered objects and cash so long as the state's total share does not exceed ten percent of the appraised value of the objects recovered.

(iv) The contract shall provide that both the state and the salvor shall have the right to select a single appraiser or joint appraisers.

(v) ((~~The contract shall provide that the applicant agrees to allow the department access to all artifacts and data recovered from the historic shipwreck for purposes of scholarly research and photographic documentation for the period specified by the department.~~

~~(vi)~~)) The contract shall ((~~also~~)) provide that title to the objects shall pass to the salvor when the permit is issued. However, should the salvor fail to fully perform under the

terms of the contract, title to all objects recovered shall revert to the state. If the salvor should fail to perform the contract terms specified in (a)((~~(v)~~)) (vi) of this subsection and has disposed of the objects to which title has passed, the salvor shall be liable to the state for liquidated damages in the amount of the appraised value of the objects disposed of.

(vi) The contract shall provide that the applicant agrees to allow the department access to all artifacts and data recovered from the historic shipwreck for purposes of scholarly research and photographic documentation for the period specified by the department.

(b) Historic aircraft:

(i) The contract shall provide that historic aircraft belonging to the state of Washington may only be recovered if the purposes of the salvage operation is to recover the aircraft for a Washington museum, historical society, nonprofit organization, or governmental entity.

(ii) Title to the aircraft may only be passed by the state to one of the entities listed in (b)(i) of this subsection.

(iii) Compensation to the salvor shall only be derived from the sale or exchange of the aircraft to one of the entities listed in (b)(i) of this subsection or such other compensation as one of the entities and the salvor may arrange. The salvor shall not have a claim to compensation from state funds.

(c) Other historic archaeological resources:

The director, in his or her discretion, may negotiate the terms of such contracts.

(6) Evidence that the applicant agrees to mitigate any archaeological damage which occurs during the excavations and recovery operations.

(7) Evidence that the applicant agrees to allow the department access to all artifacts and data recovered from historic archaeological sites for purposes of scholarly research and photographic documentation for a period to be agreed upon by the parties.

(8) Evidence that the applicant agrees to allow the department to have the right to publish scientific papers concerning the results of all research conducted as project mitigation.

(9) ((~~After the granting of a permit and, when~~)) If information filed with the ((~~office~~)) department becomes inaccurate in any way((~~,~~)) or additions or deletions are necessary, the applicant or permittee shall ((~~submit~~)) provide the department with full details of any such changes and/or correct any inaccuracy, together with copies of any new required documents, ((~~with the office~~)) within fifteen days ((~~following the~~)) after the applicant or permittee becomes aware of the inaccuracy or need for change. The ((~~office~~)) department reserves the right to suspend or revoke a permit under the terms of WAC 25-48-110 or to amend a permit under WAC 25-48-100 if the new or corrected information warrants.

NEW SECTION

WAC 25-48-095 Emergency permits. (1) The department may issue an emergency permit immediately where delay could cause damage to an archaeological or historic resource or site, or to burial(s) or human remains.

(2) Before issuing an emergency permit, the department shall require the applicant to provide the information required in WAC 25-48-060. The department, in its discretion, may allow the applicant to provide the required information in abbreviated form.

(3) The emergency permit shall include the terms and conditions specified in WAC 25-48-100.

(4) The department may issue an emergency permit without complying with the notification requirements in WAC 25-48-070 and 25-48-080, except as provided in WAC 25-48-070(4).

(5) An emergency permit shall be valid for not more than thirty days. The department, in its discretion, may extend the emergency permit for an additional thirty days.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

WAC 25-48-100 Terms and conditions of permits. (1) In all permits issued, the ((~~office~~)) department shall specify:

(a) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location, and purpose of the work;

(b) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit.

(c) The name of any university, museum, repository, or other scientific or educational institutions in which any collected materials and data shall be deposited.

(d) Reporting documentation requirements and site restoration and mitigation requirements.

(2) The ((~~director~~)) department may specify such terms and conditions as deemed necessary, consistent with this chapter, to:

(a) Protect the public interest in the conservation, preservation, and protection of the state's archaeological resources, and the knowledge to be derived and gained from the scientific study of these resources;

(b) Protect the public safety and other values and/or resources((~~, to~~));

(c) Secure work areas, ((~~to~~)) safeguard other legitimate land uses, and ((~~to~~)) limit activities incidental to work authorized under the permit.

((~~This may include~~)) (3) The department may require evidence of sufficient bonding to cover cost of site restoration.

((~~(3)~~)) (4) The department may specify such terms and conditions as deemed necessary that are recommended by persons commenting within the comment period provided in WAC 25-48-080.

(5) The ((~~office~~)) department may include in ((~~permits issued for archaeological work on native Indian cairns and graves or glyptic or painted records such terms and conditions as may be requested by the concerned native~~)) any permit such terms and conditions as requested by a concerned or affected Indian tribe.

((~~(4)~~)) (6) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

((~~(5)~~)) (7) The permittee shall not be released from requirements of a permit until all outstanding obligations

have been satisfied, whether or not the term of the permit has expired.

((~~(6)~~)) (8) The permittee may request that the ((~~office~~)) department extend or modify a permit. Such a request will require compliance with all the provisions of this chapter.

((~~(7)~~)) (9) The permittee's performance under any permit issued for a period greater than one year shall be subject to review by the ((~~office~~)) department, at least annually.

(10) If at any time the department determines the terms and conditions of the permit are inadequate to provide the protections addressed under subsections (2) and (3) of this section, the department may add, amend, or delete the terms and conditions of the permit.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

WAC 25-48-105 Permit denial. If a permit is denied, a written statement of the reasons for the denial will accompany the notice of permit denial to the applicant as well as notice of the right to request a hearing. A permit may be denied ((~~for failure to adequately meet the requirements of an applicant under WAC 25-48-060 and/or the standards set forth in WAC 25-48-090~~)) if:

(1) The application does not meet the requirements and standards in WAC 25-48-060 and 25-48-090;

(2) The applicant or any individual proposed to be responsible for conducting the work or carrying out the terms and conditions of the permit has failed to meet the terms and conditions of a permit previously issued under this chapter; or

(3) The applicant or any individual proposed to be responsible for conducting the work or carrying out the terms and conditions of the permit has been found to have violated this chapter or any federal or state law regulating archaeological objects or sites, historic archaeological resources, glyptic or painted records, or native Indian cairns or graves.

AMENDATORY SECTION (Amending Order 88-06, filed 11/4/88)

WAC 25-48-108 Right of first refusal—Discovery of new technology. (1) Any ((~~agency, institution,~~)) person((~~, firm, or corporation which~~)) that has been denied a permit because the historic archaeological resource would be destroyed beyond mitigation by ((~~their~~)) its method of salvage shall have the right of first refusal for a permit at a future date should technology be found which would make salvage possible without destroying the historic archaeological resource.

(2) Such rights may be assigned, but it is the responsibility of the parties to the assignment to provide written evidence of the assignment to the department, including the correct name and mailing address of the assignee.

(3) Upon receipt of a complete permit application and determination that a new technology can salvage the resource, the ((~~director~~)) department shall notify by certified mail, return receipt requested, the holder of the right of first refusal of a permit application that a new technology exists and the holder has sixty days from the receipt of the ((~~director's~~)) department's determination to submit its own permit application and thereby exercise its first refusal right, or the right shall be extinguished.

(4) If the person((~~, firm, corporation, institution, or agency~~)) that possesses the first refusal right for a permit does not exercise its first refusal right within the sixty-day time period, the department shall send to that ((~~entity~~)) person a notice by certified mail, return receipt requested, that the ((~~entity's~~)) person's right of first refusal has been extinguished.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

WAC 25-48-110 Suspension and revocation of permits. (1) The ((~~office~~)) state archaeologist or the assistant state archaeologist may suspend or revoke a permit issued pursuant to this chapter upon determining that the permittee has failed to meet any of the terms and conditions of the permit and upon at least twenty days written notice. In the case of emergencies which imminently threaten health, safety, or welfare including property, the ((~~office~~)) state archaeologist or the assistant state archaeologist may summarily suspend a permit by immediately issuing a written order which incorporates a finding to that effect.

(2) The ((~~office~~)) state archaeologist or the assistant state archaeologist shall provide the permittee with written notice ((~~and the notice of right to request a public hearing to the permittee~~)) of the suspension or revocation, the cause thereof, and in the case of a suspension, the length of the suspension and the requirements which must be met before the suspension will be removed. The notice shall inform the respondent of its right to request a hearing to contest the revocation or suspension. In addition, a notice of summary suspension shall inform the respondent of its right to request an emergency adjudicative proceeding.

AMENDATORY SECTION (Amending Order 88-06, filed 11/4/88)

WAC 25-48-120 ((~~Appeals relating to permits.~~)) Administrative appeals. ((~~Any affected person may request a hearing to appeal a denial, suspension, or revocation of a permit or extinguishment of a right of first refusal under WAC 25-48-108 to the director. Said request must be in writing and filed with the director within twenty-one calendar days of receipt of notice of the denial, suspension, revocation, or extinguishment.~~)) (1) An applicant for or holder of a permit issued under this chapter may request a hearing to contest a penalty imposed under WAC 25-48-041, the terms and conditions imposed on a permit under WAC 25-48-100, a denial of a permit application under WAC 25-48-105, a suspension or revocation of a permit under WAC 25-48-110, or the extinguishing of a right of first refusal under WAC 25-48-108.

(2) A request for a hearing shall be made by filing a written application for adjudicative proceeding with the department at the following address: Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, WA 98504-8343. The application must be received by the department within twenty-one calendar days of the date of service of the notice of the penalty, denial, suspension, revocation, or

extinguishing. An application contesting the terms and conditions imposed on a permit under WAC 25-48-100 must be received by the department within twenty-one days of the date the permit was issued. The application shall specify the issue or issues to be decided and indicate whether the requester desires a full adjudicative proceeding, a brief adjudicative proceeding, or an emergency adjudicative proceeding.

(3) When the department receives an application for adjudicative proceeding, it will immediately notify the director of its receipt and provide the director and the state archaeologist or the assistant state archaeologist with a copy of the application and the notice or document being appealed. The director thereupon will designate a presiding officer as follows:

(a) Where an application requests a full adjudicative proceeding, or where the director determines a full adjudicative proceeding is required, the director will designate as presiding officer an administrative law judge assigned by the office of administrative hearings under chapter 34.12 RCW.

(b) Where an application requests a brief adjudicative proceeding or emergency adjudicative proceeding, or where the director determines a brief adjudicative proceeding or emergency adjudicative proceeding is appropriate, the director will designate a senior staff person in the department as presiding officer. The person designated shall not have participated in the matter and shall not be subject to the authority or direction of any person who has participated in the matter.

(4) Upon being designated, the presiding officer shall notify the requestor, the state archaeologist, and the assistant state archaeologist of his or her name and business address and provide any other information required by chapter 34.05 RCW, 10-08 WAC, or this chapter.

(5) Upon receiving the notice required in subsection (4) of this section, the state archaeologist or the assistant state archaeologist shall immediately transmit to the presiding officer the application, together with any accompanying documents provided by the requester, and a copy of the notice or other document being appealed.

NEW SECTION

WAC 25-48-121 Adjudicative proceedings. (1) The department hereby adopts the model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, for use in adjudicative proceedings of agency action under this chapter.

(2) "Service" and "filing" of documents in adjudicative proceedings, brief adjudicative proceedings, and emergency adjudicative proceedings are defined as in RCW 34.05.010 and WAC 10-08-110.

(3) In the case of a conflict between the model rules of procedure and this chapter, the rules in this chapter shall take precedence.

(4) All factual determinations shall be based on the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The burden in all proceedings is a preponderance of the evidence.

(a) In all proceedings contesting the denial of a permit application under WAC 25-48-108, the burden shall be on the applicant to establish that the application meets all applicable requirements and standards.

(b) In all proceedings contesting the extinguishing of a right of first refusal under WAC 25-48-108, the burden shall be on the person challenging the extinguishing to establish the timely exercise of its right of first refusal.

(c) In all other proceedings, the burden is on the state historic preservation officer to prove the alleged factual basis set forth in the notice.

NEW SECTION

WAC 25-48-122 Brief adjudicative proceedings. (1) Pursuant to RCW 34.05.482, the department will use brief adjudicative proceedings where permitted by law and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties. A brief adjudicative proceeding is intended to serve as an inexpensive and efficient alternative where the issues can be decided by reference to writings and other documents without a full, formal hearing.

(2) A brief adjudicative proceeding may be used to review the following actions taken under this chapter:

(a) A notice of violation of the terms and conditions of a permit under WAC 25-48-041 (1)(b);

(b) A denial of a permit application under WAC 25-48-105;

(c) Extinguishing a right of first refusal under WAC 25-48-108.

(3) An application for brief adjudicative proceeding shall include a written explanation of the applicant's view of the matter and a copy of any other documents the applicant wishes to have the presiding officer consider. Any response by the department shall be filed with the presiding officer and served on the applicant within fourteen days of receiving an application for a brief adjudicative proceeding.

(4) If the applicant desires an opportunity to make an oral statement to the presiding officer, a request to make an oral statement must be included in the application for a brief adjudicative proceeding. The presiding officer may grant a request to make an oral statement if the presiding officer believes the statement would benefit him or her in reaching a decision. The presiding officer shall notify the parties within a reasonable time of his or her decision to grant or deny a request to make an oral statement. If the presiding officer grants any request to make an oral statement, all parties shall be entitled to make oral statements, and the presiding officer shall notify all parties of the time and place for hearing oral statements.

(5) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days of the decision, the presiding officer shall serve upon each party a brief written statement of the reasons for the decision and information about any internal administrative review available.

(6) The presiding officer's brief written statement is an initial order. The initial order shall be the final order without further action unless within twenty-one days of the date of

service a party requests administrative review of the initial order or the director initiates review of the initial order.

(7) If the presiding officer determines a more comprehensive hearing is warranted, or on the motion of any party, he or she may convert the proceeding to a full adjudicative proceeding by requesting in writing, with findings supporting the request, that the proceeding be so converted and that the director designate as presiding officer an administrative law judge assigned by the office of administrative hearings under chapter 34.12 RCW. The director will act as soon as possible on the request.

(8)(a) A party may request review of the initial order by filing a written request with the director at the following address: Director, Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, WA 98504-8343. A request for review of an initial order shall contain an explanation of the requester's view of the matter and a statement of reasons why the initial order is incorrect. The request must be received by the director and served on all other parties within twenty-one days of the date the initial order was served on the parties. A copy of the request must be served on the state archaeologist or the assistant state archaeologist.

(b) Any response to the request for review of an initial order shall be filed with the director and served on the requester within ten days after receiving the request.

(c) In response to a request for review of an initial order, the director shall immediately obtain the record compiled by the presiding officer. The director, at his or her sole discretion, may act as the reviewing officer or designate a reviewing officer who is authorized to grant appropriate relief upon review.

(d) The reviewing officer may issue an order on review, which shall include a brief statement of the reasons for the decision and include a notice that judicial review may be available.

(e) A request for review of an initial order is deemed to have been denied if the reviewing officer does not issue an order on review within twenty days of the date the request for review of the initial order was filed with the director.

(9)(a) The director may initiate review of the initial order on his or her own motion, without notifying the parties. The director, at his or her sole discretion, may act as the reviewing officer or designate a reviewing officer who is authorized to grant appropriate relief upon review.

(b) The reviewing officer shall obtain and review the record compiled by the presiding officer before taking action.

(c) The reviewing officer may not take any action on review less favorable to any party than in the initial order without giving that party notice and an opportunity to provide a written explanation of its view of the matter. The notice shall specify the deadline for that party to submit its written explanation.

(d) Any order on review shall be issued and served on the parties within twenty days of the date the initial order was served on the parties or within twenty days of the date a request for review of the initial order was filed with the director, whichever occurs later. If an order on review is not issued and served by the applicable deadline in this paragraph, the initial order becomes the final order.

NEW SECTION

WAC 25-48-123 Emergency adjudicative proceedings. (1) A respondent who receives a notice of summary suspension of a permit under WAC 25-48-110 may request an emergency hearing under RCW 34.05.422 and 34.05.479 to contest the findings included in the notice of summary suspension by filing an application for emergency adjudicative proceeding. A respondent who does not file an application for emergency adjudicative proceeding may contest the findings included in the notice of summary suspension in a regularly scheduled adjudicative hearing.

(2) An application for emergency adjudicative proceeding must be received by the department within seven calendar days of the date of service of the notice of summary suspension. An application for emergency adjudicative proceeding received by the department more than seven calendar days after the date of service of the notice of summary suspension shall be deemed an application for full adjudicative proceeding and will be scheduled accordingly.

(3) An application for emergency adjudicative proceeding shall include a written explanation of the applicant's view of the summary suspension and a copy of any other documents the applicant wishes to have the presiding officer consider.

(4) The presiding officer, in his or her discretion, may provide for telefacsimile or electronic service and filing of documents, using means that are similarly available to all parties, in the notice required in WAC 25-48-120(4).

(5) Upon receiving the notice required in WAC 25-48-120(4), the state archaeologist or the assistant state archaeologist shall immediately transmit to the presiding officer copies of any documents that were considered or relied upon in issuing the notice of summary suspension, in addition to the documents listed in WAC 25-48-120(5).

(6) Within seven business days after receiving an application for emergency adjudicative proceeding, the presiding office shall issue an order that either:

(a) Affirms that the summary suspension is necessary to prevent or avoid immediate danger to the public health, safety or welfare including property; or

(b) Sets aside the summary suspension as unnecessary to prevent or avoid immediate danger to the public health, safety or welfare including property.

No other issue shall be decided in the emergency adjudicative proceeding. The order shall include a brief statement of findings of fact, conclusions of law, and policy reasons for the decision.

(7) The order is effective when signed by the presiding officer. The presiding officer shall promptly notify each party of the decision and serve each party with a copy of the order.

(8) If other issues remain to be decided, or if the respondent requests review of the order, the presiding officer may request that a full adjudicative proceeding be scheduled and that the director designate as presiding officer an administrative law judge assigned by the office of administrative hearings under chapter 34.12 RCW. The request shall summarize the issues that remain to be decided. The director will act as soon as possible on the request. The order issued under this

section becomes final unless within seven days of the date of issuance a full adjudicative proceeding is scheduled.

AMENDATORY SECTION (Amending Order 88-06, filed 11/4/88)

WAC 25-48-125 Listing of areas where permits are required to protect historic archaeological sites on aquatic lands. The following is a list of those areas where permits are required under RCW 27.53.060 to protect historic archaeological sites on aquatic lands:

Lake Washington.

Elliott Bay.

Columbia River Bar.

AMENDATORY SECTION (Amending Order 11, filed 6/5/86)

WAC 25-48-130 Display of permit. (1) The permit granted by the ((~~office~~)) department shall be either prominently displayed at all times upon the archaeological site being excavated during the permitted period, or carried on the person of the individual responsible for the field work, as specified in the permit.

(2) If more than one archaeological site is being excavated under a single permit, the permittee may obtain from the ((~~office~~)) department such copy or copies of his or her permit as may be necessary to display at each archaeological site being excavated.

(3) The director or his designee, including the state archaeologist and the assistant state archaeologist, may examine at any time the permit, work, and site at which such permitted work is being undertaken.

(4) Upon request, appropriate law enforcement officials may examine the permit, work and site at which such permitted work is being undertaken.

NEW SECTION

WAC 25-48-135 Procedure for collecting radiometric data without a permit. A professional archaeologist, as defined in WAC 25-48-020(4), may collect radiocarbon samples without first obtaining a permit under this chapter if the following conditions are met:

(1) The sample or samples must consist of charcoal or shell; no human or mammal bone may be sampled without a permit;

(2) Within ten working days following the sampling, the professional archaeologist must notify the department of the radiocarbon sampling; and

(3) Within thirty days of receiving copies of the results worksheets or their equivalent from the radiocarbon laboratory, the professional archaeologist must submit to the department copies of the results worksheets or their equivalent together with a brief written report documenting sampling and results.

AMENDATORY SECTION (Amending Order 88-07, filed 11/4/88)

WAC 25-46-020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Historic archaeological resources" means those properties, including, but not limited to all ships, or aircraft, and any part or the contents thereof and all treasure trove which are listed or, in the professional judgment of the department, eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(2) "State-owned aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters.

(3) "Department" means the department of ((~~community development.~~

~~(4) "Office" means the office of~~)) archaeology and historic preservation((~~, department of community development.~~

~~(5)~~)) established in chapter 43. . . . RCW.

(4) "Director" means the director of the department of ((~~community development~~)) archaeology and historic preservation or the director's designee.

((~~(6)~~)) (5) "Entity" means any person, firm, corporation, institution, or agency.

((~~(7)~~)) (6) "Previously unreported" means the historic archaeological resource and its location are not known to the ((~~office~~)) department and are not available from public records including but not limited to government records, historic records, or insurance claims.

AMENDATORY SECTION (Amending Order 88-07, filed 11/4/88)

WAC 25-46-040 Registration forms. (1) Any person or entity who discovers a previously unreported historic archaeological resource abandoned for thirty years or more on, in, or under state-owned aquatic lands may register it with the department.

(2) Each registration of a previously unreported historic archaeological resource shall be submitted on the Submerged Historic Archaeological Resource Registration Form approved by the director. These registration forms may be obtained from the ((~~Office~~)) Department of Archaeology and Historic Preservation, ((~~Department of Community Development, 111 West 21st Avenue KL-11~~)) P.O. Box 48343, Olympia, Washington 98504-8343; telephone ((~~(360) 753-5010~~)) 360-586-3065.

AMENDATORY SECTION (Amending Order 88-07, filed 11/4/88)

WAC 25-46-060 Summary of information required for registration. (1) In order to be considered complete, each registration form shall include:

(a) A description of the historic archaeological resource sufficient to identify its historic association, identity, and

integrity of its physical remains. Any historic information you have on the resource and the circumstances of its loss.

(b) Locational information including latitude, longitude, and depth, township, range, section and quarter section, and UTM.

(c) A copy of the relevant United States Coast and Geodetic Survey chart indicating the resource's location. The location of the resource plotted on a USGS topography map.

(d) A copy of a photograph or videotape documenting the existence of identifiable physical remains of the resource sufficient to establish its historic identity and integrity. If a photograph or videotape will not establish the existence of identifiable physical remains of the resource sufficient to establish its historic identity and integrity, the applicant may apply to the ((~~office~~)) department for permission to obtain a sample artifact for this purpose. In the event the applicant wishes to apply for such permission, the applicant shall be subject to some portions of WAC 25-48-030.

(2) Failure to supply this information to the satisfaction of the ((~~office~~)) department may result in the application being deemed incomplete or inadequate under WAC 25-46-100 and 25-46-120.

AMENDATORY SECTION (Amending Order 88-07, filed 11/4/88)

WAC 25-46-080 Competing applications for the same resource. (1) When registration forms are submitted for the same resource by two or more entities, the applications shall be evaluated, accepted, or denied in sequence based upon the unique log number assigned by the department. The registration forms must be submitted via FedEx or other delivery service which records time and date of delivery.

(2) Notice will be sent by the department to each of the entities submitting the registration application for the same resource notifying them of the competing application and the sequence in which they will be evaluated. No competing application will be evaluated until such time as the first pending application has been denied and all appeal rights of that applicant have been exhausted.

(3) When an historic archaeological resource has been registered with the department all subsequent registration applications for that resource within the five-year time period for right of first refusal will be issued a notice that the resource has already been registered and the applications are denied.

AMENDATORY SECTION (Amending Order 88-07, filed 11/4/88)

WAC 25-46-100 Issuance of registration acceptance. (1) Each registration form shall be assigned a unique sequential log number upon date and time of receipt by the department and shall be evaluated in sequence.

(2) Upon receipt of the registration form, the office shall inform the applicant by registered mail within fourteen calendar days of any incomplete or inadequate information and afford the applicant twenty-one calendar days from the receipt of the notice to provide the missing or inadequate information, plus such time as may be authorized by the department for a sample artifact permit granted under WAC 25-46-060 (1)(d) and chapter 25-48 WAC.

(3) If the applicant does not supply the missing or inadequate information within the specified time period the application shall be considered void and a notice of denial sent to the applicant.

(4) The department will act upon a complete registration application within thirty-five calendar days of receipt and shall so notify the applicant. In all notifications of registration acceptance, the department shall specify:

(a) The name, address, and telephone number of the entity submitting the registration application((~~.~~));

(b) A description of the historic archaeological resource sufficient to identify its historic association and identity((~~.~~));

(c) The location of the resource including its latitude and longitude and depth((~~.~~));

(d) A statement of the director's opinion on the resource's eligibility to the Washington state register of historic places or the National Register of Historic Places((~~.~~));

(e) The date of the acceptance of the registration((~~.~~));

(f) The date of the expiration of the right for first refusal((~~.~~)); and

(g) That excavation or removal of any artifacts from the historic archaeological resource will require an archaeological excavation and removal permit and that granting of such a permit is not guaranteed.

AMENDATORY SECTION (Amending Order 88-07, filed 11/4/88)

WAC 25-46-120 Registration denial. (1) If a registration application is denied, a written statement of the reasons for the denial will accompany the notice of registration denial to the applicant.

(2) Registration may be denied for the following reasons:

(a) The application is incomplete or inadequate and has not been completed or corrected pursuant to WAC 25-46-100;

(b) The resource does not qualify as an historic archaeological resource under WAC 25-46-020(1);

(c) The resource has already been registered;

(d) The resource and its location are already known to the ((~~office~~)) department or are part of the public record.

AMENDATORY SECTION (Amending Order 88-07, filed 11/4/88)

WAC 25-46-140 Appeals relating to registration. (1) Any affected person may request a hearing to appeal a denial of registration or extinguishment of a right of first refusal under WAC 25-46-160 to the director. ((~~Said request must be in writing and filed with the director within twenty-one calendar days of receipt of notice of registration denial or extinguishment.~~)) A request for a hearing shall be made by filing a written application for adjudicative proceeding with the department at the following address: Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, WA 98504-8343. The application must be received by the department within twenty-one calendar days of the date of service of the notice of the denial or extinguishing. The application shall specify the issue or issues to be decided and

indicate whether the requester desires a full adjudicative proceeding, a brief adjudicative proceeding, or an emergency adjudicative proceeding.

(2) When the department receives an application for adjudicative proceeding, it will immediately notify the director of its receipt and provide the director and the state archaeologist or the assistant state archaeologist with a copy of the application and the notice or document being appealed. The director thereupon will designate a presiding officer as follows:

(a) Where an application requests a full adjudicative proceeding, or where the director determines a full adjudicative proceeding is required, the director will designate as presiding officer an administrative law judge assigned by the office of administrative hearings under chapter 34.12 RCW.

(b) Where an application requests a brief adjudicative proceeding or emergency adjudicative proceeding, or where the director determines a brief adjudicative proceeding or emergency adjudicative proceeding is appropriate, the director will designate a senior staff person in the department as presiding officer. The person designated shall not have participated in the matter and shall not be subject to the authority or direction of any person who has participated in the matter.

(3) Upon being designated, the presiding officer shall notify the requester, the state archaeologist, and the assistant state archaeologist of his or her name and business address and provide any other information required by chapter 34.05 RCW or 10-08 WAC, or this chapter.

(4) Upon receiving the notice required in subsection (3) of this section, the state archaeologist or the assistant state archaeologist shall immediately transmit to the presiding officer the application, together with any accompanying documents provided by the requester, and a copy of the notice or other document being appealed.

NEW SECTION

WAC 25-46-142 Adjudicative proceedings. (1) The department hereby adopts the model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, for use in adjudicative proceedings of agency action under this chapter.

(2) "Service" and "filing" of documents in adjudicative proceedings, brief adjudicative proceedings, and emergency adjudicative proceedings are defined as in RCW 34.05.010 and WAC 10-08-110.

(3) In the case of a conflict between the model rules of procedure and this chapter, the rules in this chapter shall take precedence.

(4) All factual determinations shall be based on the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The burden in all proceedings is a preponderance of the evidence.

(a) In all proceedings contesting the denial of registration under WAC 25-46-120, the burden shall be on the applicant to establish that the application meets all applicable requirements and standards.

(b) In all proceedings contesting the extinguishing of a right of first refusal under WAC 25-46-160, the burden shall be on the person challenging the extinguishing to establish the timely exercise of its right of first refusal.

(c) In all other proceedings, the burden is on the state historic preservation officer to prove the alleged factual basis set forth in the notice.

NEW SECTION

WAC 25-46-144 Brief adjudicative proceedings. (1) Pursuant to RCW 34.05.482, the department will use brief adjudicative proceedings where permitted by law and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties. A brief adjudicative proceeding is intended to serve as an inexpensive and efficient alternative where the issues can be decided by reference to writings and other documents without a full, formal hearing.

(2) A brief adjudicative proceeding may be used to review the following actions taken under this chapter:

(a) Denying an application for registration under WAC 25-46-120;

(b) Extinguishing a right of first refusal under WAC 25-46-160.

(3) An application for brief adjudicative proceeding shall include a written explanation of the applicant's view of the matter and a copy of any other documents the applicant wishes to have the presiding officer consider. Any response by the department shall be filed with the presiding officer and served on the applicant within fourteen days of receiving an application for a brief adjudicative proceeding.

(4) If the applicant desires an opportunity to make an oral statement to the presiding officer, a request to make an oral statement must be included in the application for a brief adjudicative proceeding. The presiding officer may grant a request to make an oral statement if the presiding officer believes the statement would benefit him or her in reaching a decision. The presiding officer shall notify the parties within a reasonable time of his or her decision to grant or deny a request to make an oral statement. If the presiding officer grants any request to make an oral statement, all parties shall be entitled to make oral statements, and the presiding officer shall notify all parties of the time and place for hearing oral statements.

(5) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days of the decision, the presiding officer shall serve upon each party a brief written statement of the reasons for the decision and information about any internal administrative review available.

(6) The presiding officer's brief written statement is an initial order. The initial order shall be the final order without further action unless within twenty-one days of the date of service a party requests administrative review of the initial order or the director initiates review of the initial order.

(7) If the presiding officer determines a more comprehensive hearing is warranted, or on the motion of any party, he or she may convert the proceeding to a full adjudicative proceeding by requesting in writing, with findings supporting the request, that the proceeding be so converted and that the director designate as presiding officer an administrative law

judge assigned by the office of administrative hearings under chapter 34.12 RCW. The director will act as soon as possible on the request.

(8)(a) A party may request review of the initial order by filing a written request with the director at the following address: Director, Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, WA 98504-8343. A request for review of an initial order shall contain an explanation of the requester's view of the matter and a statement of reasons why the initial order is incorrect. The request must be received by the director and served on all other parties within twenty-one days of the date the initial order was served on the parties. A copy of the request must be served on the state archaeologist or the assistant state archaeologist.

(b) Any response to the request for review of an initial order shall be filed with the director and served on the requester within ten days after receiving the request.

(c) In response to a request for review of an initial order, the director shall immediately obtain the record compiled by the presiding officer. The director, at his or her sole discretion, may act as the reviewing officer or designate a reviewing officer who is authorized to grant appropriate relief upon review.

(d) The reviewing officer may issue an order on review, which shall include a brief statement of the reasons for the decision and include a notice that judicial review may be available.

(e) A request for review of an initial order is deemed to have been denied if the reviewing officer does not issue an order on review within twenty days of the date the request for review of the initial order was filed with the director.

(9)(a) The director may initiate review of the initial order on his or her own motion, without notifying the parties. The director, at his or her sole discretion, may act as the reviewing officer or designate a reviewing officer who is authorized to grant appropriate relief upon review.

(b) The reviewing officer shall obtain and review the record compiled by the presiding officer before taking action.

(c) The reviewing officer may not take any action on review less favorable to any party than in the initial order without giving that party notice and an opportunity to provide a written explanation of its view of the matter. The notice shall specify the deadline for that party to submit its written explanation.

(d) Any order on review shall be issued and served on the parties within twenty days of the date the initial order was served on the parties or within twenty days of the date a request for review of the initial order was filed with the director, whichever occurs later. If an order on review is not issued and served by the applicable deadline in this paragraph, the initial order becomes the final order.

NEW SECTION

WAC 25-46-146 Emergency adjudicative proceedings. (1) A respondent who receives a notice of registration denial under WAC 25-46-120 may request an emergency hearing under RCW 34.05.422 and 34.05.479 to contest the findings included in the notice of registration denial by filing an application for emergency adjudicative proceeding. A respondent who does not file an application for emergency adjudicative proceeding may contest the findings included in the notice of registration denial in a regularly scheduled adjudicative hearing.

(2) An application for emergency adjudicative proceeding must be received by the department within seven calendar days of the date of service of the notice of summary suspension. An application for emergency adjudicative proceeding received by the department more than seven calendar days after the date of service of the notice of registration denial shall be deemed an application for full adjudicative proceeding and will be scheduled accordingly.

(3) An application for emergency adjudicative proceeding shall include a written explanation of the applicant's view of registration denial and a copy of any other documents the applicant wishes to have the presiding officer consider.

(4) The presiding officer, in his or her discretion, may provide for telefacsimile or electronic service and filing of documents, using means that are similarly available to all parties, in the notice required in WAC 25-46-140(3).

(5) Upon receiving the notice required in WAC 25-46-140(3), the state archaeologist or the assistant state archaeologist shall immediately transmit to the presiding officer copies of any documents that were considered or relied upon in issuing the notice of summary suspension, in addition to the documents listed in WAC 25-46-140(4).

(6) Within seven business days after receiving an application for emergency adjudicative proceeding, the presiding office shall issue an order that either:

(a) Affirms that the registration denial is necessary to prevent or avoid immediate danger to the public health, safety or welfare including property; or

(b) Sets aside the summary suspension as unnecessary to prevent or avoid immediate danger to the public health, safety or welfare including property.

No other issue shall be decided in the emergency adjudicative proceeding. The order shall include a brief statement of findings of fact, conclusions of law, and policy reasons for the decision.

(7) The order is effective when signed by the presiding officer. The presiding officer shall promptly notify each party of the decision and serve each party with a copy of the order.

(8) If other issues remain to be decided, or if the respondent requests review of the order, the presiding officer may request that a full adjudicative proceeding be scheduled and that the director designate as presiding officer an administrative law judge assigned by the office of administrative hearings under chapter 34.12 RCW. The request shall summarize the issues that remain to be decided. The director will act as soon as possible on the request. The order issued under this section becomes final unless within seven days of the date of issuance a full adjudicative proceeding is scheduled.

AMENDATORY SECTION (Amending Order 6, filed 5/30/80)

WAC 25-12-020 Definitions. (1) Public records. "Public record" includes any writing containing information relating to the conduct of government or the performance of any

governmental or proprietary function prepared, owned, used or retained by any state or local agency, regardless of physical form or characteristics.

(2) Writing. Writing means handwriting, typewriting, printing, photostating, and every other means of recording, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

(3) Advisory council on historic preservation. The advisory council on historic preservation is the council established pursuant to RCW ((43.51A.110)) 27.34.250 through 27.34.280, and is hereinafter referred to as the "council."

(4) ((Office)) Department of archaeology and historic preservation. The ((office)) department of archaeology and historic preservation is that agency established pursuant to RCW ((43.51A.030)) 27.34.210, and is hereinafter referred to as the "((office)) department." The ((office)) department provides staff for the council.

(5) State historic preservation officer. The state historic preservation officer is that person appointed pursuant to RCW ((43.51A.060)) 27.34.210 to implement the purposes of that chapter, and hereinafter referred to as "SHPO."

(6) ((Professional public. The professional public includes individuals, government agencies, or private businesses which, as a means of providing livelihood or fulfilling legal obligations, are available to prepare nominations to the state and national registers of historic places. The professional public is further identified in WAC 25-12-050(2).

(7) Nonprofessional public. The nonprofessional public includes individuals, organizations, government agencies, or private businesses not identified as provided in WAC 25-12-050(2).)) State register. These are buildings, sites, structures, objects or districts which are listed on the Washington Heritage Register of Historic Places, and is hereinafter referred to as the "state register."

AMENDATORY SECTION (Amending Order 6, filed 5/30/80)

WAC 25-12-030 Description of purpose and staff. The council is of an advisory nature for the governor and the ((office)) department. Financial and administrative services including those related to budgeting, accounting, financial reporting, personnel and procurement shall be provided to the council by the ((office)) department. The administrative location of the council and that of its staff is at the ((Office)) Department of Archaeology and Historic Preservation, ((111 West 21st Avenue)) P.O. Box 48343, Olympia, Washington 98504-8343. The council meets on the last Friday of every ((third)) fourth month unless otherwise agreed by a majority of the members of the council.

AMENDATORY SECTION (Amending Order 6, filed 5/30/80)

WAC 25-12-050 Procedures—Nominations ((proposed by the professional public)) to state and/or National Register. (1) Any member((s)) of the ((professional)) public may submit ((completed)) nominations directly to the SHPO for review and evaluation. The opportunity to review drafts of the nomination is ((encouraged)) required to promote the rapid handling of the complete document.

(2) The SHPO shall prepare and maintain a list of ((the)) qualified professional ((public to identify those who can submit nominations under this section and for referrals as provided in WAC 25-12-040(3))) consultants who meet and/or exceed the Secretary of the Interior's Historic Preservation Professional Qualification Standards (48 FR 44716). Inclusion on the list shall be limited to those individuals((, governmental agencies, or private businesses that)) who have demonstrated an ability to prepare nominations consistent with WAC 25-12-060(3) and 36 CFR Part 60.

(3) Any nomination developed under this section shall be treated as outlined in WAC 25-12-060.

AMENDATORY SECTION (Amending Order 6, filed 5/30/80)

WAC 25-12-060 ((Procedures.)) Nomination—Process. The following is a statement of the general course and method followed in the nomination and designation of historic properties to the state or National Register.

(1) The SHPO shall not schedule any nomination for review by the council if the nomination is poorly prepared, incomplete in any manner, or ((treats)) for a property that does not appear to be eligible for the state or national registers of historic places. The agenda shall be established by the SHPO in cooperation and consultation with the chairperson of the council.

(2) The SHPO may return any nomination to the originator for correction, or for additional information of any kind required for completion and accuracy.

(3) The SHPO shall prepare and distribute standards of acceptability for nominations, ((such standards to be not more restrictive than those promulgated by the Heritage Conservation and Recreation Service for the conduct of the)) for both the state and National Register programs.

(4) The SHPO will notify the owner of the property and the most appropriate local jurisdiction or government of the date, time, and location of the review of the nomination by the council, such notification to occur not more than ((45)) 75 days nor less than 30 days prior to the scheduled meeting date.

(5) In the nomination of an historic district to the state or National Register where more than 50 property owners are involved, notification shall occur through a notice in a local newspaper of general circulation. The general notice shall be published at least 30 days, but no more than 75 days before the scheduled meeting date. In addition to formal legal notice, proponents of historic districts shall follow an additional notification process to be outlined by the council. For districts of less than 50 property owners, individual notification of the pending nomination will be sent.

(6) ((Federally affected properties which have been determined under federal regulations to be ineligible for the National Register will be referred to the SHPO to be evaluated for inclusion on the State Register without referring the nomination to the council for further consideration.

~~(7)~~)) Following council review, the council will transmit its recommendations to the SHPO. When the council has reviewed and approved a procedurally correct nomination and has forwarded it to the SHPO, the SHPO will submit the nomination to the National Register, unless, in his opinion, the SHPO considers the property one which does not meet the National Register criteria. A decision to submit a nomination to the National Register is within the discretion of the SHPO. All council determinations regarding nominations are advisory only. In each instance that the SHPO determines a nomination to be ineligible for inclusion in the National Register, he/she shall notify the council of this action at its next regularly scheduled meeting.

((~~(8)~~)) (7) The SHPO shall act upon all nominations reviewed by the council prior to its next regularly scheduled meeting, and shall report those actions to the council at that meeting.

(8) The council alone will determine if properties are eligible for listing on the state register at its regularly scheduled meetings.

AMENDATORY SECTION (Amending Order 6, filed 5/30/80)

WAC 25-12-070 Public records available. All public records of the council, as defined in WAC 25-18-020, are available for public inspection ((~~any [and]~~)) and copying at the ((~~office~~)) department location described in WAC 25-12-030, pursuant to WAC 25-18-040 through 25-18-130, except as otherwise provided by RCW 42.17.310.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 25-12-040 Procedures—Nominations proposed by nonprofessional public.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-010 Definitions. The definitions of the words and terms of WAC 197-11-700 through 197-11-799 are made a part of this chapter along with the following additions:

(1) "((~~Office~~)) Department" means the Washington state ((~~office~~)) department of archaeology and historic preservation.

(2) "Director" means the state historic preservation officer as provided for in chapter 27.34 RCW.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-020 Impact of SEPA on ((~~office~~)) department. The ((~~office~~)) department fully endorses the intent and purpose of SEPA and will make every effort to implement and fulfill the intent and requirements of SEPA and the SEPA rules. The capacity of the ((~~office~~)) department to provide full service to the public and other agencies is limited by funds and ((~~manpower~~)) staffing. The ((~~office~~)) department will make every effort to implement SEPA in the best manner possible with the resources available.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-030 Purpose. (1) The purpose of this chapter is to implement chapter 197-11 WAC, SEPA rules, as applicable to the ((~~office~~)) department.

(2) These policies and procedures are developed to implement SEPA in a manner which reduces duplication, establishes effective and uniform guidelines, encourages public involvement, and promotes certainty with respect to the requirements of the act.

(3) These policies and procedures are not intended to cover compliance by the ((~~office~~)) department with respect to the National Environmental Policy Act of 1969 (NEPA). In those situations where the ((~~office~~)) department is required by federal law or regulations to perform some element of compliance with NEPA, compliance will be governed by the applicable federal statute and regulations.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-040 Scope and coverage of this chapter. (1) It is the intent of the ((~~office~~)) department that compliance with this chapter shall constitute complete procedural compliance with SEPA for all actions as defined in WAC 197-11-704.

(2) This chapter applies to all actions as defined in WAC 197-11-704 and applies to all activities of the ((~~office~~)) department. Furthermore, although these guidelines normally do not apply to actions of the ((~~office~~)) department exempted under WAC 197-11-800, the ((~~office~~)) department accepts the responsibility of attempting to follow the intent of SEPA and its decision making process for exempt actions.

(3) To the fullest extent possible, the ((~~office~~)) department shall integrate procedures required by this chapter with existing planning and permitting procedures. These procedures should be initiated early, and undertaken in conjunction with other governmental operations to avoid lengthy time delays and unnecessary duplication of effort.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-050 Agency policy—Substantive authority and mitigation. (1) ((~~The overriding~~)) It is the policy of the ((~~office is~~)) department to avoid or mitigate adverse environmental impacts which may result from its decisions. ((~~This policy results from:~~

~~(a) The legislated duty of the office to preserve and protect the heritage of the state in a manner that does not impair the resource (RCW 27.34.200); and~~

~~(b) Recognition of the fact that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the pres-~~

~~ervation and enhancement of the environment (RCW 43.21C.020(31)).~~))

(2) If an action is subject to SEPA, including an activity or activities requiring a permit from the ((~~office~~)) department, and is reasonably likely to have an adverse environmental impact as identified in an environmental document, the ((~~office~~)) department will:

(a) Require reasonable alternatives to the action and/or proven measures which will mitigate or eliminate the identified potential adverse impact, and make such alternatives and/or proven mitigation measures conditions of the ((~~office's~~)) department's approval; or

(b) Deny the proposal if significant adverse impacts as identified in a final or supplemental environmental impact statement prepared under chapter 197-11 WAC are not satisfactorily avoided or mitigated by proven techniques.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-060 Timing of the SEPA process. (1) The environmental review process will normally begin upon receipt of a determination of nonsignificance (DNS), determination of significance (DS), scoping notice, or draft environmental impact statement (DEIS) when another agency is the lead agency. When the ((~~office~~)) department is the lead agency for nonagency actions, review will begin upon receipt of a complete permit application and a complete environmental checklist. The department typically requests plans, a location map, and a project description, pursuant to WAC 197-11-100, but may request additional information of the applicant as needed to make a threshold determination. The applicant should submit this information with the checklist so that review may proceed expeditiously. For agency actions, environmental review will normally begin when the proposed action is sufficiently developed to allow preliminary decisions.

(2) Upon written request of an applicant, preliminary environmental review will be conducted prior to receipt of detailed project plans and specifications. In such instances, the applicant shall submit information judged by the ((~~office~~)) department to be sufficient to make a preliminary review.

(3) The preliminary review will be advisory only and not binding upon the ((~~office~~)) department. Final review and determination will be made only upon receipt of detailed project plans and specifications.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-070 Summary of information which may be required of an applicant. (1) The applicant for each project for which the ((~~office~~)) department is the lead agency shall submit a complete environmental checklist along with a complete application for the required approval.

(2) After review of the environmental checklist, the ((~~office~~)) department may require the applicant to submit additional information necessary to properly evaluate the potential environmental impacts of the project. Field investigation or research may be required of the applicant or conducted by the ((~~office~~)) department at the applicant's cost.

(3) A draft and final EIS is required for each project for which a determination is made that the proposal will have a probable significant adverse impact on the environment. Preparation of the EIS((~~s~~)) is the responsibility of the ((~~office~~)) department, by or under the direction of its responsible official, as specified by ((~~office~~)) department procedures. No matter who participates in the preparation of the EIS, it is the EIS of the ((~~agency~~)) department. The responsible official, prior to distributing an EIS, shall be satisfied that it complies with this chapter and chapter 197-11 WAC.

(4) The ((~~office~~)) department may have an EIS prepared by ((~~office~~)) department staff, an applicant or its agent, or by an outside consultant retained by either an applicant or the ((~~office~~)) department. The ((~~office~~)) department shall assure that the EIS is prepared in a professional manner and with appropriate interdisciplinary methodology. The responsible official shall direct the areas of research and examination to be undertaken as a result of the scoping process, as well as the organization of the resulting document.

(5) If a person other than the ((~~office~~)) department is preparing the EIS, the ((~~office~~)) department shall:

(a) Coordinate any scoping procedures so that the individual preparing the EIS receives all substantive information submitted by any agency and the public;

(b) Assist in obtaining any information on file with other agencies that is needed by the person preparing the EIS;

(c) Allow any party preparing an EIS access to all public records of the ((~~office~~)) department that relate to the subject of the EIS, under RCW 42.17.250 through 42.17.340.

(6) Normally, the ((~~office~~)) department will prepare an EIS((~~s~~)) for its own proposals.

(7) For applicant proposals, the ((~~office~~)) department normally will require the applicant to prepare or help prepare the EIS at the applicant's expense, under provisions of this chapter and chapter 197-11 WAC. Expenses shall include fees of any consultants, if required, the ((~~office's~~)) department's consultation time and cost of any required materials. A performance bond in an amount specified by the ((~~office~~)) department may be required of the applicant to ensure payment of the ((~~office's~~)) department's expenses.

(8) The ((~~office~~)) department may require an applicant to provide information that the ((~~office~~)) department does not possess, including specific investigations. ((~~The applicant is not required to supply information that is not required under this chapter and chapter 197-11 WAC.~~))

(9) A supplemental EIS shall be prepared as an addition to either the draft or final EIS if the ((~~office decides~~)) department determines that:

(a) There are substantial changes to a proposal which will have a probable significant adverse environmental impact; or

(b) There is significant new information relative to the probable significant environmental impact of a proposal; or

(c) ((~~Its~~)) Written comments on the DEIS warrant additional ((~~discussion for the purposes of its action than that found in the lead agency's FEIS~~)) environmental review.

The provisions of subsections (3), (4), (5), (6), (7), and (8) of this section except for the first sentence of subsection

(3) of this section, also pertain to a supplemental EIS or addendum.

(10) Upon the written request of an applicant for a project for which the ((~~office~~)) department is the lead agency, the ((~~office~~)) department will consider initiating environmental review and preparation of an EIS at the conceptual stage as opposed to the final detailed design state.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-080 Assumption of lead agency status. (1) Whenever the ((~~office feels~~)) department determines that a DNS issued by another lead agency is inappropriate and that the proposal in question could cause significant harm to the resources under ((~~its~~)) the department's jurisdiction, the ((~~office~~)) department will assume lead agency status per WAC 197-11-948.

(2) Within ten days of assuming lead agency status, the ((~~office~~)) department will notify the proponent of the proposal in writing as to the reasons for its assumption of lead agency status.

(3) Prior to preparation of an EIS for the proposal, the ((~~office~~)) department will consult with the proponent and give the proponent an opportunity to modify or change the proposal in such a way that an EIS may not be necessary as outlined in WAC 197-11-360(4).

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-090 Designation of responsible official. Under normal circumstances, the responsible official is the director or ((~~his~~)) the director's designee. The responsible official shall carry out duties and functions for the purpose of assuring the ((~~office's~~)) department's compliance with SEPA and SEPA guidelines. The responsible official may delegate duties and functions assigned under this chapter and chapter 197-11 WAC; the responsible official alone, however, is wholly responsible for proper accomplishment of such duties and functions.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-100 Mitigated DNS. (1) An applicant may ask the ((~~office~~)) department whether issuance of a DS is likely for a proposal. This request for early notice must:

(a) Be written;

(b) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the ((~~office~~)) department is lead agency; and

(c) Precede the ((~~office's~~)) department's actual threshold determination for the proposal.

(2) The responsible official shall respond in writing to the request within ten working days of receipt of the letter((~~,~~)). The response shall:

(a) ((~~Be written;~~

~~(b)~~)) State whether the ((~~office~~)) department is considering issuance of a DS; ((~~(c)~~)) and, if so, indicate the general or specific area(s) of concern that led the ((~~office~~)) department to consider a DS; and

((~~(d)~~)) (b) State that the applicant may change or clarify the proposal to mitigate the impacts indicated in the letter, revising the environmental checklist as necessary to reflect the changes or clarifications.

(3) The ((~~office~~)) department shall not continue with the threshold determination until receiving a written response from the applicant changing or clarifying the proposal or asking that the threshold determination be based on the original proposal.

(4) If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the ((~~office~~)) department will make its threshold determination based on the changed or clarified proposal((~~:~~)).

(a) If the ((~~office's~~)) department's response to the request for early notice indicated specific mitigation measures that would remove all probable significant adverse environmental impacts, and the applicant changes or clarifies the proposal to include all of those specific mitigation measures, the ((~~office shall~~)) department will issue a DNS and circulate the DNS for review and comments ((~~as in~~)) per WAC 197-11-340(2).

(b) If the ((~~office~~)) department indicated general or specific areas of concern but did not indicate specific mitigation measures that would allow it to issue a DNS, the ((~~office~~)) department shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.

(5) The ((~~office~~)) department may specify mitigation measures that would allow it to issue a DNS without a request for early notice from an applicant. If it does so, and the applicant changes or clarifies the proposal to include those measures, the ((~~office~~)) department shall issue a DNS and circulate it for review and comment under WAC 197-11-340(2).

(6) When an applicant changes or clarifies the proposal, the clarification or changes may be included in written attachments to the documents already submitted. If the environmental checklist and supporting documents would be difficult to read and/or understand because of the need to read them in conjunction with the attachment(s) the ((~~office~~)) department may require the applicant to submit a new checklist.

(7) The ((~~office~~)) department may change or clarify features of its own proposals before making the threshold determination.

(8) The ((~~office's~~)) department's written response under subsection (2) of this section shall not be constructed as a determination of significance. In addition, preliminary discussion of clarification of or changes to a proposal, as opposed to a written request for early notice, shall not bind the ((~~office~~)) department to consider the clarification or changes in the threshold determination.

(9) When an applicant submits a changed or clarified proposal pursuant to this section, it shall be considered part of the applicant's application for a permit or other approval for all purposes. Unless the ((~~office's~~)) department's decision expressly states otherwise, when a mitigated DNS is issued for a proposal, any decision approving the proposal shall be based on the proposal as changed or clarified pursuant to this section.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-110 SEPA public information center. The ((~~office~~)) department designates its main ((~~office~~)) department as its SEPA public information center. The mailing address is ((~~111 West 21st Ave.[,]~~)) P.O. Box 48343, Olympia, Washington 98504-8343; telephone ((~~(206) 753-5010~~)) 360-586-3065.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-120 Public notice. (1) When required under chapter 197-11 WAC, the ((~~office~~)) department will give public notice by one or more of the following methods as appropriate for the specific circumstances:

(a) Notifying public and private groups and agencies and tribes with known interest in a certain proposal or in the type of proposals being considered;

(b) Notifying individuals with known interest in a certain proposal or in the type of proposal being considered;

(c) Publication in a newspaper of general circulation in the area in which the proposal will be implemented; and/or

(d) ((~~Notifying the news media; and/or~~

~~(e)~~)) Posting on the property site in question.

(2) The ((~~office~~)) department may require an applicant to perform the public notice requirements at the applicant's expense.

WSR 06-06-003
PERMANENT RULES
WASHINGTON STATE PATROL

[Filed February 16, 2006, 12:21 p.m., effective March 19, 2006]

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

Purpose: To clarify and amend safety rules to meet the 2000 edition of the National Fire Protection Association standard #1123 for outdoor public fireworks displays shot from barges of floating vessels.

Statutory Authority for Adoption: Chapters 43.43 and 70.77 RCW.

Adopted under notice filed as WSR 05-22-104 on November 2, 2005.

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

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

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

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

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

Paul S. Beckley
for John R. Batiste
Chief

NEW SECTION

WAC 212-17-342 Public display—Floating vessels and platforms. (1) Floating vessels and floating platforms shall be permitted to be manned or unmanned as long as the pyrotechnic crew remains in control of the site and firing of the display.

(2) Floating vessels and floating platforms shall be held in control at all times, whether self-propelled, controlled by another vessel, or secured by mooring or anchoring.

(3) Floating vessels and floating platforms shall be of sufficient strength and stability to safely allow the firing of the display.

(4) The types of fireworks and placement of the fireworks launch tubes and accompanying equipment shall be such that, when fired, the stability of the site structures and sea-worthiness of the floating vessels or platforms shall not be jeopardized.

(5) Floating vessels and floating platforms that are manned during electrical firing shall have a safety shelter. The safety shelter shall meet the following requirements:

(a) Be of sufficient size to accommodate all personnel present during the actual firing of the display;

(b) Have a minimum of three sides and a roof; and

(c) Have walls and a roof constructed of at least three-quarter-inch plywood or equivalent material.

(6) The minimum size for the floating vessel or floating platform for electrically fired programs that are manned shall be based upon the area for the setup of the display plus the safety area for the safety shelter.

Exceptions: (a) Multishot devices up to three inches in diameter shall be calculated at twice the actual footprint of each device (length x width).
(b) Ground display pieces shall be excluded from the calculations for minimum display set-up area.

The required minimum size for a barge (in square feet) for a particular display shall be determined by the following calculations: Minimum discharge site (in square feet) = sum of (total number of each size mortar times its inside diameter) divided by two.

Example:

A display containing one hundred three-inch shells, fifty four-inch shells, twenty five-inch shells, ten six-inch shells, and five eight-inch shells would require the following minimum display set-up area.

$$\frac{100 \times 3 + 50 \times 4 + 20 \times 5 + 10 \times 6 + 5 \times 8}{2}$$

$$\frac{300 + 200 + 100 + 60 + 40}{2}$$

$$700 / 2 = 350 \text{ square feet}$$

(7) Separation between mortars and safety shelter shall be two feet per inch of diameter of any mortars up to six inches in diameter. For shells larger than six inches in diam-

eter, the minimum separation distance shall be four feet per inch of shell diameter.

Exception: If the safety shelter is constructed of stronger material, then the separation distance between mortars and the shelter shall be permitted to be reduced.

(8) At all times a minimum of two separate egress paths shall be provided. Only one egress path shall be required from protective barricades or safety shelters.

(9) Egress paths shall be unobstructed and free of impediments.

(10) Floating platforms constructed of wood or other combustible material shall be permitted to be used as a fireworks launch vessel.

(11) Manual firing of displays shall be permitted on floating vessels and floating platforms under the following conditions:

(a) All shells shall be preloaded into mortars prior to the display;

(b) Shells shall be limited to single-break and shall not exceed six inches in diameter;

(c) The minimum size of the floating vessel or floating platform shall be twice that required for an electrically fired display;

(d) A protective barrier(s) meeting the strength requirements of three-quarter-inch plywood or equivalent shall be provided. All personnel other than the shooter(s) and operator shall be behind the barrier(s) during the display; and

(e) Electrical firing on the same vessel or platform where manual firing is used shall be in accordance with the requirements for the electrical fired display.

(12) Shells shall be loaded into mortars and in place prior to the start of a display. There shall be no reloading of any material during the display.

(13) All personnel, other than spotters of fire watch, shall be in safety shelters. Spotters and fire watch on a floating platform or floating vessel shall be behind protective barriers during the display with a minimum wall construction of three-quarter-inch plywood or equivalent material.

(14) A U.S. Coast Guard approved personal flotation device (PFD) shall be provided and available for each person on a display launched from floating vessels and floating platforms. Those PFDs shall be properly worn any time the vessel is not moored at the dock. PFDs shall have or include a visual location device.

(15) A watercraft ready and capable of providing rapid emergency response shall be present during the display.

(16) The positions of the shells or mortars on floating vessels and floating platforms from which fireworks are launched shall comply with minimum safety distance requirements as outlined in WAC 212-17-325.

(17) An operational means of communication, such as a cellular/digital telephone, marine radio, or walkie-talkie system, shall be on board manned vessels and platforms from which fireworks are being discharged.

(18) During the display only necessary personnel shall be aboard any floating vessel or floating platform.

(19) Floating vessels and floating platforms shall be free of all nonessential flammable or combustible materials.

(20) Portable power-generation equipment, motorized vehicles, and material-handling equipment deemed necessary for the performance of the display shall be permitted.

WSR 06-06-005
PERMANENT RULES
DEPARTMENT OF NATURAL RESOURCES

[Order 724—Filed February 16, 2006, 1:38 p.m., effective March 19, 2006]

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

Purpose: SHB 1491 reorganized and renumbered all aquatic lands statutes, throughout Title 79 RCW. This rule change will update all RCW references within the aquatic lands administrative codes (chapter 332-30 WAC) to reflect this reorganization and renumbering. It will also correct a few internal numbering references. It will make no substantive changes.

Citation of Existing Rules Affected by this Order: Amending chapter 332-30 WAC.

Statutory Authority for Adoption: RCW 79.105.360.

Adopted under notice filed as WSR 05-23-177 on November 23, 2005.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 15, Repealed 0.

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

Date Adopted: February 6, 2006.

Doug Sutherland
Commissioner of
Public Lands

AMENDATORY SECTION (Amending Resolution No. 500, filed 11/5/85)

WAC 332-30-100 Introduction. Subsection (2)(e) of this section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114). State-owned aquatic lands include approximately 1,300 miles of tidelands, 6,700 acres of constitutionally established harbor areas and all of the submerged land below extreme low tide which amounts to some 2,000 square miles of marine beds of navigable waters and an undetermined amount of fresh water shoreland and bed. These lands are managed as a public trust and provide a rich land base for a variety of recreational, economic and natural process activities. Manage-

ment concepts, philosophies, and programs for state-owned aquatic lands should be consistent with this responsibility to the public.

These lands are "a finite natural resource of great value and an irreplaceable public heritage" and will be managed to "provide a balance of public benefits for all citizens of the state." (RCW ((~~79.90.450 and 79.90.455~~)) 79.105.010, 79.105.020, and 79.105.030)

(1) **Management goals.** Management of state-owned aquatic lands will strive to:

(a) Foster water-dependent uses;

(b) Ensure environmental protection;

(c) Encourage direct public use and access;

(d) Promote production on a continuing basis of renewable resources;

(e) Allow suitable state aquatic lands to be used for mineral and material production; and

(f) Generate income from use of aquatic lands in a manner consistent with the above goals.

(2) **Management methods.** To achieve the above, state-owned aquatic lands will be managed particularly to promote uses and protect resources of statewide value.

(a) Planning will be used to prevent conflicts and mitigate adverse effects of proposed activities involving resources and aquatic land uses of statewide value. Mitigation shall be provided for as set forth in WAC 332-30-107(6).

(b) Areas having unique suitability for uses of statewide value or containing resources of statewide value may be managed for these special purposes. Harbor areas and scientific reserves are examples. Unique use requirements or priorities for these areas may supersede the need for mitigation.

(c) Special management programs may be developed for those resources and activities having statewide value. Based on the needs of each case, programs may prescribe special management procedures or standards such as lease auctions, resource inventory, shorter lease terms, use preferences, operating requirements, bonding, or environmental protection standards.

(d) Water-dependent uses shall be given a preferential lease rate in accordance with RCW ((~~79.90.480~~)) 79.105.240. Fees for nonwater-dependent aquatic land uses will be based on fair market value.

(e) Research and development may be conducted to enhance production of renewable resources.

AMENDATORY SECTION (Amending Order 710, filed 10/17/02, effective 11/17/02)

WAC 332-30-106 Definitions. All definitions in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). For the purpose of this chapter:

(1) "Accretion" means the natural buildup of shoreline through the gradual deposit of alluvium. The general principle of common law applicable is that a riparian or littoral owner gains by accretion and reliction, and loses by erosion. Boundary lines generally will change with accretion.

(2) "Alluvium" means material deposited by water on the bed or shores.

(3) "Anniversary date" means the month and day of the start date of an authorization instrument unless otherwise specified in the instrument.

(4) "Aquaculture" means the culture and/or farming of food fish, shellfish, and other aquatic plants and animals in fresh water, brackish water or salt water areas. Aquaculture practices may include but are not limited to hatching, seeding or planting, cultivating, feeding, raising, harvesting of planted crops or of natural crops so as to maintain an optimum yield, and processing of aquatic plants or animals.

(5) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters (RCW ((~~79.90.010~~)) 79.105.060(1)). Aquatic lands are part of the public lands of the state of Washington (see subsection ((~~(49)~~)) (51) of this section). Included in aquatic lands are public places subsection ((~~(51)~~)) (53) of this section, waterways subsection ((~~(74)~~)) (78) of this section, bar islands, avulsively abandoned beds and channels of navigable bodies of water, managed by the department of natural resources directly, or indirectly through management agreements with other governmental entities.

(6) "Aquatic land use classes" means classes of uses of tideland, shorelands and beds of navigable waters that display varying degrees of water dependency. See WAC 332-30-121.

(7) "Authorization instrument" means a lease, material purchase, easement, permit, or other document authorizing use of state-owned aquatic lands and/or materials.

(8) "Avulsion" means a sudden and perceptible change in the shoreline of a body of water. Generally no change in boundary lines occurs.

(9) "Beds of navigable waters" means those submerged lands lying waterward of the line of extreme low tide in navigable tidal waters and waterward of the line of navigability in navigable lakes, rivers and streams. The term, "bedlands" means beds of navigable waters.

(10) "Commerce" means the exchange or buying and selling of goods and services. As it applies to aquatic land, commerce usually involves transport and a land/water interface.

(11) "Covered moorage" means slips and mooring floats that are covered by a single roof with no dividing walls.

(12) "Department" means the department of natural resources.

(13) "Dredging" means enlarging or cleaning out a river channel, harbor, etc.

(14) "Educational reserves" means accessible areas of aquatic lands typical of selected habitat types which are suitable for educational projects.

(15) "Enclosed moorage" means moorage that has completely enclosed roof, side and end walls similar to a car garage i.e. boathouse.

(16) "Environmental reserves" means areas of environmental importance, sites established for the continuance of environmental baseline monitoring, and/or areas of historical, geological or biological interest requiring special protective management.

(17) "Erosion" means the gradual cutting away of a shore by natural processes. Title is generally lost by erosion, just as it is gained by accretion.

(18) "Extreme low tide" means the line as estimated by the federal government below which it might reasonably be expected that the tide would not ebb. In Puget Sound area generally, this point is estimated by the federal government to be a point in elevation 4.50 feet below the datum plane of mean lower low water, (0.0). Along the Pacific Ocean and in the bays fronting thereon and the Strait of Juan due Fuca, the elevation ranges down to a minus 3.5 feet in several locations.

(19) "Fair market value" means the amount of money which a purchaser willing, but not obligated, to buy the property would pay an owner willing, but not obligated, to sell it, taking into consideration all uses to which the property is adapted and might in reason be applied (Donaldson v. Greenwood, 40 Wn.2d 238, 1952). Such uses must be consistent with applicable federal, state and local laws and regulations affecting the property as of the date of valuation.

(20) "First class shorelands" means the shores of a navigable lake or river belonging to the state not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, or the inner harbor line where established and within or in front of the corporate limits of any city, or within two miles thereof upon either side (RCW ((~~79.90.040~~)) 79.105.060(3)). These boundary descriptions represent the general rule; however exceptions do exist. To determine if the shorelands are within two miles of the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(21) "First class tidelands" means the shores of navigable tidal waters belonging to the state lying within or in front of the corporate limits of any city, or within one mile thereof upon either side and between the line of ordinary high tide and the inner harbor line; and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide (RCW ((~~79.90.030~~)) 79.105.060(4)). In general, the line of ordinary high tide is the landward boundary. The line of extreme low tide, or the inner harbor line where established, is the waterward boundary. To determine if the tidelands are within two miles of the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(22) "Fiscal year" means a period of time commencing on the first day of July and ending on the thirtieth day of June of the succeeding year. A fiscal year is identified by the year in which it ends, e.g., fiscal year 1985 is the period July 1, 1984 through June 30, 1985.

(23) "Floating house" means any floating structure that is designed, or has been substantially and structurally remodeled or redesigned, to serve primarily as a residence. "Floating houses" include house boats, house barges, or any floating structures that serve primarily as a residence and do not qualify as a vessel as provided in subsection (74) of this section. A floating structure that is used as a residence and is capable of navigation, but is not designed primarily for navigation, nor normally is capable of self propulsion and use as a means of transportation is a floating house, not a vessel.

(24) "Governmental entity" means the federal government, the state, county, city, port district, or other municipal corporation or political subdivision thereof.

(25) "Harbor area" means the area of navigable waters determined as provided in section 1 of Article XV of the state Constitution which shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce (RCW ((~~79.90.020~~)) 79.105.060(5)). Harbor areas exist between the inner and outer harbor lines as established by the state harbor line commission.

(26) "Harbor area use classes" means classes of uses of harbor areas that display varying degrees of conformance to the purpose for which harbor areas were established under the Constitution.

(27) "Harbor line" means either or both:

(a) A line (outer harbor line) located and established in navigable waters as provided for in section 1 of Article XV of the state Constitution beyond which the state shall never sell or lease any rights whatever to private persons (RCW 79.105.060(12)).

(b) A line (inner harbor line) located and established in navigable waters between the line of ordinary high tide and the outer harbor line, constituting the inner boundary of the harbor area (RCW ((~~79.90.025~~)) 79.105.060(8)).

(28) "Inflation rate" means, for a given year, the percentage rate of change in the previous calendar year's all commodity producer price index of the Bureau of Labor Statistics of the United States department of commerce (RCW ((~~79.90.465~~)) 79.105.060(7)). The rate published by the bureau during May of each year for the previous calendar year shall be the rate for the previous calendar year.

(29) "Interest rate" shall be twelve percent per annum (RCW ((~~79.90.520~~)) 43.17.240).

(30) "Interim uses" means certain uses which may, under special circumstances, be allowed to locate in harbor areas (see WAC 332-30-115(5)).

(31) "Inventory" means both a compilation of existing data on man's uses, and the biology and geology of aquatic lands as well as the gathering of new information on aquatic lands through field and laboratory analysis. Such data is usually presented in map form such as the *Washington Marine Atlas.*

(32) "Island" means a body of land entirely and customarily surrounded by water. Land in navigable waters which is only surrounded by water in times of high water, is not an island within the rule that the state takes title to newly formed islands in navigable waters.

(33) "Line of navigability" means a measured line at that depth sufficient for ordinary navigation as determined by the board of natural resources for the body of water in question.

(34) "Log booming" means placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in water-borne commerce, related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility (RCW ((~~79.90.465~~)) 79.105.060(9)).

(35) "Log storage" means the water storage of logs in rafts or otherwise prepared for shipment in water-borne commerce, but does not include the temporary holding of logs to be taken directly into a vessel or processing facility (RCW ((~~79.90.465~~)) 79.105.060(10)).

(36) "Marine land" means those lands from the mean high tide mark waterward in marine and estuarine waters, including intertidal and submerged lands. Marine lands represents a portion of aquatic lands.

(37) "Meander line" means fixed determinable lines run by the federal government along the banks of all navigable bodies of water and other important rivers and lakes for the purpose of defining the sinuosities of the shore or bank and as a means of ascertaining the areas of fractional subdivisions of the public lands bordering thereon.

(38) "Moorage facility" means a marina, open water moorage and anchorage area, pier, dock, mooring buoy, or any other similar fixed moorage site.

(39) "Motorized vehicular travel" means movement by any type of motorized equipment over land surfaces.

(40) "Multiple use management" means a management philosophy which seeks to insure that several uses or activities can occur at the same place at the same time. The mechanism involves identification of the primary use of the land with provisions such as performance standards to permit compatible secondary uses to occur.

(41) "Navigability or navigable" means that a body of water is capable or susceptible of having been or being used for the transport of useful commerce. The state of Washington considers all bodies of water meandered by government surveyors as navigable unless otherwise declared by a court.

(42) "Navigation" means the movement of vessels to and from piers and wharves.

(43) "Nonwater-dependent use" means a use that can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility (RCW ((~~79.90.465~~)) 79.105.060(11)).

(44) "Open moorage" means moorage slips and mooring floats that have completely open sides and tops.

(45) "Open water moorage and anchorage areas" are areas of state-owned aquatic lands leased for moorage and anchorage that do not abut uplands and do not include a built connection to the uplands. They are generally in the center of a waterbody, to provide moorage in addition to any marinas and docks along the edge of the waterbody. They may contain mooring buoys, floating moorage docks, other moorage facilities not connected to the shoreline, and/or anchorage areas, as determined by the lessee and approved by the department. These areas are leased in accordance with WAC 332-30-139(5) and subject to the restrictions therein.

(46) "Optimum yield" means the yield which provides the greatest benefit to the state with particular reference to food production and is prescribed on the basis of the maximum sustainable yield over the statewide resource base as modified by any relevant economic, social or ecological factor.

(47) "Ordinary high tide" means the same as mean high tide or the average height of high tide. In Puget Sound, the mean high tide line varies from 10 to 13 feet above the datum plane of mean lower low water (0.0).

(48) "Ordinary high water" means, for the purpose of asserting state ownership, the line of permanent upland vegetation along the shores of nontidal navigable waters. In the absence of vegetation, it is the line of mean high water.

(49) "Port district" means a port district created under Title 53 RCW (RCW ((~~79.90.465~~)) 79.105.060(14)).

(50) "Public benefit" means that all of the citizens of the state may derive a direct benefit from departmental actions in the form of environmental protection; energy and mineral production; utilization of renewable resources; promotion of navigation and commerce by fostering water-dependent uses; and encouraging direct public use and access; and generating revenue in a manner consistent with RCW ((~~79.90.455~~)) 79.105.030.

(51) "Public lands" means lands belonging to or held in trust by the state, which are not devoted to or reserved for a particular use by law, and include state lands, tidelands, shorelands and harbor areas as herein defined, and the beds of navigable waters belonging to the state (RCW ((~~79.01.004~~)) 79.02.010).

(52) "Public interest" means. . . . (reserved).

(53) "Public place" means a part of aquatic lands set aside for public access through platted tidelands, shorelands, and/or harbor areas to the beds of navigable waters.

(54) "Public tidelands" means tidelands belonging to and held in public trust by the state for the citizens of the state, which are not devoted to or reserved for a particular use by law.

(55) "Public trust" means that certain state-owned tidelands, shorelands and all beds of navigable waters are held in trust by the state for all citizens with each citizen having an equal and undivided interest in the land. The department has the responsibility to manage these lands in the best interest of the general public.

(56) "Public use" means to be made available daily to the general public on a first-come, first-served basis, and may not be leased to private parties on any more than a day use basis.

(57) "Public use beach" means a state-owned beach available for free public use but which may be leased for other compatible uses.

(58) "Public utility line" means pipes, conduits, and similar facilities for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers, including sewer outfall lines (RCW ((~~79.90.465~~)) 79.105.060 (15)).

(59) "Real rate of return" means the average for the most recent ten calendar years of the average rate of return on conventional real property mortgages as reported by the Federal Home Loan Bank Board or any successor agency, minus the average inflation rate for the most recent ten calendar years (RCW ((~~79.90.465~~)) 79.105.060(16)).

(60) "Reliction" means the gradual withdrawal of water from a shoreline leaving the land uncovered. Boundaries usually change with reliction.

(61) "Renewable resource" means a natural resource which through natural ecological processes is capable of renewing itself.

(62) "Residential use" means any noncommercial habitation of:

(a) A floating house, as defined in WAC 332-30-106(23); or

(b) A vessel, as defined in WAC 332-30-106(74), when any one of the following applies:

(i) Any person or succession of different persons resides on the vessel in a specific location, and/or in the same area on more than a total of thirty days in any forty-day period or on more than a total of ninety days in any three hundred sixty-five-day period. "In the same area" means within a radius of one mile of any location where the same vessel previously moored or anchored on state-owned aquatic lands. A vessel that is occupied and is moored or anchored in the same area, but not for the number of days described in this subsection, is considered used as a recreational or transient vessel;

(ii) The city or county jurisdiction, through local ordinance or policy, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility where it is moored;

(iii) The operator of the facility where the vessel is moored, through the moorage agreement, billing statement, or facility rules, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility; or

(iv) The occupant or occupants identify the vessel or the facility where it is moored as their residence for voting, mail, tax, or similar purposes.

(63) "Riparian" means relating to or living or located on the bank of a natural water course, such as a stream, lake or tidewater.

(64) "Scientific reserves" means sites set aside for scientific research projects and/or areas of unusually rich plant and animal communities suitable for continuing scientific observation.

(65) "Second class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city (RCW ((~~79.90.045~~)) 79.105.060 (17)). These boundary definitions represent the general rule; however, exceptions do exist. To determine if shorelands are more than two miles from the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(66) "Second class tidelands" means the shores of navigable tidal waters belonging to the state, lying outside of and more than two miles from the corporate limits of any city and between the line of ordinary high tide and the line of extreme low tide (RCW ((~~79.90.035~~)) 79.105.060(18)). In general, the line of ordinary high tide is the landward boundary. The line of extreme low tide is the waterward boundary. To determine if the tidelands are more than two miles from the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(67) "Shore" means that space of land which is alternately covered and left dry by the rising and falling of the water level of a lake, river or tidal area.

(68) "State-owned aquatic lands" means those aquatic lands and waterways administered by the department of natural resources or managed under department agreement by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the department of natural resources (RCW ((~~79.90.465~~)) 79.105.060(20)).

(69) "Statewide value." The term statewide value applies to aquatic land uses and natural resources whose use, management, or intrinsic nature have statewide implications. Such uses and resources may be either localized or distributed statewide. Aquatic land uses of statewide value provide major statewide public benefits. Public use and access, renewable resource use and water-dependent use have been cited by the legislature as examples of such uses. Aquatic land natural resources of statewide value are those critical or uniquely suited to aquatic land uses of statewide value or to environmental quality. For example, wild and scenic rivers, high quality public use beaches and aquatic lands fronting state parks are of statewide value for public use and access. Commercial clam and geoduck beds and sites uniquely suited to aquaculture are of statewide value to renewable resource use. Harbor areas are of statewide value to water-dependent navigation and commerce. Certain aquatic land habitats and plant and animal populations are of statewide value to recreational and commercial fisheries, wildlife protection, and scientific study.

(70) "Streamway" means stream dependent corridor of single or multiple, wet or dry channel, or channels within which the usual seasonal or storm water run-off peaks are contained, and within which environment the flora, fauna, soil and topography is dependent on or influenced by the height and velocity of the fluctuating river currents.

(71) "Terminal" means a point of interchange between land and water carriers, such as a pier, wharf, or group of such, equipped with facilities for care and handling of cargo and/or passengers (RCW ((~~79.90.465~~)) 79.105.060(21)).

(72) "Thread of stream - thalweg" means the center of the main channel of the stream at the natural and ordinary stage of water.

(73) "Town" means a municipal corporation of the fourth class having not less than three hundred inhabitants and not more than fifteen hundred inhabitants at the time of its organization (RCW 35.01.040).

(74) "Vessel" means a floating structure that is designed primarily for navigation, is normally capable of self propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels, including, but not limited to, registration as a vessel by an appropriate government agency.

(75) "Water-dependent use" means use which cannot logically exist in any location but on the water. Examples include, but are not limited to, waterborne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks (RCW ((~~79.90.465(1)~~)) 79.105.060(24)).

(76) "Waterfront" means a parcel of property with upland characteristics which includes within its boundary, a physical interface with the existing shoreline of a body of water.

(77) "Water oriented use" means use which historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront.

Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and houseboats (RCW ((~~79.90.465~~)) 79.105.060(25)).

(78) "Waterway" means an area platted across aquatic lands or created by a waterway district providing for access between the uplands and open water, or between navigable bodies of water.

(79) "Wetted perimeter" means a fluctuating water line which separates submerged river beds from the dry shoreland areas at any given time.

AMENDATORY SECTION (Amending Resolution No. 469, filed 11/9/84)

WAC 332-30-108 Establishment of new harbor areas. (1) The policies and standards in this section apply to establishment of new harbor areas by the harbor line commission under Article XV of the Washington Constitution and to establishment of new harbor areas in Lake Washington by the commissioner of public lands under RCW ((~~79.94.240~~)) 79.125.520.

(2) New harbor areas will only be established to serve the following purposes:

(a) Reserving adequate urban space for navigation and commerce facilities; and

(b) Preventing urban development from disrupting navigation.

(3) New harbor areas will only be established when a need is demonstrated by existing development or by plans, studies, project proposals or other evidence of development potential in, or waterward of, the proposed harbor area.

(4) Unless there is an overriding statewide navigation and commerce need, new harbor areas will only be established when:

(a) Compatible with local land use and shoreline management plans;

(b) Supported by the city, county and port district;

(c) The area is physically and environmentally suitable for navigation and commerce purposes; and

(d) Necessary support facilities and services are likely to be available.

(5) The shoreline length of a new harbor area established along a city's waterfront will be determined by the need and purposes to be served and by conformance with subsection (4) of this section.

(6) Harbor line placement standards.

(a) Harbor lines will be placed to serve constitutional harbor area purposes as they relate to the individual site in question.

(b) Harbor lines will be placed to provide practical development guidance. Harbor lines will relate to navigation and commerce development which has occurred or can reasonably be expected to occur.

(c) Inner harbor lines will be placed at the boundary of public aquatic land ownership. Inner harbor lines may be placed waterward of the boundary of public ownership to avoid conflicts with other guidelines in this section.

(d) Outer harbor lines will generally be placed near the ends of existing conforming structures located on public aquatic lands. The lines shall provide adequate space for navigation and commerce and prevent development from interfering with navigation.

(e) Unless there is an overriding statewide navigation and commerce need, harbor lines will be placed in accordance with:

(i) Local, state and federal land use plans and environmental regulations;

(ii) Maintenance of environmental quality;

(iii) Existing abutting harbor lines; and

(iv) Existing aquatic land development.

AMENDATORY SECTION (Amending Resolution No. 470, filed 11/9/84)

WAC 332-30-114 Management agreements with port districts. By mutual, formal, written agreement the department may authorize a port district to manage some or all of those aquatic lands within the port district meeting the criteria stated in subsection (2) of this section. The port district shall adhere to the aquatic land management laws and policies of the state as specified in chapters ((~~79.90 through 79.96~~)) 79.105 through 79.140 RCW. Port district management of state aquatic lands shall be consistent with all department regulations contained in chapter 332-30 WAC. These requirements shall govern the port's management of state aquatic lands. The administrative procedures used to carry out these responsibilities shall be those provided for port districts under Title 53 RCW.

(1) Interpretations. Phrases used in legislation (RCW ((~~79.90.475~~)) 79.105.420) providing for management agreements with ports shall have the following interpretation:

(a) "Administrative procedures" means conducting business by the port district and its port commission.

(b) "Aquatic lands abutting or used in conjunction with and contiguous to" means state-owned aquatic lands which share a common or coincident boundary with an upland parcel or in the event the state aquatic land does not attach to an upland parcel (i.e., bedlands, harbor areas, etc.), this term shall include the aquatic land adjacent to and waterward of the port owned or controlled aquatic parcel which has a common or coincident boundary to the upland parcel.

(c) "Diligently pursued" means such steady and earnest effort by the port district and the department which results in the resolution of any deficiencies preventing the issuance of a management agreement to the port.

(d) "Leasehold interest" means the benefits and obligations of both the lessor and lessee resulting from a lease agreement.

(e) "Model management agreement" means a document approved by the board of natural resources to be used for all individual management agreements with port districts.

(f) "Operating management" means the planning, organizing, staffing, coordinating, and controlling for all activities occurring on a property.

(g) "Otherwise managed" means having operating management for a property.

(h) "Revenue attributable" means all rentals, fees, royalties, and/or other payments generated from the use of a parcel; or the most likely amount of money due for the use of a

parcel as determined by procedures in chapter 332-30 WAC, whichever is greater.

(2) Criteria for inclusion. State-owned parcels of aquatic lands, including those under lease or which may come under lease to a port, abutting port district uplands may be included in a management agreement if criteria set forth in RCW ((~~79.90.475~~)) 79.105.420 are met and if there is documentation of ownership, a lease in good standing, or agreement for operating management, in the name of the port district for the upland parcel.

(3) A model management agreement and any amendments thereto shall be developed by the department and representatives of the port industry. The board of natural resources shall review and approve the model management agreement and any subsequent amendments.

(4) Processing requests. The following application requirements, review procedures, and time frame for responses involved in the issuance of a management agreement to a port district shall apply.

(a) Application requirements. The following items must be submitted to the department by the port district in order for its request to be an application for a management agreement:

(i) A copy of a resolution of the port commission that directs the port district to seek a management agreement;

(ii) An exhibit showing the location of and a description adequate to allow survey for each parcel of state-owned aquatic land to be included in the agreement, plus sufficient information on abutting port parcels to satisfy the requirements of subsection (2) of this section;

(iii) The name, address, and phone number of the person or persons that should be contacted if the department has any questions about the application.

(b) Time frames for responses:

(i) Within thirty days of receipt of an application, the department shall notify the port district if its application is complete or incomplete;

(ii) Within thirty days of receipt of notification by the department of any incompleteness in their application, the port district shall submit the necessary information;

(iii) Within ninety days of receipt of notification by the department that the application is complete, the port district and department shall take all steps necessary to enter into an agreement.

AMENDATORY SECTION (Amending Resolution No. 500, filed 11/5/85)

WAC 332-30-117 Waterways. (1) **Purpose and applicability.** This section describes the requirements for authorizing use and occupation of waterways under the department's authority as proprietor of state-owned aquatic lands. This section applies to waterways established in accordance with RCW ((~~79.93.010 and 79.93.020~~)) 79.120.010 and 79.120.020. This section does not apply to uses of Salmon Bay Waterway, or to the East and West Duwamish Waterways in Seattle authorized under RCW ((~~79.93.040~~)) 79.120.040.

(2) **Priority use.** Providing public navigation routes between water and land for conveniences of navigation and commerce is the priority waterway use.

(3) **Permit requirement.** In order to assure availability of waterways for present and future conveniences of navigation and commerce, moorage (other than transient moorage for fewer than 30 days), and other waterway uses shall require prior authorization from the department. Permits may be issued for terms not exceeding one year if there will be no significant interference with the priority waterway use or short-term moorage. Permits may be issued for terms not exceeding five years for uses listed in subsection (4) of this section in instances in which existing development, land use, ownership, or other factors are such that the current and projected demand for priority waterway uses is reduced or absent.

(4) **Permit priority.** In cases of competing demands for waterways, the following order of priority will apply:

(a) Facilities which provide public access to adjacent properties for loading and unloading of watercraft;

(b) Water-dependent commerce, as defined in WAC 332-30-115(1), related to use of the adjacent properties;

(c) Other water-dependent uses;

(d) Facilities for nonnavigational public access;

(e) Other activities consistent with the requirements in WAC 332-30-131(4) for public use facilities.

(5) **Waterway permits.** All necessary federal, state, and local permits shall be acquired by those proposing to use waterways. Copies of permits must be furnished to the department prior to authorizing the use of waterways.

(6) **Obstructions.** Permanent obstruction of waterways, including filling is prohibited. Structures associated with authorized uses in waterways shall be capable of ready removal. Where feasible, anchors and floats shall be preferred over pilings.

(7) **Permit process.** Applications for waterway permits will be processed as follows:

(a) Local government review of permit applications will be requested.

(b) Public comment will be gathered through the shoreline permit process, if applicable. If no shoreline permit is required, public comment will be gathered through the methods described in WAC 332-41-510(3).

(c) Applications will be reviewed for consistency with the policy contained in this chapter.

(d) Evaluation will consider existing, planned, and foreseeable needs and demands for higher priority uses in the waterway and in the associated water body.

(8) The department will require waterway permittees to provide security in accordance with WAC 332-30-122(5) to insure the provisions of waterway permits are fulfilled.

(9) **Cancellation.** Permission to use waterways is subject to cancellation in order to satisfy the needs of higher priority waterway uses. Transient moorage may be required to move at any time. Waterway permits are cancellable upon ninety days' notice when the sites are needed for higher priority uses.

(10) **Monitoring.** Local governments will be encouraged to monitor waterway use and to report any uses not in compliance with this regulation.

(11) **Planning.** Planning for waterway use will be encouraged. The shoreline planning process should provide for the long range needs of preferred waterway uses and other

statewide values. Planning should also consider the availability of other public property, such as platted street ends, to serve anticipated needs.

(12) **Existing uses.** Existing waterway uses, structures, and obstructions will be reviewed for compliance with this section. Uses not in compliance shall be removed within one year from the date notification of noncompliance is mailed unless the public interest requires earlier removal. Unless early removal is required, removal may be postponed if the department receives a request for vacation of the waterway from the city or port district in accordance with RCW ((~~79.93.060~~)) 79.120.060. If the request for waterway vacation is denied, the structure must be removed within six months of mailing of notice of denial or within one year of the original date of notification of noncompliance, whichever is later.

(13) **Fees.** Waterway permit fees will be determined on the same basis as required for similar types of uses on other state-owned aquatic lands.

(14) **Filled areas.** Certain waterways contain unauthorized fill material. The filled areas have generally assumed the characteristics of the abutting upland. Nonwater-dependent uses may be allowed on existing fills when there will be no interference with priority or other permitted waterway uses and when permitted under applicable local, state, and federal regulations.

AMENDATORY SECTION (Amending Order 342, filed 7/1/80)

WAC 332-30-119 Sale of second class shorelands. (1) Under RCW ((~~79.01.474~~)) 79.125.450 state-owned second class shorelands on lakes legally determined or considered by the department of natural resources to be navigable, may be sold to private owners of abutting upland property where it is determined by the board of natural resources that the shorelands have minimal public value for uses such as providing access, recreation or other public benefit. The amount of shoreland subject to sale to any one individual shall be the amount fronting a lot within a recorded subdivision plat; or the greater of 100 feet or ten percent of the frontage owned by the applicant outside of a recorded subdivision. However, it shall be in the public interest to retain ownership of publicly owned second class shorelands on navigable lakes where any of the following conditions exist:

(a) The shorelands are natural, conservancy, or equivalent designated areas under the local shoreline master program.

(b) The shorelands are located in front of land with public upland ownership or public access easements.

(c) Further sales of shorelands would preclude the establishment of public access to the lake, or adversely affect the public use and access to the lake.

(2) Prior to the sale of second class shorelands on a navigable lake, the department will:

(a) Depict on a suitable map the current ownership of all shorelands and identify those shorelands potentially available for sale as provided under WAC 332-30-119(1).

(b) Identify any privately owned shorelands, acquisition of which would benefit the public.

(c) Identify and establish the waterward boundary of the shorelands potentially available for sale or acquisition.

(d) Make an appraisal of the value of the shorelands potentially available for sale or acquisition in accordance with as many of the following techniques as are appropriate to the parcels in question:

(i) The market value of shorelands as of the last equivalent sale before the moratorium multiplied by the percentage increase in value of the abutting upland during the same period, i.e.,

FMV = (V2/V1) x (S1)

FMV = Current fair market value of shorelands

S1 = Value of shorelands at time of last equivalent sale

V1 = Value of abutting upland at time of last equivalent shoreland sale

V2 = Current fair market value of upland to a maximum of 150 feet shoreward

(ii) Techniques identified in adopted aquatic land management WACs e.g. WAC 332-30-125

(iii) The sales price of the shoreland shall be the fair market value as determined in (2)(d)(i)(ii) but not less than five percent of the fair market value of the abutting uplands, less improvements, to a maximum depth of one hundred fifty feet landward from the line of ordinary high water.

(e) If necessary, prepare a lake management plan in cooperation with local government to guide future department activities on the publicly owned aquatic lands.

(3) The board of natural resources shall determine whether or not the sale would be in the public interest, and a sales price shall be established by the department of natural resources in a reasonable period of time.

AMENDATORY SECTION (Amending Order 580, filed 11/5/91, effective 12/6/91)

WAC 332-30-122 Aquatic land use authorization. All requirements in this section shall apply to the department. Subsection (2) of this section (except subsection (2)(a)(iii) and (b)(iii) of this section), subsections (3)(a), and (4)(a) shall apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **General requirements.**

(a) In addition to other requirements of law, aquatic land activities that interfere with the use by the general public of an area will require authorization from the department by way of agreement, lease, permit, or other instrument.

(i) Suitable instruments shall be required for all structures on aquatic lands except for those federal structures serving the needs of navigation.

(ii) The beds of navigable waters may be leased to the owner or lessee of the abutting tideland or shoreland. This preference lease right is limited to the area between the landward boundary of the beds and the -3 fathom contour, or 200 feet waterward, whichever is closer to shore. However, the distance from shore may be less in locations where it is necessary to protect the navigational rights of the public.

(iii) When proposing to lease aquatic lands to someone other than the abutting property owner, that owner shall be notified of the intention to lease the area. When not adverse

to the public's ownership, the abutting owner's water access needs may be reasonably accommodated.

(b) Determination of the area encumbered by an authorization for use shall be made by the department based on the impact to public use and subsequent management of any remaining unencumbered public land.

(i) Operations involving fixed structures will include the area physically encumbered plus the open water area needed to operate the facility.

(ii) Areas for individual mooring buoys will be a circle with a radius equal to the expected swing of the vessel or object moored. Only the area encumbered at any given point in time shall be used to calculate any rentals due.

(iii) Areas for utility line easements will normally be ten feet wider than the overall width of the structure(s) placed in the right of way.

(c) All necessary federal, state and local permits shall be acquired by those proposing to use aquatic lands. Copies of permits must be furnished to the department prior to authorizing the use of aquatic lands. When evidence of interest in aquatic land is necessary for application for a permit, an authorization instrument may be issued prior to permit approval but conditioned on receiving the permit.

(2) **Application review.** In addition to other management considerations, the following special analysis shall be given to specific proposed uses:

(a) Environment.

(i) Authorization instruments shall be written to insure that structures and activities on aquatic lands are properly designed, constructed, maintained and conducted in accordance with sound environmental practices.

(ii) Uses which cause adverse environmental impacts may be authorized on aquatic lands only upon compliance with applicable environmental laws and regulations and appropriate steps as may be directed are taken to mitigate substantial or irreversible damage to the environment.

(iii) Nonwater-dependent uses which have significant adverse environmental impacts shall not be authorized.

(b) Public use and access.

(i) Wherever practical, authorization instruments for use of aquatic lands shall be written to provide for public access to the water.

(ii) Areas allocated for first-come, first-served public use shall not be managed to produce a profit for a concessionaire or other operator without a fee being charged.

(iii) Notice will be served to lessees of tidelands and shorelands allocated for future public use that prior to renewal of current leases, such leases will be modified to permit public use or will be terminated.

(c) Authorization to use aquatic lands shall not be granted to any person or organization which discriminates on the basis of race, color, creed, religion, sex, age, or physical or mental handicap.

(d) Authorization instruments for the installation of underwater pipelines, outfalls and cables may be granted when proper provisions are included to insure against substantial or irreversible damage to the environment and there is no practical upland alternative.

(3) **Rents and fees.**

(a) When proposed uses of aquatic lands requiring an authorization instrument (other than in harbor areas) have an identifiable and quantifiable but acceptable adverse impact on state-owned aquatic land, both within and without the authorized area, the value of that loss or impact shall be paid by the one so authorized in addition to normal rental to the department or port as is appropriate.

(b) Normal rentals shall be calculated based on the classification of the aquatic land use(s) occurring on the property. Methods for each class of use are described in specific WAC sections.

(c) Advance payments for two or more years may be collected in those situations where annual payments are less than document preparation and administration costs.

(d) Rentals for leases will normally be billed annually, in advance. If requested by a lessee in good standing, billings will be made:

(i) Quarterly on a prorated basis when annual rental exceeds four thousand dollars; or

(ii) Monthly on a prorated basis when annual rental exceeds twelve thousand dollars.

(e) A one percent per month charge shall be made on any amounts which are past due, unless those amounts are appealed. Users of aquatic properties shall not be considered in good standing when they have amounts more than thirty days past due.

(4) **Structures and improvements on aquatic lands.**

(a) Authorization for placing structures and improvements on public aquatic lands shall be based on the intended use, other uses in the immediate area, and the effect on navigational rights of public and private aquatic land owners. Structures and improvements shall:

(i) Conform to the laws and regulations of any public authority;

(ii) Be kept in good condition and repair by the authorized user of the aquatic lands;

(iii) Not be, nor become, a hazard to navigation;

(iv) Be removed by the authorized user as stipulated in the authorization instrument.

(b) In addition to aquatic land rentals and fees, rent shall be charged for use of those structures and improvements:

(i) Owned by the department, under contract to the department for management; or that become state property under RCW ((~~79.94.320~~)) 79.125.300;

(ii) As may be agreed upon as part of the authorization document;

(iii) Installed on an authorized area without written concurrence of the department; or

(iv) Not covered by an application for use of aquatic lands, or a lawsuit challenging such requirements, within ninety days after the date of mailing of the department's written notification of unauthorized occupancy of public aquatic lands.

(c) Only land rental and fees shall be charged for public aquatic lands occupied by those structures and improvements that are:

(i) Authorized in writing by the department;

(ii) Installed prior to June 1, 1971 (effective date of the Shoreline Management Act) on an area authorized for use from the department; or

(iii) Covered by an application for use of aquatic lands within ninety days after the date of mailing of the department's written notification of unauthorized occupancy of public aquatic lands.

(5) **Insurance, bonds, and other security.**

(a) The department may require authorized users of aquatic lands to carry insurance, bonding, or provide other forms of security as may be appropriate for the use or uses occurring on public property, in order to ensure its sustained utility and future value.

(b) Proof of coverage shall be acceptable to the department if provided by any of the following:

(i) Insurance and/or bonding companies licensed by the state;

(ii) Recognized insurance or bonding agent for the authorized user;

(iii) Savings account assignment from authorized user to department; or

(iv) Cash deposit.

(c) The amount of security required of each user shall be determined by the department and adjusted periodically as needed.

(i) Any portion of the required security relating to payment of rent or fees shall be limited to an amount not exceeding two year's rental or fees.

(ii) Required security related to other terms of the agreement shall be based on the estimated cost to the department of enforcing compliance with those terms.

(iii) Cash deposits shall not be required in an amount exceeding one-twelfth of the annual rental or fees. If this amount is less than the total required security, the remainder shall be provided through other forms listed in (b) of this subsection.

(d) Security must be provided on a continual basis for the life of the agreement. Security arrangements for less than the life of the agreement shall be accepted as long as those arrangements are kept in force through a series of renewals or extensions.

AMENDATORY SECTION (Amending Resolution No. 470 [WSR 05-23-033], filed 11/9/84 [11/8/05])

WAC 332-30-123 Aquatic land use rentals for water-dependent uses. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). The annual rental for water-dependent use leases of state-owned aquatic land shall be: The per unit assessed value of the upland tax parcel, exclusive of improvements, multiplied by the units of lease area multiplied by thirty percent multiplied by the real rate of return. Expressed as a formula, it is: UV x LA x .30 x r = AR. Each of the letter variables in this formula have specific criteria for their use as described below. This step by step presentation covers the typical situations within each section first, followed by alternatives for more unique situations.

(1) **Overall considerations.**

(a) Criteria for use of formula. The formula:

(i) Shall be applied to all leases having structural uses that require a physical interface with upland property when a water-dependent use occurs on such uplands (in conjunction with the water-dependent use on the aquatic lands);

(ii) Shall be used for remote moorage leases by selecting an upland parcel as detailed in subsection (2) of this section;

(iii) Shall not be used for areas of filled state-owned aquatic lands having upland characteristics where the department can charge rent for such fills (see WAC 332-30-125), renewable and nonrenewable resource uses, or areas meeting criteria for public use (see WAC 332-30-130); and

(iv) Shall cease being used for leases intended for water-dependent uses when the lease area is not actively developed for such purposes as specified in the lease contract. Rental in such situations shall be determined under the appropriate section of this chapter.

(b) Criteria for applicability to leases. The formula shall be used to calculate rentals for:

(i) All new leases and all pending applications to lease or re-lease as of October 1, 1984;

(ii) All existing leases, where the lease allows calculation of total rent by the appropriate department methods in effect at the time of rental adjustment. Leases in this category previously affected by legislated rental increase limits, shall have the formula applied on the first lease anniversary date after September 30, 1984. Other conditions of these leases not related to rent shall continue until termination or amendment as specified by the lease contract. Leases in this category not previously affected by legislated rental increase limits and scheduled for a rent adjustment after October 1, 1985, shall have the option of retaining the current rent or electing to pay the formula rent under the same conditions as specified in (iii) of this subsection.

(iii) Leases containing specific rent adjustment procedures or schedules shall have the rent determined by the formula when requested by the lessee. Holders of such leases shall be notified prior to their lease anniversary date of both the lease contract rent and formula rent. A selection of the formula rent by the lessee shall require an amendment to the lease which shall include all applicable aquatic land laws and implementing regulations.

(2) **Physical criteria of upland tax parcels.**

(a) Leases used in conjunction with and supportive of activities on the uplands. The upland tax parcel used shall be waterfront and have some portion with upland characteristics. If no upland tax parcel meets these criteria, then an alternative shall be selected under the criteria of subsection (4) of this section.

(b) Remote moorage leases. The upland tax parcel used shall be waterfront, have some portion with upland characteristics; and

(i) If the remote moorage is associated with a local upland facility, be an appropriate parcel at the facility; or

(ii) If the remote moorage is similar in nature of use to moorages in the area associated with a local upland facility, be an appropriate parcel at the facility; or

(iii) If the remote moorage is not associated with a local upland facility, be the parcel closest in distance to the moorage area.

(c) Priority of selection. If more than one upland tax parcel meets the physical criteria, the priority of selection shall be:

(i) The parcel that is structurally connected to the lease area;

(ii) The parcel that abuts the lease area;

(iii) The parcel closest in distance to the lease area.

If more than one upland tax parcel remains after this selection priority, then each upland tax parcel will be used for its portion of the lease area. If there is mutual agreement with the lessee, a single upland tax parcel may be used for the entire lease area. When the unit value of the upland tax parcels are equal, only one upland tax parcel shall be used for the lease area.

(d) The unit value of the upland tax parcel shall be expressed in terms of dollars per square foot or dollars per acre, by dividing the assessed value of the upland tax parcel by the number of square feet or acres in the upland tax parcel. This procedure shall be used in all cases even if the value attributable to the upland tax parcel was assessed using some other unit of value, e.g., front footage, or lot value. Only the "land value" category of the assessment record shall be used; not any assessment record category related to improvements.

(3) **Consistent assessment.** In addition to the criteria in subsection (2) of this section, the upland tax parcel's assessed value must be consistent with the purposes of the lease and method of rental establishment. On this basis, the following situations will be considered inconsistent and shall either require adjustment as specified, or selection of an alternative upland tax parcel under subsection (4) of this section:

(a) The upland tax parcel is not assessed. (See chapter 84.36 RCW Exemptions);

(b) Official date of assessment is more than four years old. (See RCW 84.41.030);

(c) The "assessment" results from a special tax classification not reflecting fair market value. Examples include classifications under: State-regulated utilities (chapter 84.12 RCW), ((~~Reforestation lands (chapter 84.28 RCW),~~)) Timber and forest lands (chapter 84.33 RCW), and Open space (chapter 84.34 RCW). This inconsistency may be corrected by substituting the full value for the parcel if such value is part of the assessment records;

(d) If the assessed valuation of the upland tax parcel to be used is under appeal as a matter of record before any county or state agency, the valuation on the assessor's records shall be used, however, any changes in valuation resulting from such appeal will result in an equitable adjustment of future rental;

(e) The majority of the upland tax parcel area is not used for a water-dependent purpose. This inconsistency may be corrected by using the value and area of the portion of the upland tax parcel that is used for water-dependent purposes if this portion can be segregated from the assessment records; and

(f) The size of the upland tax parcel in acres or square feet is not known or its small size results in a nominal valuation, e.g., unbuildable lot.

(4) **Selection of the nearest comparable upland tax parcel.** When the upland tax parcel does not meet the physical criteria or has an inconsistent assessment that can't be corrected from the assessment records, an alternative upland tax parcel shall be selected which meets the criteria. The nearest upland tax parcel shall be determined by measurement along the shoreline from the inconsistent upland tax parcel.

(a) The alternative upland tax parcel shall be located by order of selection priority:

(i) Within the same city as the lease area, and if not applicable or found;

(ii) Within the same county and water body as the lease area, and if not found;

(iii) Within the same county on similar bodies of water, and if not found;

(iv) Within the state.

(b) Within each locational priority of (a) of this subsection, the priority for a comparable upland tax parcel shall be:

(i) The same use class within the water-dependent category as the lease area use;

(ii) Any water-dependent use within the same upland zoning;

(iii) Any water-dependent use; and

(iv) Any water-oriented use.

(5) **Aquatic land lease area.** The area under lease shall be expressed in square feet or acres.

(a) Where more than one use class separately exist on a lease area, the formula shall only be applied to the water-dependent use area. Other use areas of the lease shall be treated according to the regulations for the specific use.

(b) If a water-dependent and a nonwater-dependent use exist on the same portion of the lease, the rent for such portion shall be negotiated taking into account the proportion of the improvements each use occupies.

(6) **Real rate of return.**

(a) Until July 1, 1989, the real rate of return to be used in the formula shall be five percent.

(b) On July 1, 1989, and on each July 1 thereafter the department shall calculate the real rate of return for that fiscal year under the following limitations:

(i) It shall not change by more than one percentage point from the rate in effect for the previous fiscal year; and

(ii) It shall not be greater than seven percent nor less than three percent.

(7) **Annual inflation adjustment of rent.** The department shall use the inflation rate on a fiscal year basis e.g., the inflation rate for calendar year 1984 shall be used during the period July 1, 1985 through June 30, 1986. The rate will be published in a newspaper of record. Adjustment to the annual rent of a lease shall occur on the anniversary date of the lease except when the rent is redetermined under subsection (9) of this section. The inflation adjustment each year is the inflation rate times the previous year's rent except in cases of stairstepping.

(8) **Stairstepping rental changes.**

(a) Initial increases for leases in effect on October 1, 1984. If the application of the formula results in an increase of more than one hundred dollars and more than thirty-three percent, stairstepping to the formula rent shall occur over the first three years in amounts equal to thirty-three percent of the

difference between each year's inflation adjusted formula rent and the previous rent.

Example

Previous rent = $100.00 Formula rent =$403.00 Inflation = 5%/yr.

Yr.	Formula Rent	Previous Rent	Difference	33%	Stairstep Rent
1	$403.00	$100.00	$303.00	$100.00	$200.00
2	423.15	100.00	323.15	106.64	306.64
3	444.31	100.00	344.31	113.62	420.26
4	466.52	-	-	-	466.52

(b) Initial decreases for leases in effect on October 1, 1984. If the application of the formula results in a decrease of more than thirty-three percent, stairstepping to the formula rent shall occur over the first three years in amounts equal to thirty-three percent of the difference between the previous rent and each year's inflation adjusted formula rent.

Example

Previous rent =$403.00 Formula rent = $100.00 Inflation = 5%/yr.

Yr.	Previous Rent	Formula Rent	Difference	33%	Stairstep Rent
1	$403.00	$100.00	$303.00	$100.00	$303.00
2	403.00	105.00	298.00	98.34	204.66
3	403.00	110.25	292.75	96.61	108.05
4	-	115.76	-	-	115.76

(c) If a lease in effect on October 1, 1984, contains more than one water-dependent or water-oriented use and the rental calculations for each such use (e.g., log booming and log storage) result in different rentals per unit of lease area, the total of the rents for those portions of the lease area shall be used to determine if the stairstepping provisions of (a) or (b) of this subsection apply to the lease.

(d) If a lease in effect on October 1, 1984, contains a nonwater-dependent use in addition to a water-dependent or oriented use, the stairstepping provisions of (a) or (b) of this subsection:

(i) Shall apply to the water-dependent use area if it exists separately (see subsection (5)(a) of this section);

(ii) Shall not apply to any portion of the lease area jointly occupied by a water-dependent and nonwater-dependent use (see subsection (5)(b) of this section).

(e) Subsequent increases. After completion of any initial stairstepping under (a) and (b) of this subsection due to the first application of the formula, the rent for any lease or portion thereof calculated by the formula shall not increase by more than fifty percent per unit area from the previous year's per unit area rent.

(f) All initial stairstepping of rentals shall only occur during the term of existing leases.

(9) The annual rental shall be redetermined by the formula every four years or as provided by the existing lease language. If an existing lease calls for redetermination of rental during an initial stairstepping period, it shall be determined on the scheduled date and applied (with inflation adjustments) at the end of the initial stairstep period.

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.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending Order 343, filed 7/3/80)

WAC 332-30-127 Unauthorized use and occupancy of aquatic lands (see RCW ((~~79.01.471~~)) 79.105.200 and 79.125.200). (1) Aquatic lands determined to be state owned, but occupied for private use through accident or without prior approval, may be leased if found to be in the public interest.

(2) Upon discovery of an unauthorized use of aquatic land, the responsible party will be immediately notified of his status. If the use will not be authorized, he will be served notice in writing requiring him to vacate the premises within thirty days. If the law and department policy will permit the use, the occupant is to be encouraged to lease the premises.

(3) The trespassing party occupying aquatic lands without authority will be assessed a monthly use and occupancy fee for such use beginning at the time notification of state ownership is first provided to them and continuing until they have vacated the premises or arranged for a right to occupy through execution of a lease as provided by law.

(4) The use and occupancy fee is sixty percent higher than full fair market rental and is intended to encourage either normal leasing or vacation of aquatic land.

(5) In those limited circumstances when a use cannot be authorized by a lease even though it may be in the public interest to permit the structure or activity, the fair market rental will be charged and billed on an annual basis.

(6) The use and occupancy billing is to be made after the use has occurred and conveys no rights in advance. Payment is due by the tenth of the month following the original notification, and if not received, a notice is to be sent. If payment is not received within thirty days of this notice and monthly thereafter by the tenth of each month during the period of the use and occupancy lease or if the improvement has not been removed from the aquatic land, an unlawful detainer action against the party in trespass will be filed along with an action to collect past due rental.

AMENDATORY SECTION (Amending Resolution No. 500 [1186], filed 11/5/85 [12/20/05])

WAC 332-30-128 Rent review. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **Eligibility to request review.** Any lessee or applicant to lease or release state-owned aquatic lands may request review of any rent proposed to be charged by the department.

(2) **Dispute officers.** The manager of the marine lands division will be the rental dispute officer (RDO). The supervisor of the department, or his designee, will be the rental dispute appeals officer (RDAO).

(3) **Submittals.** A request for review of the rent (an original and two copies) shall be submitted within thirty days of notification by the department of the rent due from the lessee/applicant. The request for review shall contain sufficient information for the officers to make a decision on the appropriateness of the rent initially determined by the depart-

ment. The burden of proof for showing that the rent is incorrect shall rest with the lessee/applicant.

(4) **Rental due.** The request for review shall be accompanied by one year's rent payment based on the preceding year's rate, or a portion thereof as determined by RCW ((~~79.90.530~~)) 79.105.340; or based on the rate proposed by the department, or a portion thereof as determined by RCW ((~~79.90.530~~)) 79.105.340, whichever is less. The applicant shall pay any additional rent or be entitled to a refund, with interest, within thirty days after completion of the review process provided in this section.

(5) **Contents of request.** The request for review shall state what the lessee/applicant believes the rent should be and shall contain, at the minimum, all necessary documentation to justify the lessee/applicant's position. This information shall include but not be limited to:

(a) **Rationale.** Why the rent established by the department is inappropriate. The supporting documentation for nonwater-dependent leases may include appraisals by professionally accredited appraisers.

(b) **Lease information.** A description of state-owned aquatic land under lease which shall include, but not be limited to:

(i) Lease or application number;

(ii) Map showing location of lease or proposed lease;

(iii) Legal description of lease area including area of lease;

(iv) The permitted or intended use on the leasehold; and

(v) The actual or current use on the leasehold premises.

(c) **Substitute upland parcel.** A lessee/applicant whose lease rent is determined according to RCW ((~~79.90.480~~)) 79.105.240 (water-dependent leases) and who disputes the choice of the upland parcel as provided by WAC 332-30-123, shall indicate the upland parcel that should be substituted in the rental determination and shall provide the following information on the parcel:

(i) The county parcel number;

(ii) Its assessed value;

(iii) Its area in square feet or acres;

(iv) A map showing the location of the parcel; and

(v) A statement indicating the land use on the parcel and justifying why the parcel should be substituted.

(6) **RDO review.**

(a) The RDO shall evaluate the request for review within fifteen days of filing to determine if any further support materials are needed from the lessee/applicant or the department.

(b) The lessee/applicant or the department shall provide any needed materials to the RDO within thirty days of receiving a request from the RDO.

(c) The RDO may, at any time during the review, order a conference between the lessee/applicant and department staff to try to settle the rent dispute.

(d) The RDO shall issue a decision within sixty days of filing of the request. Such decision shall contain findings of fact for the decision. If a decision cannot be issued within that time, the lessee/applicant's request will automatically be granted and the rent proposed by the lessee/applicant will be the rent for the lease until the next rent revaluation; provided that, the RDO may extend the review period for one sixty-day period.

(7) **RDAO review.**

(a) The RDAO may, within fifteen days of the final decision by the RDO, be petitioned to review that decision.

(b) If the RDAO declines to review the petition on the decision of the RDO, the RDO's decision shall be the final decision of the RDAO.

(c) If the RDAO consents to review the decision, the review may only consider the factual record before the RDO and the written findings and decision of the RDO. The RDAO shall issue a decision on the petition containing written findings within thirty days of the filing of the petition. This decision shall be the RDAO's final decision.

(8) **Board review.**

(a) The board of natural resources (board) may, within fifteen days of the final RDAO decision, be petitioned to review that decision.

(b) If the board declines to review the petition, the RDAO decision shall be the final decision of the board.

(c) If the board decides to review the petition, the department and the lessee/applicant shall present written statements on the final decision of the RDAO within fifteen days of the decision to review. The board may request oral statements from the lessee/applicant or the department if the board decides a decision cannot be made solely on the written statements.

(d) The board shall issue a decision on the petition within sixty days of the filing of the written statements by the lessee/applicant and the department.

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.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending Order 710, filed 10/17/02, effective 11/17/02)

WAC 332-30-139 Marinas and moorages. (1) Moorage facilities developed on aquatic lands should meet the following design criteria:

(a) Moorage shall be designed so as to be compatible with the local environment and to minimize adverse esthetic impacts.

(b) Open moorage is preferred in relatively undeveloped areas and locations where view preservation is desirable, and/or where leisure activities are prevalent.

(c) Covered moorage may be considered in highly developed areas and locations having a commercial environment.

(d) Enclosed moorage should be confined to areas of an industrial character where there is a minimum of esthetic concern.

(e) In general, covered moorage is preferred to enclosed moorage and open moorage is preferred to covered moorage.

(f) View encumbrance due to enclosed moorage shall be avoided in those areas where views are an important element in the local environment.

(g) In order to minimize the impact of moorage demand on natural shorelines, large marina developments in urban areas should be fostered in preference to numerous small marinas widely distributed.

(h) The use of floating breakwaters shall be considered as protective structures before using solid fills.

(i) Dry moorage facilities (stacked dry boat storage) shall be considered as an alternative to wet storage in those locations where such storage will:

(i) Significantly reduce environmental or land use impacts within the water area of the immediate shoreline.

(ii) Reduce the need for expansion of existing wet storage when such expansion would significantly impact the environment or adjacent land use.

(2) Anchorages suitable for use by transient, recreational boaters will be identified and established by the department in appropriate locations so as to provide additional moorage space.

(3) Upland sewage disposal approved by local government and appropriate state agencies is required for all vessels used as a residence.

(4) The department shall work with federal, state, local government agencies and other groups to determine acceptable locations for marina development, properly distributed to meet projected public need for the period 1980 to 2010.

(5) The department may lease open water moorage and anchorage areas only to local governments that have authorized the establishment of open water moorage and anchorage areas in their local Shoreline Master Programs within five years of the effective date of this rule. With the department's approval, the local government lessee may install mooring buoys or other floating moorage devices, designate anchorage locations, sublease moorage and anchorage in the area, collect rent and fees for such moorage and anchorage, and otherwise manage the area as a moorage facility. All open water moorage and anchorage areas must meet the following requirements:

(a) Open water moorage and anchorage areas must meet all relevant requirements normally applicable to a marina lease, which may include the placement, design, limitation on the number of vessels or floating houses, and operation of the area and any improvements within the area, payment of rent to the department, consideration of navigational and environmental impacts, and all other applicable permits and other requirements of law.

(b) Open water moorage and anchorage areas may not be in a harbor area nor in any location or configuration that would interfere with water-borne commerce and navigation.

(c) The leasing of state-owned aquatic lands for open water moorage and anchorage areas is subject to all preferences accorded upland, tideland, or shoreland owners in RCW ((~~79.94.070, 79.94.260, 79.94.280, 79.95.010~~)) 79.125.400, 79.125.460, 79.125.410, 79.130.010, and WAC 332-30-122.

(d) Any vessel used for residential use or floating house in an open water moorage and anchorage area must comply with WAC 332-30-171.

(e) Except for nongrandfathered floating house moorage as defined in WAC 332-30-171 (7)(a)(ii), nonwater-dependent uses and commercial uses are prohibited in open water moorage and anchorage areas. Uses prohibited by this subsection (e) are allowed when necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

The department will not lease an open water moorage and anchorage area to an entity other than a local government agency. This restriction shall not affect use authorizations to public or private entities for mooring buoys, aquaculture net pens, or other floating structures otherwise allowed by law.

AMENDATORY SECTION (Amending Order 710, filed 10/17/02, effective 11/17/02)

WAC 332-30-144 Private recreational docks. (1) **Applicability.** This section implements the permission created by RCW ((~~79.90.105~~)) 79.105.430, Private recreational docks, which allows abutting residential owners, under certain circumstances, to install private recreational docks without charge. The limitations set forth in this section apply only to use of state-owned aquatic lands for private recreational docks under RCW ((~~79.90.105~~)) 79.105.430. No restriction or regulation of other types of uses on aquatic lands is provided. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(2) **Eligibility.** The permission shall apply only to the following:

(a) An "abutting residential owner," being the owner of record of property physically bordering on public aquatic land and either used for single family housing or for a multifamily residence not exceeding four units per lot.

(b) A "dock," being a securely anchored or fixed, open walkway structure visible to boaters and kept in good repair extending from the upland property, primarily used as an aid to boating by the abutting residential owner(s), and accommodating moorage by not more than four pleasure boats typical to the body of water on which the dock is located. Two or more abutting residential owners may install and maintain a single joint-use dock provided it meets all other design requirements of this section; is the only dock used by those owners; and that the dock fronts one of the owners' property.

(c) A "private recreational purpose," being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

(d) State-owned aquatic lands outside harbor areas designated by the harbor line commission.

(3) **Uses not qualifying.** Examples of situations not qualifying for the permission include:

(a) Yacht and boat club facilities;

(b) Floating houses, as defined in WAC 332-30-106(23), and vessels used as a residence (as defined in WAC 332-30-106(62));

(c) Resorts;

(d) Multifamily dwellings, including condominium ownerships, with more than four units;

(e) Uses other than docks such as launches and railways not part of the dock, bulkheads, landfills, dredging, breakwaters, mooring buoys, swim floats, and swimming areas.

(4) **Limitations.**

(a) The permission does not apply to areas where the state has issued a reversionary use deed such as for shellfish culture, hunting and fishing, or park purposes; published an allocation of a special use and the dock is inconsistent with

the allocation; or granted an authorization for use such as a lease, easement, or material purchase.

(b) Each dock owner using the permission is responsible for determining the availability of the public aquatic lands. Records of the department are open for public review. The department will research the availability of the public aquatic lands upon written request. A fee sufficient to cover costs shall be charged for this research.

(c) The permission is limited to docks that conform to adopted shoreline master programs and other local ordinances.

(d) The permission is not a grant of exclusive use of public aquatic lands to the dock owner. It does not prohibit public use of any aquatic lands around or under the dock. Owners of docks located on state-owned tidelands or shorelands must provide a safe, convenient, and clearly available means of pedestrian access over, around, or under the dock at all tide levels. However, dock owners are not required to allow public use of their docks or access across private lands to state-owned aquatic lands.

(e) The permission is not transferable or assignable to anyone other than a subsequent owner of the abutting upland property and is continuously dependent on the nature of ownership and use of the properties involved.

(f) Vessels used as a residence and floating houses are not permitted to be moored at a private recreational dock, except when such moorage is necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

(5) **Revocation.** The permission may be revoked or canceled if:

(a) The dock or abutting residential owner has not met the criteria listed in subsection (2) or (4) of this section; or

(b) The dock significantly interferes with navigation or with navigational access to and from other upland properties. This degree of interference shall be determined from the character of the shoreline and waterbody, the character of other in-water development in the vicinity, and the degree of navigational use by the public and adjacent property owners;

(c) The dock interferes with preferred water-dependent uses established by law; or

(d) The dock is a public health or safety hazard.

(6) **Appeal of revocation.** Upon receiving written notice of revocation or cancellation, the abutting residential owner shall have thirty days from the date of notice to file for an administrative hearing under the contested case proceedings of chapter ((~~34.04~~)) 34.05 RCW. If the action to revoke the permission is upheld, the owner shall correct the cited conditions and shall be liable to the state for any compensation due to the state from the use of the aquatic lands from the date of notice until permission requirements are met or until such permission is no longer needed. If the abutting residential owner disclaims ownership of the dock, the department may take actions to have it removed.

(7) **Current leases.** Current lessees of docks meeting the criteria in this section will be notified of their option to cancel the lease. They will be provided a reasonable time to respond. Lack of response will result in cancellation of the lease by the department.

(8) **Property rights.** No property rights in, or boundaries of, public aquatic lands are established by this section.

(9) **Lines of navigability.** The department will not initiate establishment of lines of navigability on any shorelands unless requested to do so by the shoreland owners or their representatives.

(10) Nothing in this section is intended to address statutes relating to sales of second class shorelands.

AMENDATORY SECTION (Amending Order 343, filed 7/3/80)

WAC 332-30-163 River management. (1) Use and/or modification of any river system shall recognize basic hydraulic principles, as well as harmonize as much as possible with the existing aquatic ecosystems, and human needs.

(2) Priority consideration will be given to the preservation of the streamway environment with special attention given to preservation of those areas considered esthetically or environmentally unique.

(3) Bank and island stabilization programs which rely mainly on natural vegetative systems as holding elements will be encouraged.

(4) Research will be encouraged to develop alternative methods of channel control, utilizing natural systems of stabilization.

(5) Natural plant and animal communities and other features which provide an ecological balance to a streamway, will be recognized in evaluating competing human use and protected from significant human impact.

(6) Normal stream depositions of logs, uprooted tree snags and stumps which abut on shorelands and do not intrude on the navigational channel or reduce flow, or adversely redirect a river course, and are not harmful to life and property, will generally be left as they lie, in order to protect the resultant dependent aquatic systems.

(7) Development projects will not, in most cases, be permitted to fill indentations such as mudholes, eddies, pools and aeration drops.

(8) Braided and meandering channels will be protected from development.

(9) River channel relocations will be permitted only when an overriding public benefit can be shown. Filling, grading, lagooning or dredging which would result in substantial detriment to navigable waters by reason of erosion, sedimentation or impairment of fish and aquatic life will not be authorized.

(10) Sand and gravel removals will not be permitted below the wetted perimeter of navigable rivers except as authorized under a departments of fisheries and game hydraulics permit (RCW ((~~75.20.100~~)) 75.55.100). Such removals may be authorized for maintenance and improvement of navigational channels.

(11) Sand and gravel removals above the wetted perimeter of a navigable river (which are not harmful to public health and safety) will be considered when any or all of the following situations exist:

(a) No alternative local upland source is available, and then the amount of such removals will be determined on a

case by case basis after consideration of existing state and local regulations.

(b) The removal is designed to create or improve a feature such as a pond, wetland or other habitat valuable for fish and wildlife.

(c) The removal provides recreational benefits.

(d) The removal will aid in reducing a detrimental accumulation of aggregates in downstream lakes and reservoirs.

(e) The removal will aid in reducing damage to private or public land and property abutting a navigable river.

(12) Sand and gravel removals above the wetted perimeter of a navigable river will not be considered when:

(a) The location of such material is below a dam and has inadequate supplementary feeding of gravel or sand.

(b) Detached bars and islands are involved.

(c) Removal will cause unstable hydraulic conditions detrimental to fish, wildlife, public health and safety.

(d) Removal will impact esthetics of nearby recreational facilities.

(e) Removal will result in negative water quality according to department of ecology standards.

(13) Bank dumping and junk revetment will not be permitted on aquatic lands.

(14) Sand and gravel removal leases shall be conditioned to allow removal of only that amount which is naturally replenished on an annual basis.

<u>AMENDATORY SECTION</u> (Amending Order 640, filed 3/11/99, effective 4/11/99)

WAC 332-30-170 Tideland and shoreland exchange. The department will use this rule when it considers exchanging tidelands or shorelands with private individuals or public entities pursuant to RCW ((~~79.90.457~~)) <u>79.105.400</u>. The department may exchange these aquatic lands if the exchange is in the public interest and will actively contribute to the public benefits established in RCW ((~~79.90.455~~)) <u>79.105.030</u>. Those benefits are: Encouraging direct public use and access; fostering water-dependent uses; ensuring environmental protection; utilizing renewable resources; and generating revenue in a manner consistent with these benefits. The department may not exchange state-owned harbor areas or waterways.

(1) **Eligibility criteria.** The department may consider exchanging ownership of tidelands or shorelands with private and other public landowners if the proposed exchange meets the eligibility criteria set forth in (a) and (b) of this subsection.

(a) The economic values of the parcels must be equal or the exchange must result in a net economic gain to the state. The economic value must be determined by a qualified independent appraiser and/or economist and accomplished through a methodology accepted by the department.

(b) The tidelands or shorelands to be conveyed into state ownership must abut navigable water.

(2) **Evaluation criteria.** Subject to available funding, the department will evaluate eligible proposed exchanges according to the following criteria. The department will give priority and preference to proposed exchanges which, in the department's judgment, are in the public interest by providing the greatest public benefits, the least negative impacts, and the most appropriate resolution of other considerations, as set forth in (a), (b) and (c) of this subsection.

(a) The tidelands or shorelands to be conveyed into state ownership must have one or more of the following characteristics:

(i) Be or abut a critical and/or an essential habitat identified by the National Marine Fisheries Service, state natural resource management agency(s), and/or the United States Department of Fish and Wildlife;

(ii) Be or abut a critical area identified by jurisdictions under chapter 36.70A RCW;

(iii) Be an area beneficial to sediment transport and/or nearshore habitat function identified by the National Marine Fisheries Service, state natural resource management agency(s), and/or the United States Department of Fish and Wildlife;

(iv) Be actively used or abut a parcel used in the commercial production of food or fibre or other renewable resource production (for example, commercial grade beds of shellfish and aquaculture facilities);

(v) Abut a state or national wildlife refuge;

(vi) Abut an upland parcel with public upland ownership, easements, or some other formalized agreement that would allow direct public use of and access to the water;

(vii) Be actively used or abut parcel(s) actively used for water-dependent uses or allow for water dependent use;

(viii) Contain a historic or archaeological property listed on or eligible to be listed on the National Register of Historic Places; or

(ix) Generate or have the potential to generate higher revenues than the parcel being transferred out-of-state ownership in a manner consistent with the benefits listed in RCW ((~~79.90.455~~)) <u>79.105.030</u>.

(b) The proposed exchange must have beneficial or no negative impacts on:

(i) Navigation;

(ii) The diversity and health of the local environment including the production and utilization of renewable resources;

(iii) The quantity and quality of public access to the waterfront;

(iv) Treaty rights of federally recognized tribes. The department will solicit comments on a proposed exchange from affected tribes; and

(v) Hazardous waste and contaminated sediments liability issues.

(c) The following issues must also be considered:

(i) Consistency with plans and development guidelines of public ports, counties, cities and other local, state, and federal agencies;

(ii) The relative manageability of the tidelands or shorelands to be exchanged including, but not limited to, the effect of the exchange on management costs, liability and upland access, and the relative proximity of the tidelands or shorelands to be exchanged to other state-owned shorelands or tidelands; and

(iii) The cumulative impacts of similar exchanges on water dependent uses, nonrenewable and renewable natural

resources, and total aquatic lands acreage managed by the department.

(3) **Recommendation to the board of natural resources.** The department will provide its recommendations to the board of natural resources in writing, addressing whether the exchange meets the criteria in this rule and the positive and negative impacts of the exchange on public benefits and resources. The department will provide copies of its recommendations to the proponent of the exchange. In general, an exchange should only be recommended by the department and approved by the board of natural resources when, in the department's and the board's judgment, the public benefits associated with the exchange outweigh the negative impacts or other diminution in public benefits.

AMENDATORY SECTION (Amending Order 710, filed 10/17/02, effective 11/17/02)

WAC 332-30-171 Residential uses on state-owned aquatic lands. (1) **Application.** This section applies to residential uses, as defined in WAC 332-30-106(62), and floating houses, moorage facilities, and vessels, as defined in WAC 332-30-106 (23), (38) and (74), as they relate to residential uses, on state-owned aquatic lands. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). This section does not apply to: Activities or structures on aquatic lands not owned by the state; vessels used solely for recreational or transient purposes; floating houses or vessels used as hotels, motels or boatels; or vessels owned and operated by the United States military.

(2) **Limits on the number of residential uses.** Residential uses on state-owned aquatic lands shall only occur in accordance with all federal, state, and local laws. The following apply only to leases entered into following the effective date of this rule unless otherwise provided in subsection (3) of this section.

(a) The total number of slips which may be allocated for residential uses in any marina, pier, open water moorage and anchorage area, or other moorage facility shall be limited to ten percent of the total number of slips within a marina, unless otherwise established as provided in (b) or (c) of this subsection. For the purposes of determining the exact number of residential slips, the department shall round to nearest whole number.

(b) Upon the effective date of this rule, the ten percent limit can be changed by local government, through amendments to the local shoreline master program and/or issuance of a shoreline substantial development conditional use permit, if all of the following conditions are met:

(i) Methods to handle the upland disposal and best management practices for the increased waste associated with residential use are expressly addressed and required; and

(ii) Specific locations for residential use slips do not adversely impact habitat or interfere with water-dependent uses.

(c) If a local shoreline master program or local ordinance has established a different percentage limit prior to the date this rule takes effect, the limit established in that shoreline master program or local ordinance shall be the recognized percentage limit. After the effective date of this rule, changes to the percentage limit shall only be recognized by DNR as the percentage limit if the changes are made through amendments to the Shoreline Master Program or adoption of a shoreline substantial development conditional use permit.

(d) Application of the percentage limit to moorage facilities that occupy both state-owned aquatic and privately owned aquatic lands.

(i) If the city or county jurisdiction has not established a percentage limit, then the total number of vessels used as a residence and floating houses in any moorage facility shall be limited to ten percent of the total number of slips or spaces usable for moorage or anchorage in that facility. In this case, when a moorage facility occupies both state-owned and non-state-owned aquatic lands, the percent limit will be calculated using only the total number of slips that are located on state-owned aquatic lands and will be applied only to the portion of the facility located on state-owned aquatic lands.

(ii) If a county or city has established a percent limit, and a moorage facility occupies both state-owned and nonstate-owned aquatic lands, the department may authorize any or all of the floating houses or vessels with residential uses within the entire facility to be located in the portion of the facility on state-owned aquatic lands.

(e) If a moorage facility has so few moorage slips or spaces that the percent limit allows for less than one residential use slip, then one residential use slip may be authorized, if not otherwise prohibited by the city or county jurisdiction.

(3) **Excess residential use slips.**

(a) This subsection shall apply to all lessees occupying state-owned aquatic lands under written leases with the department as of the effective date of this rule. Within one hundred eighty days of the effective date of this rule, each existing moorage facility lessee shall document the existing percentage of residential use slips within their facility and report this information to the department. This reported percentage shall be referred to as the "reported existing percentage" for the moorage facility lessee.

(i) If the reported existing percentage of residential use slips is greater than the ten percent limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, then the reported existing percentage will establish the allowable residential use percentage at the beginning of a new lease for the same moorage facility, regardless of whether ownership of the facility changes subject to attrition described in subsection (3)(b) of this section. At the time the new lease is entered into, those residential uses in excess of the reported existing percentage will be required to vacate the moorage facility.

(ii) If the reported existing percentage of residential use slips is less than or equal to the ten percent limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, then the percentage limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, will establish the allowable residential use percentage at the beginning of a new lease for the same moorage facility, regardless of whether ownership of the facility changes. At the time the new lease is entered into, those residential uses in excess of the ten percent limit established in this rule, or other

locally established limit as described in subsection (2)(b) or (c) of this section, will be required to vacate the moorage facility.

(iii) If a moorage facility lessee fails to report the existing percentage of residential slips within their facility within one hundred eighty days of the effective date of this rule, then the percentage limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, will establish the allowable residential use percentage at the beginning of a new lease for the same moorage facility, regardless of whether ownership of the facility changes. At the time the new lease is entered into, those residential uses in excess of the ten percent limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, will be required to vacate the moorage facility.

(b) The purpose of this subsection is to describe the process of attrition used to reach compliance with the percentage limit or locally established percentage limit. For all leases entered into following the effective date of this rule, if there are more residential use slips in a moorage facility than allowed by the percent limit, then no new or additional residential use slips, including replacements for grandfathered floating houses under subsection (7)(a) of this section, shall be authorized in that facility. In such cases, any residential uses that leave the facility for a period of time greater than thirty days may not return to the facility until the total number of residential use slips is below the percent limit. For purposes of counting the thirty days described in this subsection (3)(b), the department shall not include time needed for repairs to the vessels or floating houses, nor any time when a vessel is away from the moorage facility but the owner or operator of the vessel continuously maintains a written moorage agreement for that facility.

(c) Marina owners, operators, and/or managers may decrease the ten percent limit on a site-specific basis.

(4) **Waste disposal.** The following apply to all leases entered into following the effective date of this rule:

(a) Sewage. All treated and untreated sewage shall be disposed of upland, in accordance with federal, state, and local laws. This section does not require specific disposal methods so long as the measures established by the lessee and the department ensure upland disposal.

(b) Oil and toxic substances. All oil, grease, corrosive liquids, and other toxic substances shall be disposed of upland, in accordance with federal, state, and local laws. This section does not require specific disposal methods so long as the measures established by the lessee and the department ensure upland disposal.

(c) Solid waste. All solid waste shall be disposed of upland, in accordance with federal, state, and local laws. This section does not require specific disposal methods so long as the measures established by the lessee and the department ensure upland disposal.

(d) Gray water. All gray water shall be disposed of in accordance with federal, state, and local laws. Moorage facilities shall develop and implement best management practices to avoid, to the maximum extent possible, all discharges into waters above state-owned aquatic land, of wastewater from showers, baths, sinks, laundry, decks, and other miscellaneous sources, otherwise known as "gray water." For those unavoidable discharges, the best management practices shall minimize discharges, to the maximum extent possible, of gray water from showers, baths, sinks, laundry, decks, and other miscellaneous sources.

(5) **Responsibilities of lessees with residential uses.** The following apply to leases entered into following the effective date of this rule:

(a) Each department lessee must establish and implement measures satisfactory to the department for ensuring upland waste disposal, and the avoidance or minimization of any discharge of waste, as described in (c) of this subsection, onto or in the waters above state-owned aquatic lands from vessels used for residential use and floating houses. This shall include a contingency plan in case of failure or unavailability of the waste disposal methods identified by the lessee and approved by the department.

(b) Each department lessee must annually, or as otherwise provided in the lease, provide the department with evidence that all vessels used for residential use and floating houses in their facility comply with this rule and the terms of the department lease.

(c) Each department lessee shall fully describe the waste disposal measures. These measures may include, but are not limited to:

(i) Connection to an upland sewage system;

(ii) Periodic sewage pump-out service, either at a pump-out station or with transportable pump-out equipment, including prepayment for such services and proof of participation by residential occupants;

(iii) Installation of appropriate waste receptacles;

(iv) Back-up and clean-up facilities and procedures as needed in case of failure or temporary unavailability of waste disposal systems;

(v) Educational efforts, such as posting of notices, distribution of information, and training for residents on waste disposal methods and requirements;

(vi) Monitoring of activities within the facility to prevent or identify and remedy improper waste disposal;

(vii) Contractual requirements in moorage subleases requiring proper waste disposal by residents; and/or

(viii) Other best management practices and/or best available technologies that are established by any local, state, or federal agency, including the department, or by any appropriate nongovernmental organization, that are satisfactory to the department to ensure upland disposal of waste and avoid or minimize any discharge of waste onto or in the waters above state-owned aquatic lands.

(d) Consistent with all federal, state, and local laws and regulations, all leases issued by the department after the effective date of this rule for moorage facilities with residential uses within them shall require and specify:

(i) Methods to handle the upland disposal and best management practices for the increased waste associated with residential use;

(ii) Specific locations for residential use slips that do not adversely impact habitat or interfere with water-dependent uses.

(6) **Vessels.** Moorage of a vessel, as defined in WAC 332-30-106(74), is a water-dependent use.

(7) **Floating houses.** Moorage of a floating house, as defined in WAC 332-30-106(23), is a water-oriented use.

(a) **Classifying floating house moorage under RCW ((~~79.90.465(2)~~)) 79.105.060(25).** In classifying floating house moorage under ((~~RCW 79.90.465(2)~~)) 79.105.060(25), the department will apply the following rules:

(i) If a floating house moorage site had a floating house moored there under a department lease on October 1, 1984, or if a floating house was moored there for at least three years before October 1, 1984, then the department will classify that site as a water-dependent use for the purposes of determining rent. Such sites may be referred to as "grandfathered" sites.

(ii) If a floating house moorage site did not have a floating house moored there under a department lease on October 1, 1984, nor for at least three years before October 1, 1984, then the department shall classify that site as a nonwater-dependent use. Such sites may be referred to as "nongrandfathered" sites.

(iii) The classification of a grandfathered or nongrandfathered floating house moorage site applies to the specific aquatic land being utilized for moorage of the floating house, not to the floating house itself.

(iv) The department shall classify each individual floating house moorage slip within a moorage facility as a separate site. This may result in a marina containing both grandfathered and nongrandfathered floating house moorage sites.

(v) If a floating house vacates a grandfathered moorage site and either returns within thirty days or is replaced with another floating house within thirty days, then the moorage site will remain grandfathered.

(vi) If a floating house vacates a grandfathered moorage site and does not return within thirty days, future moorage of that floating house in the same or a different site shall be nongrandfathered, unless the floating house qualifies as a replacement floating house under (a)(v) of this subsection.

(vii) After October 1, 1984, if a grandfathered site ceased or ceases being used for floating house moorage for more than thirty consecutive days, then the site shall no longer be grandfathered.

(viii) When counting the thirty days described in (a)(v) through (vii) of this subsection, the department will exclude any reasonable time needed for repair of the floating house.

(ix) If a lessee redesignates a grandfathered floating house moorage slip within the lease area, consistent with the lease requirements, and notifies the department in advance of where the slip is to be relocated, then the slip will remain grandfathered. However, if a nongrandfathered site has a floating house relocated to it after the effective date of this rule, the site shall not be designated as grandfathered as provided in this subsection, (7)(a)(ix).

(x) If a floating house was moored at a grandfathered site on October 1, 1984, but was relocated to a site authorized by the department so that on the effective date of this rule the floating house is moored at a nongrandfathered site, then the department may classify this new location as a grandfathered site if the floating house meets all of the following criteria:

(A) The floating house was on state-owned aquatic land leased on October 1, 1984, or was on state-owned aquatic lands for three years prior to October 1, 1984;

(B) The floating house was continuously on state-owned aquatic lands from October 1, 1984, until the effective date of this rule, except for any reasonable time needed for repair of the house; and

(C) The department receives, within one year after the effective date of this rule, a request to have the current moorage site classified as a grandfathered site.

(b) **Managing grandfathered floating house moorage.** Floating houses moored in grandfathered sites that meet all applicable laws and rules, and are consistent with all lease requirements, may remain. The department shall charge the water-dependent rental rate for such moorage.

(c) **Managing nongrandfathered floating house moorage.**

(i) The department may authorize floating house moorage at a nongrandfathered site only if the department determines that the following conditions are met:

(A) All conditions as set forth in this section;

(B) The specific sites and circumstances for floating house moorage have been identified in an adopted local shoreline management plan that provides for the present and future needs of all uses, considers cumulative impacts to habitat and resources of statewide value, identifies specific areas or situations in which floating house moorage will be allowed, and justifies the exceptional nature of those areas or situations; and

(C) The floating house moorage is compatible with water-dependent uses existing in or planned for the area.

(ii) If a floating house is moored at a nongrandfathered site that does not meet the conditions in (c)(i) of this subsection, but the site is authorized by a department lease and the floating house and moorage meet all conditions as set forth in this section and is consistent with all lease requirements, then the floating house may remain until the termination of the lease or one year after the effective date of this rule, whichever is later. Thereafter, unless at that time the floating house meets the conditions in (c)(i) of this subsection, the floating house must vacate the nongrandfathered site.

(iii) If a floating house is moored at a nongrandfathered site that does not meet the conditions in (c)(i) of this subsection and is not authorized by a department lease, then the floating house must vacate the site within one year from the effective date of this rule, unless at that time it meets the conditions in (c)(i) of this subsection and the department chooses to grant a lease.

(iv) For nongrandfathered floating house moorage sites, the department shall charge the nonwater-dependent rental rate. If a leased area contains both nongrandfathered floating house moorage along with grandfathered floating house moorage or other water-dependent uses, then the nonwater-dependent rental rate shall be applied to a proportionate share of any common areas used in conjunction with the nongrandfathered floating house moorage, including, but not limited to, docks, breakwaters, and open water areas for ingress and egress to the facility.

(8) **Open water moorage.** For the purposes of this section, open water moorage and anchorage areas are defined in WAC 332-30-106(45).

(a) Vessels used for residential use and floating houses shall be moored, anchored, or otherwise secured only at a

marina, pier, or similar fixed moorage facility that is connected to the shoreline, or in open water moorage and anchorage areas described under WAC 332-30-139(5) and subject to the restrictions therein. Vessels used for residential use and floating houses shall not be moored, anchored or otherwise secured in open waters above state-owned aquatic lands away from a fixed moorage facility that is connected to the shoreline, nor be moored, anchored, or otherwise secured to any natural feature in the water or on the shoreline, except within an open water moorage and anchorage area. A vessel used for residential use or floating house may moor in areas prohibited by this subsection (8)(a) when necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

(b) Any vessel used for residential use or floating house that is moored on state-owned aquatic lands on the effective date of this rule, and complies with all other applicable laws and all lease requirements, but does not comply with (a) of this subsection, may remain until one year after the effective date of this rule or until the termination date of the existing department lease, whichever is later. Thereafter, unless at that time it meets the conditions in (a) of this subsection, the vessel used for residential use or floating house must vacate the site. The department shall not authorize or reauthorize any moorage for vessels used for residential use or floating houses that do not comply with (a) of this subsection.

WSR 06-06-013
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed February 17, 2006, 11:34 a.m., effective March 20, 2006]

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

Purpose: The purpose of this amendment is to increase the categorically needy income level (CNIL) SSI-related standards and the medically needy (MN) standards based on a change in federal standards. When effective, these rules replace the emergency rules filed as WSR 06-02-045.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0070 and 388-478-0080.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Other Authority: Section 1924 of the Social Security Act (42 U.S.C. 1396r-5).

Adopted under notice filed as WSR 06-02-076 on January 3, 2006.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: February 9, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-06-090, filed 3/1/05, effective 4/1/05)

WAC 388-478-0070 Monthly income and countable resource standards for medically needy (MN). (1) Beginning January 1, ((~~2005~~)) 2006, the medically needy income level (MNIL) is:

(a) One person	$((~~579.00~~)) 603
(b) Two persons	$((~~592~~)) 603
(c) Three persons	$667
(d) Four persons	$742
(e) Five persons	$858
(f) Six persons	$975
(g) Seven persons	$1,125
(h) Eight persons	$1,242
(i) Nine persons	$1,358
(j) Ten persons and more	$1,483

(2) The MNIL standard for a person who meets institutional status requirements is in WAC 388-513-1305(3).

(3) Countable resource standards for the MN program is:

(a) One person	$2,000
(b) Two persons	$3,000
(c) For each additional family member add	$50

AMENDATORY SECTION (Amending WSR 05-06-090, filed 3/1/05, effective 4/1/05)

WAC 388-478-0080 Supplemental security income (SSI) standards; SSI-related categorically needy income level (CNIL); and countable resource standards. (1) The SSI payment standards, also known as the federal benefit rate (FBR), beginning January 1, ((~~2005~~)) 2006 are:

(a) Living alone (in own home or alternate care, does not include nursing homes or medical situations)

Individual	$((~~579~~)) 603
Individual with an ineligible spouse	$((~~579~~)) 603
Couple	$((~~869~~)) 904

(b) Shared living (in the home of another)

Individual	$((~~386~~)) 402
Individual with an ineligible spouse	$((~~386~~)) 402
Couple	$((~~579~~)) 603

(c) Living in an institution

Individual	$30

(2) See WAC 388-478-0055 for the amount of the state supplemental payments (SSP) for SSI recipients.

(3) The SSI-related CNIL standards are:

(a) Single person	$((~~579.00~~)) 603
(b) Married couple - both eligible	((~~869.00~~)) 904
(c) Supplied shelter - single person	((~~386.00~~)) 402
(d) Supplied shelter couple - both eligible	((~~579.00~~)) 603

(4) The countable resource standards for SSI and SSI-related CN medical programs are:

(a) One person	$2,000
(b) A legally married couple	$3,000

WSR 06-06-019

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed February 21, 2006, 11:38 a.m., effective March 24, 2006]

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

Purpose: To amend selected fees in chapters 196-30 and 196-26A WAC by suspending a portion of those fees for a two-year period.

Statutory Authority for Adoption: RCW 43.24.086, 18.43.035, and 18.210.050.

Adopted under notice filed as WSR 06-01-064 and 06-01-065 on December 19, 2005, and WSR 06-02-084 on January 4, 2006.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 4, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 14, 2006.

Andrea C. Archer
Assistant Director

Chapter 196-26A WAC

REGISTERED PROFESSIONAL ENGINEERS AND LAND SURVEYOR FEES

NEW SECTION

WAC 196-26A-100 Suspended fees. Effective March 1, 2006 the following fees will have the listed portions suspended from collection until July 1, 2008.

Fee categories	Current Fees	Portion Suspended	Temporary Fees
Structural Engineering:			
Structural III Examination & application fee	$365	$35	$330
Structural III Examination retake:	$330	$30	$300
Comity Licensure:			
Engineering	$110	$40	$70
Surveyor comity	$140	$40	$100

NEW SECTION

WAC 196-26A-110 Suspended fees. Effective July 1, 2006 the following fees will have the listed portions suspended from collection until July 1, 2008.

Fee categories	Current Fees	Portion Suspended	Temporary Fees
License Renewals:			
Engineer	$116	$16	$100
Engineer late renewal penalty	$174	$24	$150
Surveyor	$116	$16	$100
Surveyor late renewal penalty	$174	$24	$150

Chapter 196-30 WAC

FEES FOR ON-SITE WASTEWATER TREATMENT DESIGNERS AND INSPECTORS

NEW SECTION

WAC 196-30-100 Suspended fees. Effective March 1, 2006 the following fees will have the listed portions suspended from collection until July 1, 2008.

Fee categories	Current Fees	Portion Suspended	Temporary Fees
Designer licensing:			
Designer license application	$175	$25	$150

Certificate of Competency:			
Certificate of Competency application	$175	$25	$150

NEW SECTION

WAC 196-30-110 Suspended fees. Effective July 1, 2006 the following fees will have the listed portions suspended from collection until July 1, 2008.

Fee categories	Current Fees	Portion Suspended	Temporary Fees
Certificate of Comptency:			
Certificate of Competency renewal	$250	$100	$150
Certificate of Competency late renewal	$350	$100	$250

WSR 06-06-020
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed February 21, 2006, 12:59 p.m., effective June 1, 2006]

Effective Date of Rule: June 1, 2006.

Purpose: The Occupational Safety and Health Administration (OSHA) found our administrative rules to be less-effective-than the federal requirements. The adopted rule makes the WISHA rule at-least-as-effective-as the federal equivalent rules. Housekeeping changes have been made, in addition to rewriting for clarity and usability. Existing rules contained in chapter 296-350 WAC, Administrative rules, and WAC 296-800-350 WISHA appeals, penalties, and other procedural rules, are being combined into a single book titled administrative rules and are applicable to all businesses, including those currently covered by chapter 296-307 WAC, Safety standards for agriculture.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-350-010 Definitions, 296-350-700 Variance from WISHA rules, 296-350-70010 Purpose of variances, 296-350-70015 Permanent variances—Description, 296-350-70020 Temporary variances—Description, 296-350-70030 Requesting a permanent variance, 296-350-70035 Requesting a temporary variance, 296-350-70040 Renewing temporary variances, 296-350-70045 Submitting variance requests, 296-350-70050 Notifying employees about variance requests, 296-350-70055 Department review and decision, 296-350-70060, Your responsibilities once we make a decision, 296-350-70065 Changing a variance, 296-350-70070 Variance hearings, 296-350-990 Appendix A—Form F418-023-000—Application for copies of citations and notices, 296-800-350 Introduction, 296-800-35002 Types of workplace inspections, 296-800-35004 Scheduling inspections, 296-800-35006 Inspection techniques, 296-800-35008 Response to complaints submitted by employees or their representatives, 296-800-35010 Citations mailed after an inspection, 296-800-35012 Employees (or their representatives) can request a citation and notice, 296-800-35016 Posting a citation and notice and employee complaint information, 296-800-35018 Reasons to assess civil penalties, 296-800-35020 Minimum penalties, 296-800-35022 Base penalty calculations—Severity and probability, 296-800-35024 Severity rate determination, 296-800-35026 Probability rate determination, 296-800-35028 Determining the gravity of a violation, 296-800-35030 Base penalty adjustments, 296-800-35032 Types of base penalty adjustments, 296-800-35038 Minimum and maximum adjusted base penalty amounts, 296-800-35040 Reasons for increasing civil penalty amounts, 296-800-35042 Employers must certify that violations have been abated, 296-800-35044 For willful, repeated, or serious violations, submit additional documentation, 296-800-35046 Submitting correction action plans, 296-800-35048 Submit progress reports to the department when required, 296-800-35049 WISHA determines the date by which abatement documents must be submitted, 296-800-35050 Inform affected employees and their representatives of abatement actions you have taken, 296-800-35052 Tag cited moveable equipment to warn employees of a hazard, 296-800-35056 You can request more time to comply, 296-800-35062 WISHA's response to your request for more time, 296-800-35063 Post the department's response, 296-800-35064 A hearing can be requested about the department's response, 296-800-35065 Post the department's hearing notice, 296-800-35066 Hearing procedures, 296-800-35072 Post the hearing decision, 296-800-35076 Employers and employees can request an appeal of a citation and notice, 296-800-35078 Await the department's response to your appeal request, 296-800-35080 Department actions when reassuming jurisdiction over an appeal, 296-800-35082 Appealing a corrective notice, and 296-800-35084 Notify employees.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 05-23-145 on November 22, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 39, Amended 0, Repealed 52; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 39, Amended 0, Repealed 52.

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

Date Adopted: February 21, 2006.

Gary Weeks
Director

Chapter 296-900 WAC

ADMINISTRATIVE RULES

NEW SECTION

WAC 296-900-100 Scope. This chapter applies to the following requirements and information regarding administration of the Washington Industrial Safety and Health Act (WISHA), chapter 49.17 RCW:

• Employer requests for using an alternative to WISHA requirements.

• Workplace inspections conducted by WISHA.

• Citations and penalties for violations of WISHA safety and health requirements.

• How to respond to actions that WISHA may take when requirements have been violated.

• Employer correction of cited violations, and notification to WISHA when the corrections are made.

• Employer obligations to inform employees.

• Reporting alleged safety and health hazards.

• Appeal and hearing processes for employers and employees.

NEW SECTION

WAC 296-900-110 Variances.

Summary:

Employer responsibility:

To follow requirements on granted variances:

Applying for a variance
WAC 296-900-11005.

Interim orders
WAC 296-900-11010.

Renewing a temporary variance
WAC 296-900-11015.

Changing a variance
WAC 296-900-11020.

Variance hearings
WAC 296-900-11025.

NEW SECTION

WAC 296-900-11005 Applying for a variance.

IMPORTANT:

• A variance provides an approved alternative to WISHA requirements to protect employees from a workplace hazard. Variances can be permanent or temporary.

• Variances will **not** be retroactive. Employers are obligated to follow WISHA requirements until the variance is granted.

You must:

• Follow steps 1-5 to apply for a variance when you wish to use an alternative to WISHA requirements as a means to protect your employees.

Step 1: Decide what type of variance is needed by reviewing the types of variances in Table 1, Requesting a Variance.

Step 2: Complete a written application for the variance, following the requirements in Table 1, Requesting a Variance.

Note: • A form, Variance Application (F414-021-000), is available for requesting variances:
– From any L&I office.
– On our web site under Safety Forms, Variance Application http://www.lni.wa.gov/FormPublications/Tables-Forms/Safety/SafetyHealth.asp

Reference: • For a list of the local L&I offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

Step 3: Notify employees before submitting any type of variance request by doing all of the following:
• Posting a copy of the request on your safety bulletin board.
• Using other appropriate means for notifying employees who may not be expected to receive notices posted on the safety bulletin board. For example, provide a copy to a designated representative or the safety committee.

Step 4: Submit the written request, using one of the following means:
• Mail to:
Assistant Director
WISHA Services
P.O. Box 44650
Olympia, WA 98504-4650
• Fax to: 360-902-5438
• Take to any L&I office.

Step 5: After receiving a written decision from WISHA about your request, immediately notify affected employees of the decision by using the methods in Step 3.

You must:

• Follow the specific requirements of the variance that WISHA has granted.

Note: • If employers fail to follow Steps 1-5 above, the variance cannot be granted.
• Citations may be issued for failing to follow a variance.
• Employers can always follow the original WISHA requirements instead of the variance requirements.
• If your variance is no longer necessary and you decide to follow the WISHA requirements instead, please advise WISHA in writing.

Table 1
Requesting a Variance

For this type of variance:	Include the following on your written application:
Permanent variance – Request a permanent variance if you can show that you will be providing alternate methods of protecting employees from hazards that are as effective as those provided by the requirements from which you are requesting relief.	• Employer name and address • Employer or employer representative signature • Work locations and situations that apply to the variance • Which specific requirements you want to vary from, with WAC numbers • Description of proposed alternative methods of protection, and how they will protect employees.

Table 1
Requesting a Variance

For this type of variance:	Include the following on your written application:
Note: • A permanent variance remains in effect unless WISHA modifies or revokes it. Examples of reasons a variance might be revoked include:	• How employees will be notified: – About the variance request, as required in Step 2 – That they may request a hearing
– An employer requests the variance be revoked	• The following notice on the first page of your posted application, written in large and clear enough print to be easily read:
– Requirements that existed when the variance was approved are modified	"Attention Employees: Your employer is applying to WISHA for a variance from safety and health requirements. You have a right to ask WISHA for a hearing on the variance request, but you must ask for the hearing in writing by (date*). If no hearing is requested, WISHA will act on the variance request without a hearing."
– The work location is changed	*This date must be 21 calendar days after the variance request is mailed or delivered.
Temporary variance Request a temporary variance if both of the following apply:	• Provide all the information required above for permanent variances
• New WISHA requirements can't be met for any of the following reasons:	• Also provide all of the following:
– Professional or technical people are not available	– An explanation of why WISHA requirements can't be met, including documentation that supports this belief
– Materials or equipment are not available	– Steps that will be taken to protect employees until WISHA requirements can be met
– Construction or alteration of facilities cannot be completed by the effective date of the requirements	– When WISHA requirements will be met
• You have an effective plan for meeting WISHA requirements as soon as possible. **Note:** • Temporary variances remain in effect: – Until current WISHA requirements are met – No longer than one year, unless extended	– A statement that this request is from a qualified person who has first hand knowledge of the facts represented

What to expect from WISHA:

• A review of all variance requests.

– If more information is needed to make a decision, WISHA may:

■ Contact you or others who may have the needed information.

■ Visit your workplace after contacting you to make arrangements.

■ Deny your request if you don't provide information needed to make a decision on it.

• A decision at least twenty-one calendar days from when the request was posted for employees.

– The twenty-one-day period allows employees time to request a hearing on your variance application. See Variance hearings, WAC 296-900-11025.

• A written decision either granting or denying the variance.

– If granted, the written decision will include all of the following:

■ The requirement for which the variance applies.

■ The locations where the variance applies.

■ What you must do as an alternative means of protecting employees.

■ The effective date of the variance.

■ An expiration date for the variance, if applicable.

■ The requirement to post the decision.

– If denied, the written decision will include:

■ A brief statement with reasons for the denial.

■ The requirement to post the decision.

• WISHA will review permanent variances periodically after they have been in effect for six months, to decide whether they are still needed or need to be changed.

Note: If there's an appealed WISHA citation and notice that relates to the variance request, the decision on the variance may be delayed until the appeal is resolved.

NEW SECTION

WAC 296-900-11010 Interim orders.

Definition:

An interim order allows an employer to vary from WISHA requirements until a permanent or temporary variance is granted.

You must:

• Request an interim order if alternate methods of protecting employees are needed while waiting for a permanent or temporary variance.

Note: An interim order may be requested at the same time a permanent or temporary variance is requested, or anytime after that.

What to expect from WISHA:

• A review of the request for an interim order.

– If more information is needed to make a decision, WISHA may:

■ Contact the employer or others who may have the needed information.

■ Visit the workplace after contacting the employer to make arrangements.

■ Deny the request if the employer doesn't provide information needed to make a decision.

• A decision at least twenty-one calendar days from when the request was posted for employees.

– The twenty-one-day period allows employees time to request a hearing on your temporary variance renewal. See Variance hearings, WAC 296-900-11025.

• A written decision either granting or denying the interim order request.

– If granted, the decision will include all of the following:

■ The requirement for which the interim order applies.

■ The locations where the interim order applies.

■ What you must do as an alternative means of protecting employees.

■ The effective date of the interim order.

■ An expiration date for the interim order.

■ The requirement to post the decision.

– If denied, the decision will include:

■ A brief statement with reasons for the denial.

■ The requirement to post the decision.

Note: • WISHA's decision to grant or deny an interim order request will not affect the decision on a permanent or temporary variance request.
• WISHA may choose to issue an interim order in response to a variance request, even when the interim order wasn't specifically requested.
• Interim orders are effective until they are revoked, or until the variance request is granted or denied.

NEW SECTION

WAC 296-900-11015 Renewing a temporary variance.

IMPORTANT:

Temporary variances can be renewed up to two times, for up to one hundred eighty days each time.

You must:

• Apply for a temporary variance renewal at least ninety days before the temporary variance expires.

• Send a letter, explaining why more time is needed to fulfill the current requirements.

What to expect from WISHA:

• A review of the temporary variance renewal request.

– If more information is needed to make a decision, WISHA may:

■ Contact you or others who may have the needed information.

■ Visit your workplace after contacting you to make arrangements.

■ Deny your request if you don't provide information needed to make a decision.

• A decision at least twenty-one calendar days from when the request was posted for employees.

– The twenty-one-day period allows employees time to request a hearing on your temporary variance renewal. See Variance hearings, WAC 296-900-11025.

• A written decision either granting or denying the temporary variance renewal request.

– If granted, the written decision will include all of the following:

■ The requirements for which the temporary variance applies.

■ The locations where the temporary variance applies.

■ What you must do as an alternative means of protecting employees.

■ The effective date of the temporary variance.

■ An expiration date for the temporary variance.

■ The requirement to post the decision.

– If denied, the written decision will include:

■ A brief statement with reasons for the denial.

■ The requirement to post the decision.

NEW SECTION

WAC 296-900-11020 Changing a variance.

You, your employees, or their representatives may:

• Request changes to variances in writing as follows:

– For a permanent variance only after it's been in effect for at least six months.

– For a temporary variance, only when renewing it.

Note: ■ After six months, WISHA may initiate changes to a variance if they appear to be warranted.
■ Employers can decide at any time to follow the original requirement, instead of the requested variance.

What to expect from WISHA:

• A review of your request to change a variance.

– If more information is needed to make a decision, WISHA may:

■ Contact you or others who may have the needed information.

■ Visit your workplace after contacting you to make arrangements.

■ Deny your request for a change if you don't provide information needed to make a decision.

• A decision at least twenty-one calendar days from when the request was posted for employees.

– The twenty-one-day period allows employees time to request a hearing on your request to change a variance. See Variance hearings, WAC 296-900-11025.

• A written decision either granting or denying the change in variance.

– If granted, the written decision will include all of the following:

■ The requirements for which the variance applies.

■ The locations for which the variance applies.

■ What you must do as an alternative means of protecting employees.

■ The effective date of the change in variance.

■ An expiration date of the variance, if applicable.

■ The requirement to post the decision.

– If denied, the written decision will include:

■ A brief statement with reasons for the denial.

■ The requirement to post the decision.

NEW SECTION

WAC 296-900-11025 Variance hearings.

IMPORTANT:

• Employers, affected employees, or employee representatives may request a hearing on any of the following:

– Permanent or temporary variance requests.

– Changes to existing variances.

You and your affected employees must:

• Do all of the following if requesting a variance hearing:

– Put the request in writing and sign it.

– Make sure the request is posted or delivered to the department within twenty-one calendar days from the variance application date, or renewal request date.

– Send the written request to WISHA, using one of the following means:

• Mail to:

Assistant Director
WISHA Services
P.O. Box 44650
Olympia, WA 98504-4650

• Fax to: 360-902-5438

• Take to any L&I office.

You must:

• Immediately do all of the following when you receive a notice of the hearing from WISHA:

– Post a copy of the notice on the safety bulletin board.

– Give a copy of the notice to affected employees and employee representatives.

– Use any other appropriate means for notifying employees who may not receive notices posted on the safety bulletin board. For example, provide a copy to a designated representative or the safety committee.

What to expect from WISHA:

• WISHA will do both of the following after receiving a request for a hearing on a variance, change of variance, or temporary variance renewal:

– Within ten days, issue a notice advising all interested parties listed on the application that they have the option to participate in the hearing.

– Provide you with a notice of the hearing at least twenty calendar days before the hearing date.

• A hearing for the variance or variance change will be conducted as follows:

– A WISHA representative will explain WISHA's view of the request for a variance or any proposed change to a variance.

– Employers, employees, or employee representatives will then have an opportunity to explain their views and provide any relevant documents or information.

• Information gathered at the hearing will be used to make a decision about whether to grant or deny the request for a variance or change in variance.

Note: • WISHA may record a variance hearing.
• Employers, employees, or employee representatives may request copies of recordings or transcripts of variance hearings at cost.

NEW SECTION

WAC 296-900-120 Inspections.

Summary:

WISHA inspections
WAC 296-900-12005.
Inspection techniques
WAC 296-900-12010.
Complaints
WAC 296-900-12015.

NEW SECTION

WAC 296-900-12005 WISHA inspections.

• WISHA conducts the following types of **programmed** inspections:

– Hazardous workplaces.

WISHA identifies hazardous workplaces using objective criteria and inspection-scheduling systems that may include any of the following factors:

■ Type of industry.

■ Injury and illness data that identifies hazards.

■ Employer's industrial insurance experience.

■ Number, type, and toxicity of contaminants in the workplace.

■ Degree of exposure to hazards.

■ Number of employees exposed.

■ Other factors, such as history of employee complaints.

Note: WISHA periodically reviews the scheduling systems and may adjust the type or significance of each criteria.

– High hazard industries that include the following:

■ Agriculture.

■ Asbestos renovation and demolition.

■ Construction.

■ Electrical utilities and communications.

■ Logging.

■ Maritime.

• WISHA conducts the following types of **unprogrammed** inspections of workplaces that may be in violation of WISHA safety or health requirements or chapter 49.17 RCW, the Washington Industrial Safety and Health Act. These inspections may focus only on certain areas or processes in a workplace or, depending on initial findings, may be expanded to include the entire workplace. Unprogrammed inspections may occur because of:

– Complaints from current employees or employee representatives who believe they have been exposed to a hazard because of a violation.

– Referrals from anyone, including former employees, who reasonably believes that workers under WISHA jurisdiction are being, or have been, exposed to a hazard because of a violation.

– Workplace deaths, catastrophic events, or serious injury or illness.

– A reason to believe that employees may be in imminent danger of serious injury or death.

– Follow-up inspections to verify that hazards identified in a previous inspection have been corrected.

NEW SECTION

WAC 296-900-12010 Inspection techniques.

• During an inspection, WISHA staff may:

– Take samples, photographs, videotapes, or audiotapes.

– Conduct tests or interviews.

– Ask employees to wear sampling devices.

– Privately question, on or off the worksite, any:

■ Employer.

■ Employer representative.

■ Owner.

■ Operator.

■ Employee.

■ Employee representative.

– Employ any other reasonable investigative techniques.

NEW SECTION

WAC 296-900-12015 Complaints.

Employees or employee representatives may:

• File a written complaint if they believe they have been exposed to a hazard that is a violation of WISHA safety and health requirements.

What to expect from WISHA:

• After receiving a written complaint from an employee or employee representative, WISHA reviews the allegations and responds according to Table 2, WISHA Responses to Employee Complaints.

Table 2
WISHA Responses to Employee Complaints

For this determination:	WISHA will take the following actions:
The complaint is within WISHA jurisdiction and an inspection doesn't appear to be needed at this time	• Call the employer to discuss the complaint • Set a deadline for the employer to respond in writing • Fax or mail a complaint notification letter to the employer. Before the complaint is faxed or mailed, the following names will be removed unless specific permission is given to include them: – The name of the person submitting the complaint – The names of any employees identified in the complaint • Evaluate the employer's response, and do one of the following: – Close the complaint because the issues have been addressed, and send a copy of the employer's response to the person filing the complaint – Inspect the workplace **Note:** • If the complaint is closed and additional information is received from the person filing the complaint disputing the employer's written response, WISHA may schedule an inspection • If the person who filed the original complaint requests in writing that WISHA review a decision not to conduct an inspection, WISHA will review the decision and notify the person in writing of the results • If the person requesting the review is not satisfied with the results of the review, they may request a second review by the assistant director or designee

Table 2
WISHA Responses to Employee Complaints

Table 2
WISHA Responses to Employee Complaints

For this determination:	WISHA will take the following actions:
The complaint is within WISHA jurisdiction and an inspection needs to be conducted	• Conduct an inspection • Issue a citation and notice that shows one of the following: – Violations found – No violations were found • Send a letter to the person filing the complaint with inspection results **Reference:** For citation and notice information, turn to citation and notice, WAC 296-900-130
The complaint is not within WISHA jurisdiction	• Send a written response to the person filing the complaint explaining the matter is not within WISHA jurisdiction **Note:** WISHA may make a referral to the proper authority

NEW SECTION

WAC 296-900-130 Citation and notice.

Summary:

Employer responsibility:

To notify employees when a citation and notice is received:

Citation and notice
WAC 296-900-13005.
Copies of inspection results
WAC 296-900-13010.
Posting citation and notices
WAC 296-900-13015.

NEW SECTION

WAC 296-900-13005 Citation and notice.

Definition:

A citation and notice is a document issued to an employer notifying them of:

• Inspection results.

• Any specific violations of WISHA safety and health requirements.

• Any monetary penalties assessed.

• Employer certification of correction requirements.

• WISHA will mail a citation and notice to you as soon as possible but not later than six months following any inspection or investigation.

– If violations are found, the citation and notice will include:

■ A description of violations found.

■ The amount and type of assessed penalties.

■ The length of time given to correct the violations not already corrected during the inspection.

– If no violations are found, a notice of inspection results will be sent stating that no violations were found or penalties assessed.

NEW SECTION

WAC 296-900-13010 Copies of future citation and notices. Employees or their representatives wishing to receive copies of citation and notices during the next twelve months must:

• Submit a request for copy of citation and notice form to the following:

Department of Labor and Industries
Standards and Information
P.O. Box 44638
Olympia, WA 98504-4638

Note: • A request for copy of citation and notice form can be obtained by:
– Calling 360-902-5553.
– Contacting the local L&I office.

Reference: ■ For a list of the local L&I offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

What to expect from WISHA:

• WISHA may decide who will receive copies of the citation and notices if more than one employee or employee representative requests a copy.

• WISHA may deny a request for copies of citation and notices if the person filing the request is not an employee or employee representative.

• If WISHA grants the request for copies of citation and notices, the employee or employee representative will:

– Receive an approval document from WISHA.

– Receive all citation and notices issued to that employer for the next twelve months.

– Continue receiving citation and notices for an additional twelve months if a one-year extension is requested and approved.

NEW SECTION

WAC 296-900-13015 Posting citation and notices.

You must:

• Immediately notify employees of a citation and notice by posting it and any correspondence related to an employee complaint on the safety bulletin board for three working days or until all violations are corrected, whichever time period is longer.

• Use any other appropriate means to notify employees who may receive notices posted on the safety bulletin board.

– Examples of other appropriate means include sending a copy by mail or electronically to any of the following:

■ A designated employee representative.

■ Safety representatives.

■ The safety committee.

NEW SECTION

WAC 296-900-140 Monetary penalties.

Summary:

Employer responsibility:

To pay monetary penalties if assessed.

Contents:

Reasons for monetary penalties
WAC 296-900-14005.
Base penalties
WAC 296-900-14010.
Base penalty adjustments
WAC 296-900-14015.
Increases to adjusted base penalties
WAC 296-900-14020.

Definition:

Monetary penalties are fines assessed against an employer for violations of safety and health requirements.

NEW SECTION

WAC 296-900-14005 Reasons for monetary penalties.

• WISHA **may** assess monetary penalties when a citation and notice is issued for any violation of safety and health rules or statutes.

• WISHA **will** assess monetary penalties under the following conditions:

– When a citation and notice is issued for a serious, willful, or egregious violation.

– When civil penalties are specified by statute as described in RCW 49.17.180.

Note: In addition to penalties specified by WISHA, there are penalties specified by other statutes, such as:
• Asbestos construction projects, RCW 49.26.016.
• Right to know (RTK)—MSDS, RCW 49.70.190.
• Right to know—Penalty for late payment, RCW 49.70.177.

• The minimum civil penalties assessed by WISHA are:

– One hundred dollars for any penalty.

– Five thousand dollars per violation for all willful violations.

– Two hundred fifty dollars per day for asbestos good faith inspection (RCW 49.26.016 and 49.26.013).

NEW SECTION

WAC 296-900-14010 Base penalties.

• WISHA calculates the base penalty for a violation by considering the following:

– Specific amounts that are dictated by statute;

OR

– By assigning a weight to a violation, called "gravity." Gravity is calculated by multiplying a violation's severity rate by its probability rate. Expressed as a formula:
Gravity = Severity x Probability

Note: Most base penalties are calculated by the gravity method.

• Severity and probability are established in the following ways:

Severity:

– Severity rates are based on the most serious injury, illness, or disease that could be reasonably expected to occur because of a hazardous condition.

– Severity rates are expressed in whole numbers and range from 1 (lowest) to 6 (highest). Violations with a severity rating of 4, 5, or 6 are considered serious.

– WISHA uses Table 3, Severity Rates, to determine the severity rate for a violation.

Table 3
Severity Rates

Severity	Most serious injury, illness, or disease from the violation is likely to be:
6	• Death • Injuries involving permanent severe disability • Chronic, irreversible illness
5	• Permanent disability of a limited or less severe nature • Injuries or reversible illnesses resulting in hospitalization
4	• Injuries or temporary, reversible illnesses resulting in serious physical harm • May require removal from exposure or supportive treatment without hospitalization for recovery
3	• Would probably not cause death or serious physical harm, but have at least a major impact on and indirect relationship to serious injury, illness, or disease • Could have direct and immediate relationship to safety and health of employees • First aid is the only medical treatment needed
2	• Indirect relationship to nonserious injury, illness, or disease • No injury, illness, or disease without additional violations
1	• No injury, illness, disease • Not likely to result in injury even in the presence of other violations

Probability:

Definition:

A probability rate is a number that describes the likelihood of an injury, illness, or disease occurring, ranging from 1 (lowest) to 6 (highest).

– When determining probability, WISHA considers a variety of factors, depending on the situation, such as:

■ Frequency and amount of exposure.

■ Number of employees exposed.

■ Instances, or number of times the hazard is identified in the workplace.

■ How close an employee is to the hazard, i.e., the proximity of the employee to the hazard.

■ Weather and other working conditions.

■ Employee skill level and training.

■ Employee awareness of the hazard.

■ The pace, speed, and nature of the task or work.

■ Use of personal protective equipment.

■ Other mitigating or contributing circumstances.

– WISHA uses Table 4, Gravity Based Penalty, to determine the dollar amount for each gravity-based penalty, unless otherwise specified by statute.

Table 4
Gravity Based Penalty

Gravity	Base Penalty
1 2	$100 $200
3 4	$300 $400
5 6	$500 $1000
8 9	$1500 $2000
10 12	$2500 $3000
15 16	$3500 $4000
18 20	$4500 $5000
24 25	$5500 $6000
30 36	$6500 $7000

NEW SECTION

WAC 296-900-14015 Base penalty adjustments.

• WISHA may adjust base penalties. Table 5, Adjusted Base Penalties, describes the various factors WISHA considers when adjusting a base penalty, and the effect on the fine.

– The minimum adjusted base penalty for any violation carrying a penalty is one hundred dollars.

– The minimum penalty for willful violations is five thousand dollars.

– The maximum adjusted base penalty for a violation is seven thousand dollars.

• No adjustments are made to minimum penalty amounts specified by statute.

Note: Repeat, willful, egregious, or failure-to-abate (failure to correct) penalty adjustments can exceed seven thousand dollars. See Increases to adjusted base penalties, WAC 296-900-14020, for those penalties.

Table 5
Adjusted Base Penalties

For this type of adjustment:	WISHA will consider:	The base penalty will be adjusted as follows:
Good faith effort	• Awareness of act • Effort before an inspection to provide a safe and healthful workplace for employees • Effort to follow a requirement they have violated • Cooperation during an inspection, measured by a desire to follow the cited requirement and immediately correct identified hazards	Excellent rating = 35% reduction Good rating = 20% reduction Average rating = No adjustment Poor rating = 20% increase
Size of workforce	• Work force size at all sites in Washington state	1-25 employees = 60% reduction 26-100 employees = 40% reduction 101-250 employees = 20% reduction More than 250 employees = No adjustment
Employer history	• History of previous safety and health violations in Washington state and injury and illness rates for that employer	Good history = 10% reduction Average history = No adjustment Poor history = 10% increase

NEW SECTION

WAC 296-900-14020 Increases to adjusted base penalties.

• WISHA may increase an adjusted base penalty in certain circumstances. Table 6, Increases to Adjusted Base Penalties, describes circumstances where an increase may be applied to an adjusted base penalty.

Table 6
Increases to Adjusted Base Penalties

For this circumstance:	The adjusted base penalty may be increased as follows:
Repeat violation When the employer has been previously cited for a substantially similar hazard, with a final order for the previous violation dated no more than 3 years prior to the employer committing the violation being cited.	• Multiplied by the total number of citations with violations involving similar hazards, including the current inspection. **Note:** The maximum penalty can't exceed seventy thousand dollars for each violation.
Willful violation An act committed with the intentional, knowing, or voluntary disregard for the WISHA requirements or with plain indifference to employee safety.	• Multiplied by ten with at least the statutory minimum penalty of five thousand dollars **Note:** The maximum penalty can't exceed $70,000 for each violation.
Egregious violation If the violation was willful and at least one of the following: • The violations resulted in worker fatalities, a worksite catastrophe, or a large number of injuries or illnesses. • The violations resulted in persistently high rates of worker injuries or illnesses. • The employer has an extensive history of prior violations. • The employer has intentionally disregarded its safety and health responsibilities. • The employer's conduct taken as a whole amounts to clear bad faith in the performance of his/her duties. • The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that might be in place.	• With a separate penalty issued for each instance the employer fails to follow a specific requirement.

Table 6
Increases to Adjusted Base Penalties

For this circumstance:	The adjusted base penalty may be increased as follows:
Failure to abate (FTA) Failure to correct a cited WISHA violation on time. **Reference:** For how to certify corrected violations, go to Certifying violation corrections, WAC 296-900-60005 through 296-900-60035.	• Based on the facts at the time of reinspection, will be multiplied by: – At least five, but up to ten, based on the employer's effort to comply. – The number of calendar days past the correction date, with a minimum of five days. **Note:** The maximum penalty can't exceed seven thousand dollars per day for every day the violation is not corrected.

NEW SECTION

WAC 296-900-150 Certifying violation corrections.

Summary:

Employer responsibility:

• To certify that violations to safety and health requirements have been corrected.

• To submit, if required:

– Additional information.

– Correction action plans.

– Progress reports.

• To comply with correction due dates.

• To tag cited moveable equipment to warn employees of a hazard.

• To inform affected employees that each violation was corrected.

Certify violation correction
WAC 296-900-15005.

Violation correction action plans
WAC 296-900-15010.

Progress reports
WAC 296-900-15015.

Timeliness of violation correction documents
WAC 296-900-15020.

Inform employees about violation correction
WAC 296-900-15025.

Tag moveable equipment
WAC 296-900-15030.

NEW SECTION

WAC 296-900-15005 Certifying violation correction.

Definition:

A correction date is the date by which you must meet the WISHA requirements listed on either a:

• Citation and notice (C&N);

OR

• A corrective notice of redetermination (CNR).

You must:

• Certify in writing within ten calendar days following the correction date shown on the C&N that each violation has been corrected. Include the following:

– Employer name and address.

– The inspection number involved.

– The citation and item numbers which have been corrected.

– The date each violation was corrected and the method used to correct them.

– A statement that both:

■ Affected employees and their representatives were informed that each violation was corrected;

AND

■ The information submitted is accurate.

– Employer's signature or the signature of employer's designated representative.

Note: Certification is not required if the WISHA compliance officer indicates in the C&N, or a reassumption hearings officer indicates in a CNR, that they have already been corrected.

You must:

• Submit additional documentation for willful or repeated violations, demonstrating that they were corrected. This documentation may include, but is not limited to:

– Evidence of the purchase or repair of equipment.

– Photographic or video evidence of corrections.

– Other written records.

• Submit additional documentation for serious violations when required in the C&N or CNR.

NEW SECTION

WAC 296-900-15010 Violation correction action plans.

You must:

• Submit a written violation correction action plan within twenty-five calendar days from the final order date when the citation and notice or corrective notice of redetermination requires it. Include all of the following in the violation correction action plan:

– Identification of the violation.

– The steps that will be taken to correct the violation.

– A schedule to complete the steps.

– A description of how employees will be protected until the corrections are completed.

What to expect from WISHA:

• WISHA will notify you in writing only if your plan is not adequate, and describe necessary changes.

NEW SECTION

WAC 296-900-15015 Progress reports.

You must:

• Submit written progress reports on corrections when required in the citation and notice (C&N) or corrective notice of redetermination (CNR), and briefly explain the:

– Status of each violation.

– Action taken to correct each violation.

– Date each action has or will be taken.

What to expect from WISHA:

• WISHA will state in the C&N or CNR if progress reports are required, including:

– Items that require progress reports.

– Date when an initial progress report must be submitted. The initial progress report is due no sooner than thirty calendar days after you submit a correction action plan.

– Whether additional progress reports are required, and the dates by which they must be submitted.

NEW SECTION

WAC 296-900-15020 Timeliness of violation correction documents.

What to expect from WISHA:

• WISHA will determine the timeliness of violation correction documents by reviewing the following:

– The postmark date for documents sent by mail.

– The date received by other means, such as personal delivery or fax.

NEW SECTION

WAC 296-900-15025 Inform employees about violation correction.

You must:

• Inform employees about violation corrections by doing the following:

– Post a copy of each violation correction document submitted to WISHA, or a summary, near the place where the violations occurred, if practical.

■ If posting near the place where the violation occurred is not practical, such as with a mobile work operation, post in a place readily accessible to affected employees or take other steps to fully communicate actions taken to affected employees or their representatives.

– Keep violation correction information posted for at least three working days after submitting the correction documents to WISHA.

– Give notice to employees and their representatives on or before the date you submit correction information to WISHA.

– Make sure that all posted correction documents are not altered, defaced, or covered by other materials.

• Inform employees and their representatives of their right to examine and copy all correction documents submitted to WISHA.

– If they ask to examine or copy documents within three working days of receiving notice that the documents were submitted to WISHA, provide access or copies no later than five days after receiving their request.

NEW SECTION

WAC 296-900-15030 Tag moveable equipment.

You must:

• Tag moveable equipment that has been cited to warn employees if a hazard has not been corrected, as follows:

– Attach a warning tag or a copy of the citation to the equipment's operating controls or to the cited component.

■ For hand-held equipment, tag it immediately after you receive a citation.

■ For other equipment, tag it before moving it within the worksite or between worksites.

Note: The tag should warn employees about the nature of the violation and tell them where the citation is posted.

Reference: For a sample tag that meets this requirement, go to helpful tools, sample tag for cited moveable equipment, in the resources section of this chapter.

You must:

• Make sure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other materials.

• Keep the tag or copy of the citation attached to movable equipment until one of the following occurs:

– Violations have been corrected and all certification documents have been submitted to WISHA.

– Cited equipment is permanently removed from service.

– The final order from an appeal vacates (voids) the violation.

Note: Safety standards for construction work, chapter 296-155 WAC, has information on warning tags. You can use warning tags that meet those requirements instead of the warning tags required by this rule.

NEW SECTION

WAC 296-900-160 More time to comply.

Summary:

Your responsibility:

To submit timely requests when more time is needed to correct violations. To post requests for more time for employees.

Requesting more time to comply
WAC 296-900-16005.

Post WISHA's response to requests for more time
WAC 296-900-16010.

Correction date hearing requests
WAC 296-900-16015.

Post WISHA's violation correction hearing notice
WAC 296-900-16020.

Violation correction hearing procedures
WAC 296-900-16025.

Post the violation correction hearing decision
WAC 296-900-16030.

NEW SECTION

WAC 296-900-16005 Requesting more time to comply.

IMPORTANT:

• Employers can request more time to correct violations if they:

– Have made a good faith effort to correct the violation.

– Have not corrected the violation because of factors beyond their control.

You must:

• Submit any requests for more time to correct violations in writing. Requests must be received or postmarked before midnight of the correction date shown on the citation and notice (C&N) or corrective notice of redetermination (CNR), and include:

– The business name.

– The address of the workplaces.

– The citation and the correction dates to be extended.

– The new correction date and length of correction period being requested.

– A description of the actions that have been, and are being, taken to meet the correction dates in the C&N or CNR.

– Factors preventing correction of violations by the date required.

– The means that will be used to protect employees while the violation is being corrected.

– Certification that the request for correction date extension has been posted, and if appropriate, certification that a copy was delivered to affected employees or their representatives.

– Employer's signature or the signature of the employer's representative.

– Date.

• Submit requests by one of the following methods:

– First class mail, postage prepaid to any L&I office.

– Take to any L&I office.

– Fax to the number shown in the C&N.

Reference: For a list of the local offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

What to expect from WISHA:

• WISHA **may:**

– Accept late requests if they are both:

■ Received within five days following the related correction date;

AND

■ Accompanied by your written statement explaining the exceptional circumstances that caused the delay.

Note: WISHA doesn't accept late requests when compliance activity has already started.

• **WISHA may:**

– Respond to telephone requests or personal conversations asking for more time to comply if timely, and followed up in writing within twenty-four hours.

– Conduct an investigation before making a decision whether to grant a request for more time.

• WISHA **will:**

– Make a decision whether or not to grant the employer more time. Once made, the decision remains in effect unless an employee or employee representative requests a hearing.

– Keep the original correction date in effect unless a notice granting more time is sent.

NEW SECTION

WAC 296-900-16010 Post WISHA's response to requests for more time.

You must:

• Post notices from WISHA approving additional time to correct citations, with the related citation, immediately upon receipt.

• Keep the notices posted until one of the following occur:

– The correction date has passed.

– A hearing notice is requested and posted.

NEW SECTION

WAC 296-900-16015 Correction date hearing requests.

IMPORTANT:

• Affected employees or their designated representatives may request a hearing if they disagree with WISHA's decision to grant an employer more time to correct a violation.

• Employers may request a hearing if WISHA denies their request for more time to correct a violation.

You, your employees, or their representatives must:

• Send requests for hearings, if desired, in writing no later than ten calendar days after the issue date of the notice granting more time to correct a violation to:

– Mail to:

Assistant Director for WISHA Services
Attn: WISHA Appeals
P.O. Box 44604
Olympia, WA 98504-4604

– Fax to: 360-902-5581

– Take to any department service location.

Reference: For a list of the local offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

NEW SECTION

WAC 296-900-16020 Post WISHA's violation correction hearing notice.

You must:

• Post WISHA's hearing notice or a complete copy until the hearing is held, along with the:

– Citation containing the correction date for which more time was requested.

– Department notices issued in response to the employer's request for more time.

NEW SECTION

WAC 296-900-16025 Violation correction hearing procedures.

What to expect from WISHA:

• After receiving a hearing request, the assistant director for WISHA services will appoint someone from WISHA to act as a hearings officer.

• The hearings officer:

– Will send a hearing notice to the employer and employee at least twenty days before the hearing date that includes all of the following:

■ A statement that all interested parties can participate in the hearing.

■ The time, date, and place of the hearing.

■ A short and clear explanation why a hearing was requested.

■ The nature of the proceeding, including the specific sections of the statute or rule involved.

■ The legal authority and jurisdiction under which the hearing will be held.

– May discuss the material to be presented to determine how the hearing will proceed.

• An assistant attorney general may be present at the hearing to give legal advice to the hearings officer.

• The hearing will be conducted by either:

– The hearings officer;

OR

– The assistant attorney general, if requested by the hearings officer.

• After the hearing, WISHA will issue an order that either affirms or modifies the correction date that caused the hearing.

NEW SECTION

WAC 296-900-16030 Post the violation correction hearing decision.

You must:

• Post a complete, unedited copy of the order affirming or modifying the correction date as soon as it is received, along with the applicable citation.

NEW SECTION

WAC 296-900-170 Appeals.

Summary:

Employer responsibility:

To post information regarding appeals in a conspicuous area where notices to employees are normally posted:

Appealing a citation and notice (C&N)
WAC 296-900-17005.

Appealing a corrective notice of redetermination (CNR)
WAC 296-900-17010.

Posting appeals
WAC 296-900-17015.

NEW SECTION

WAC 296-900-17005 Appealing a citation and notice (C&N).

IMPORTANT:

• Employers may appeal C&Ns.

• Employees of the cited employer, or their designated representatives, may only appeal correction dates.

You must:

• When appealing, submit a written appeal to WISHA within fifteen working days after receiving the C&N. Include the following information:

– Business name, address, and telephone number.

– Name, address, and telephone number of any employer representative.

– C&N number.

– What you believe is wrong with the C&N and any related facts.

– What you believe should be changed, and why.

– A signature and date.

• Send appeals in any of the following ways:

– Mail to:
Assistant Director for WISHA Services
Attn: WISHA Appeals
P.O. Box 44604
Olympia, WA 98504-4604
– Fax to: 360-902-5581
– Take to any department service location.

Reference: See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.

Note: The postmark is considered the submission date of a mailed request.

Employees or their designated representatives must:

• When appealing C&N correction dates, submit a written request to WISHA within fifteen working days after the C&N is received. Include the following information:

– Name of employee, address, telephone number.

– Name, address, and telephone number of any designated representative.

– C&N number.

– What is believed to be wrong with the correction date.

– A signature and date.

• Send appeals in any of the following ways:

– Mail to:
Assistant Director for WISHA Services
Attn: WISHA Appeals
P.O. Box 44604
Olympia, WA 98504-4604
– Fax to: 360-902-5581
– Take to any L&I service location.

Reference: See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.

Note: The postmark is considered the submission date of a mailed request.

What to expect from WISHA:

• After receiving an appeal, WISHA will do one of the following:

– Reassume jurisdiction over the C&N, and notify the person who submitted the appeal.

– Forward the appeal to the board of industrial insurance appeals. The board will send the person submitting the appeal a notice with the time and location of any board proceedings.

Definition:

Reassume jurisdiction means that WISHA has decided to provide the employer with an informal conference to discuss their appeal.

• When reassuming jurisdiction over a C&N, WISHA has thirty working days after receiving the appeal to review it, gather more information, and decide whether to make changes to the C&N. The review period:

– Begins the first working day after the appeal is received. For example, if an appeal is received on Friday, the thirty days will begin on the following Monday unless it is a state holiday.

– May be extended fifteen additional working days, if everyone involved agrees and signs an extension agreement within the initial thirty-day period.

– Will include an informal conference about the appeal that is an opportunity for interested parties to:

• Briefly explain their positions.

• Provide any additional information they would like WISHA to consider when reviewing the C&N.

Note: WISHA might reassume jurisdiction over a C&N to do any of the following:

■ Provide an employer and affected employees an opportunity to present relevant information, facts, and opinions during an informal conference.

■ Give an employer, affected employees, and the department an opportunity to resolve appeals rapidly and without further contest, especially in routine compliance cases.

■ Educate employers about the C&N, the WISHA appeals process, and WISHA compliance.

■ Review citations, penalties, and correction dates. Although informal, the conference is an official meeting and it may be either partially or totally recorded. Participants will be told if the conference is recorded.

• On or before the end of the thirty working day review period, WISHA will issue a corrective notice of redetermination that:

– Reflects any changes made to the C&N.

– Is sent to the employer, employees, and employee representatives participating in the appeal process.

<u>NEW SECTION</u>

WAC 296-900-17010 Appealing a corrective notice of redetermination (CNR).

IMPORTANT:

• Employers may appeal CNRs.

• Employees who could be affected by a CNR, or their designated representatives, may appeal correction dates.

Employees or their representatives must:

• Appeal a CNR, if desired, in writing within fifteen working days after it was received to the:

Board of Industrial Insurance Appeals
2430 Chandler Court S.W.
P.O. Box 42401
Olympia, WA 98504-2401

• Send a copy of the appeal to the CNR to the:

Assistant Director for WISHA Services
Attn: WISHA Appeals
P.O. Box 44604
Olympia, WA 98504-4604

– Fax to: 360-902-5581
– Take to any department service location.

<u>NEW SECTION</u>

WAC 296-900-17015 Posting appeals.

You must:

• Immediately post notices and information related to any appeal in the same place where WISHA citation and notices (C&Ns) are posted. These notices and information include:

– The notice of appeal, until the appeal is resolved.

– Notices about WISHA reassuming jurisdiction, and any extension of the review period until the end of review period.

– A notice of an informal conference until after the conference is held.

– A corrective notice of redetermination for as long as C&Ns are to be posted.

Reference: For C&N posting requirements, see Posting citation and notices, WAC 296-900-13015.

NEW SECTION

WAC 296-900-180 Definitions.

Affected employees

Employees who could be one of the following:

– Exposed to unsafe conditions or practices.

– Affected by a request for, or change in, a variance from WISHA requirements.

Assistant director

The assistant director for the WISHA services division at the department of labor and industries or his/her designated representative.

Board

The board of industrial insurance appeals.

Certification

An employer's written statement describing when and how a citation violation was corrected.

Citation

See citation and notice.

Citation and notice

Issued to an employer for any violation of WISHA safety and health requirements. Also known as a citation and notice of assessment, or simply citation.

Correction action plans

Your written plans for correcting a WISHA violation.

Correction date

The date by which you must meet the WISHA requirements listed on either a:

• Citation and notice (C&N);

OR

• A Corrective notice of redetermination (CNR).

Corrective notice of redetermination (CNR)

Issued by WISHA after WISHA has reassumed jurisdiction over an appealed citation and notice.

Designated representative

Any of the following:

• Any individual or organization to which an employee gives written authorization.

• A recognized or certified collective bargaining agent without regard to written employee authorization.

• The legal representative of a deceased or legally incapacitated employee.

Documentation

Material that an employer submits to prove that a correction is completed. Documentation includes, but is not limited to, photographs, receipts for materials and labor.

Failure to abate (FTA)

A violation that was cited previously which the employer has not fixed.

Final order

Any of the following (unless an employer or other party files a timely appeal):

• Citation and notice.

• Corrective notice of redetermination.

• Decision and order from the board of industrial insurance appeals.

• Denial of petition for review from the board of industrial insurance appeals.

• Decision from a Washington state superior court, court of appeals, or the state supreme court.

Final order date

The date a final order is issued.

Hazard

Any condition, potential or inherent, which can cause injury, death, or occupational disease.

Imminent danger violation

Any violation resulting from conditions or practices in any place of employment, which are such that a danger exists which could reasonably be expected to cause death or serious physical harm, immediately or before such danger can be eliminated through the enforcement procedures otherwise provided by the Washington Industrial Safety and Health Act.

Interim order

An order allowing an employer to vary from WISHA requirements until a permanent or temporary variance is granted.

Monetary penalties

Fines assessed against an employer for violations of safety and health requirements.

Movable equipment

A hand-held or nonhand-held machine or device that:

• Is powered or nonpowered.

• Can be moved within or between worksites.

Must

Means mandatory.

Permanent variance

Allows an employer to vary from WISHA requirements when an alternate means, that provides equal protection to workers, is used.

Probability rate

A number that describes the likelihood of an injury, illness, or disease occurring, ranging from 1 (lowest) to 6 (highest).

Reassume jurisdiction

WISHA has decided to provide the employer with an informal conference to discuss their appeal.

Repeat violation

A violation where the employer has been cited one or more times previously for a substantially similar hazard, and the prior violation has become a final order no more than three years prior to the employer committing the violation being cited.

Serious violation

When there is a substantial probability that death or serious physical harm could result from one of the following in the workplace:

– A condition that exists.

– One or more practices, means, methods, operations, or processes that have been adopted or are in use.

Temporary variance

Allows an employer to vary from WISHA requirements under certain circumstances.

Variance

Provides an approved alternative to WISHA requirements to protect employees from a workplace hazard. Variances can be permanent or temporary.

WAC

An acronym for Washington Administrative Code, which are rules developed to address state law.

WISHA

This is an acronym for the Washington Industrial Safety and Health Act.

You

An employer.

Sample Tag for Cited Moveable Equipment

WARNING: EQUIPMENT HAZARD Cited by the **Department of Labor and Industries**	Equipment cited: Hazard cited: For detailed information, see L&I citation posted at:

WARNING: EQUIPMENT HAZARD **See reverse side**	This tag or similar tag or a copy of the citation must remain attached to this equipment until the criteria for removal in WAC 296-900-15035 are met. The tag/citation copy must not be altered, defaced, or covered by other material.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-350-010	Definitions.
WAC 296-350-700	Variance from WISHA rules.
WAC 296-350-70010	Purpose of variances.
WAC 296-350-70015	Permanent variances—Description.
WAC 296-350-70020	Temporary variances—Description.
WAC 296-350-70030	Requesting a permanent variance.
WAC 296-350-70035	Requesting a temporary variance.
WAC 296-350-70040	Renewing temporary variances.
WAC 296-350-70045	Submitting variance requests.
WAC 296-350-70050	Notifying employees about variance requests.
WAC 296-350-70055	Department review and decision.
WAC 296-350-70060	Your responsibilities once we make a decision.
WAC 296-350-70065	Changing a variance.
WAC 296-350-70070	Variance hearings.
WAC 296-350-990	Appendix A—Form F418-023-000—Application for copies of citations and notices.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-800-350	Introduction.
WAC 296-800-35002	Types of workplace inspections.
WAC 296-800-35004	Scheduling inspections.
WAC 296-800-35006	Inspection techniques.
WAC 296-800-35008	Response to complaints submitted by employees or their representatives.
WAC 296-800-35010	Citations mailed after an inspection.
WAC 296-800-35012	Employees (or their representatives) can request a citation and notice.
WAC 296-800-35016	Posting a citation and notice and employee complaint information.

WAC 296-800-35018	Reasons to assess civil penalties.
WAC 296-800-35020	Minimum penalties.
WAC 296-800-35022	Base penalty calculations—Severity and probability.
WAC 296-800-35024	Severity rate determination.
WAC 296-800-35026	Probability rate determination.
WAC 296-800-35028	Determining the gravity of a violation.
WAC 296-800-35030	Base penalty adjustments.
WAC 296-800-35032	Types of base penalty adjustments.
WAC 296-800-35038	Minimum and maximum adjusted base penalty amounts.
WAC 296-800-35040	Reasons for increasing civil penalty amounts.
WAC 296-800-35042	Employers must certify that violations have been abated.
WAC 296-800-35044	For willful, repeated, or serious violations, submit additional documentation.
WAC 296-800-35046	Submitting correction action plans.
WAC 296-800-35048	Submit progress reports to the department when required.
WAC 296-800-35049	WISHA determines the date by which abatement documents must be submitted.
WAC 296-800-35050	Inform affected employees and their representatives of abatement actions you have taken.
WAC 296-800-35052	Tag cited moveable equipment to warn employees of a hazard.
WAC 296-800-35056	You can request more time to comply.
WAC 296-800-35062	WISHA's response to your request for more time.
WAC 296-800-35063	Post the department's response.
WAC 296-800-35064	A hearing can be requested about the department's response.
WAC 296-800-35065	Post the department's hearing notice.
WAC 296-800-35066	Hearing procedures.
WAC 296-800-35072	Post the hearing decision.
WAC 296-800-35076	Employers and employees can request an appeal of a citation and notice.
WAC 296-800-35078	Await the department's response to your appeal request.
WAC 296-800-35080	Department actions when reassuming jurisdiction over an appeal.
WAC 296-800-35082	Appealing a corrective notice.
WAC 296-800-35084	Notify employees.

WSR 06-06-037
PERMANENT RULES
ENERGY FACILITY SITE EVALUATION COUNCIL

[Filed February 23, 2006, 4:24 p.m., effective March 26, 2006]

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

Purpose: The purpose of this proposal is to update the energy facility site evaluation council's air rules (chapter 463-78 WAC) to make them consistent with the federal prevention of significant deterioration (PSD) and ecology's new source review (NSR) programs, and to clarify procedures for appeals of air permits and source registration.

Citation of Existing Rules Affected by this Order: Amending WAC 463-78-005, 463-78-030, 463-78-100, 463-78-115, and 463-78-140.

Statutory Authority for Adoption: RCW 80.50.040 (1) and (12).

Adopted under notice filed as WSR 06-01-014 on December 9, 2005.

Changes Other than Editing from Proposed to Adopted Version: The language in WAC 463-78-140 (1), (2), (3), and (4) was clarified to indicate that permit actions which become effective upon final action of the governor according to RCW 80.50.100 on an application for site certification are subject to judicial review pursuant to RCW 80.50.140.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 5, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

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

Date Adopted: February 14, 2006.

James O. Luce
Chair

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-005 Adoption by reference. (1) The energy facility site evaluation council adopts the following provisions of chapter 173-400 WAC, in effect on ((~~July~~)) March 1, ((~~2003~~)) 2005, by reference. WAC 173-400-110(8) and 173-400-730(4) are not adopted by reference.

WAC 173-400-030: Definitions.
WAC 173-400-035: Portable and temporary sources.
WAC 173-400-040: General standards for maximum emissions.
WAC 173-400-050: Emission standards for combustion and incineration units.
WAC 173-400-060: Emission standards for general process units.
WAC 173-400-075: Emission standards for sources emitting hazardous air pollutants.
WAC 173-400-081: Startup and shutdown.
WAC 173-400-091: Voluntary limits on emissions.
WAC 173-400-105: Records, monitoring, and reporting.
WAC 173-400-107: Excess emissions.
WAC 173-400-110: New source review (NSR).
WAC 173-400-112: Requirements for new sources in nonattainment areas.
WAC 173-400-113: Requirements for new sources in attainment or unclassifiable areas.
WAC 173-400-114: Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.
WAC 173-400-117: Special protection requirements for federal Class I areas.
WAC 173-400-120: Bubble rules.
WAC 173-400-131: Issuance of emission reduction credits.
WAC 173-400-136: Use of emission reduction credits.
((~~WAC 173-400-141: Prevention of significant deterioration (PSD).~~))
WAC 173-400-151: Retrofit requirements for visibility protection.
WAC 173-400-161: Compliance schedules.
WAC 173-400-171: Public involvement.
WAC 173-400-175: Public information.
WAC 173-400-180: Variance.
WAC 173-400-190: Requirements for nonattainment areas.
WAC 173-400-200: Creditable stack height and dispersion techniques.
WAC 173-400-205: Adjustment for atmospheric conditions.
WAC 173-400-700: Review of major stationary sources of air pollution.
WAC 173-400-710: Definitions.
WAC 173-400-720: Prevention of significant deterioration (PSD).
WAC 173-400-730: Prevention of significant deterioration application processing procedures.
WAC 173-400-740: PSD permitting public involvement requirements.
WAC 173-400-750: Revisions to PSD permits.

(2) The energy facility site evaluation council adopts the following provisions of chapter 173-401 WAC, in effect on ((~~July~~)) March 1, ((~~2003~~)) 2005, by reference.

WAC 173-401-100: Program overview.
WAC 173-401-200: Definitions.
WAC 173-401-300: Applicability.
WAC 173-401-500: Permit applications.
WAC 173-401-510: Permit application form.
WAC 173-401-520: Certification.
WAC 173-401-530: Insignificant emission units.
WAC 173-401-531: Thresholds for hazardous air pollutants.
WAC 173-401-532: Categorically exempt insignificant emission units.
WAC 173-401-533: Units and activities defined as insignificant on the basis of size or production rate.
WAC 173-401-600: Permit content.
WAC 173-401-605: Emission standards and limitations.
WAC 173-401-610: Permit duration.
WAC 173-401-615: Monitoring and related recordkeeping and reporting requirements.
WAC 173-401-620: Standard terms and conditions. Except (2)(i).
WAC 173-401-625: Federally enforceable requirements.
WAC 173-401-630: Compliance requirements.
WAC 173-401-635: Temporary sources.
WAC 173-401-640: Permit shield.
WAC 173-401-645: Emergency provision.
WAC 173-401-650: Operational flexibility.

WAC 173-401-700: Action on application.

WAC 173-401-705: Requirement for a permit.

WAC 173-401-710: Permit renewal, revocation and expiration.

WAC 173-401-720: Administrative permit amendments.

WAC 173-401-722: Changes not requiring permit revisions.

WAC 173-401-725: Permit modifications.

WAC 173-401-730: Reopening for cause.

WAC 173-401-750: General permits.

WAC 173-401-800: Public involvement.

WAC 173-401-810: EPA Review.

WAC 173-401-820: Review by affected states.

(3) The energy facility site evaluation council adopts the following provisions of chapter 173-406 WAC, in effect on ((~~July~~)) March 1, ((~~2003~~)) 2005, by reference.

Part I - GENERAL PROVISIONS

WAC 173-406-100: Acid rain program general provisions.

WAC 173-406-101: Definitions.

WAC 173-406-102: Measurements, abbreviations, and acronyms.

WAC 173-406-103: Applicability.

WAC 173-406-104: New units exemption.

WAC 173-406-105: Retired units exemption.

WAC 173-406-106: Standard requirements.

Part II - DESIGNATED REPRESENTATIVE

WAC 173-406-200: Designated representative.

WAC 173-406-201: Submissions.

WAC 173-406-202: Objections.

Part III - APPLICATIONS

WAC 173-406-300: Acid rain permit applications.

WAC 173-406-301: Requirement to apply.

WAC 173-406-302: Information requirements for acid rain permit applications.

WAC 173-406-303: Permit application shield and binding effect of permit application.

Part IV - COMPLIANCE PLAN

WAC 173-406-400: Acid rain compliance plan and compliance options.

WAC 173-406-401: General.

WAC 173-406-402: Repowering extensions.

Part V - PERMIT CONTENTS

WAC 173-406-500: Acid rain permit.

WAC 173-406-501: Contents.

Part V - PERMIT CONTENTS

WAC 173-406-502: Permit shield.

Part VI - PERMIT ISSUANCE

WAC 173-406-600: Acid rain permit issuance procedures.

WAC 173-406-601: General.

WAC 173-406-602: Completeness.

WAC 173-406-603: Statement of basis.

WAC 173-406-604: Issuance of acid rain permits.

((~~WAC 173-406-605: Acid rain permit appeal procedures.~~))

Part VII - PERMIT REVISIONS

WAC 173-406-700: Permit revisions.

WAC 173-406-701: General.

WAC 173-406-702: Permit modifications.

WAC 173-406-703: Fast-track modifications.

WAC 173-406-704: Administrative permit amendment.

WAC 173-406-705: Automatic permit amendment.

WAC 173-406-706: Permit reopenings.

Part VIII - COMPLIANCE CERTIFICATION

WAC 173-406-800: Compliance certification.

WAC 173-406-801: Annual compliance certification report.

WAC 173-406-802: Units with repowering extension plans.

Part IX - NITROGEN OXIDES

WAC 173-406-900: Nitrogen oxides emission reduction program.

Part X - SULFUR DIOXIDE OPT-IN

WAC 173-406-950: Sulfur dioxide opt-ins.

(4) The energy facility site evaluation council adopts the following provisions of chapter 173-460 WAC, in effect on ((~~July~~)) March 1, ((~~2003~~)) 2005, by reference.

WAC 173-460-010: Purpose.

WAC 173-460-020: Definitions.

WAC 173-460-030: Requirements, applicability and exemptions.

WAC 173-460-040: New source review.

WAC 173-460-050: Requirement to quantify emissions.

WAC 173-460-060: Control technology requirements.

WAC 173-460-070: Ambient impact requirement.

WAC 173-460-080: Demonstrating ambient impact compliance.

WAC 173-460-090: Second tier analysis.

WAC 173-460-100:	Request for risk management decision.
WAC 173-460-110:	Acceptable source impact levels.
WAC 173-460-120:	Scientific review and amendment of acceptable source impact levels and lists.
WAC 173-460-130:	Fees.
WAC 173-460-140:	Remedies.
WAC 173-460-150:	Class A toxic air pollutants: Known, probable and potential human carcinogens and acceptable source impact levels.
WAC 173-460-160:	Class B toxic air pollutants and acceptable source impact levels.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-030 Additional definitions. (1) "Council" means the energy facility site evaluation council.

(2) In addition to the definitions contained in WAC 173-400-030, 173-400-710, 173-401-200, 173-406-101, "ecology," "authority," and "permitting ((~~agency~~)) authority" shall be synonymous with the energy facility site evaluation council unless a different meaning is plainly required by context.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-100 Registration. (1) Purpose. The registration program is used by the council to develop and maintain a current and accurate record of air contaminant sources subject to chapter 80.50 RCW. Information collected through the registration program is used to evaluate the effectiveness of air pollution strategies in collaboration with the department of ecology, and to verify source compliance with applicable air pollution requirements.

(2) Requirement to register. Except as provided in subsection (3) of this section, the owner or operator of each ((~~stationary~~)) source subject to chapter 80.50 RCW shall register the source with the council. ((~~Stationary~~)) Sources subject to the Operating permit regulation in chapter 173-401 WAC are not required to comply with these registration requirements.

((~~Registration shall be on forms which have been adopted for use by the department of ecology within the time specified thereon.~~)) (3) The following sources are exempt from registration:

(a) A source that emits pollutants below the following emission rates:

Pollutant	Tons/Year
Carbon monoxide	5.0
Nitrogen oxides	2.0
Sulfur dioxide	2.0
Particulate Matter (PM)	1.25
Fine Particulate (PM10)	0.75
Volatile Organic Compounds (VOC).	2.0
Lead	0.005

; and

(b) A source or emission unit that does not emit measurable amounts of Class A or Class B toxic air pollutants specified in WAC 173-460-150 and 173-460-160.

(4) Initial registration. The owner or operator of a source that exists on the effective date of this rule must register the source with the council by no later than one year after the effective date of this rule. The owner or operator of a new source must register with the council within ninety days after beginning operation.

(5) Annual reregistration. After initial registration, the owner or operator of a source must reregister with the council by February 15 of each year. The reregistration must include all of the information required in the initial registration and must be updated to reflect any changes to such information since the previous registration. For information that has not changed since the previous registration, the owner or operator may reaffirm in writing the correctness and current status of the information previously furnished to the council.

(6) Registration format. Registration shall be in a format approved by the council. Each registration submittal shall include the following information:

(a) Name of the source and the nature of the business;

(b) Street address, telephone number, facsimile number, and e-mail address of the source;

(c) Name, mailing address, telephone number, facsimile number and e-mail address of the owner or operator;

(d) Name, mailing address, telephone number, facsimile number and e-mail address of the local individual responsible for compliance with this rule;

(e) Name, mailing address, telephone number, facsimile number and e-mail address of the individual authorized to receive requests for data and information;

(f) A description of the production processes and a related flow chart;

(g) Identification of emission units and air pollutant generating activities;

(h) A plot plan showing the location and height of all emission units and air pollutant generating activities. The plot plan must also show the property lines of the air pollution source and indicate the distance to and direction of the nearest residential or commercial property;

(i) Type and quantity of fuels, including the sulfur content of fuels, used on a daily and annual basis;

(j) Type and quantity of raw materials used on a daily and annual basis;

(k) Estimates of the total actual emissions for the air pollution source of the following air pollutants: Particulate matter emissions, PM_{10} emissions, sulfur dioxide (SO_2), nitrogen oxides (NO_X), carbon monoxide (CO), volatile organic compounds (VOC), lead (Pb), fluorides, sulfuric acid mist, hydrogen sulfide (H_2S), total reduced sulfur (TRS), and reduced sulfur compounds;

(l) Calculations used to determine the estimated emissions in (k) of this subsection;

(m) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions; and

(n) Any other information specifically requested by the council.

(7) Procedure for estimating emissions. The registration submittal must include an estimate of actual emissions taking into account equipment, operating conditions, and air pollution control measures. The emission estimates must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the council. Any emission estimates submitted to the council must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(a) Source-specific emission tests;

(b) Mass balance calculations;

(c) Published, verifiable emission factors that are applicable to the source;

(d) Other engineering calculations; or

(e) Other procedures to estimate emissions specifically approved by the council.

(8) Other reports required.

(a) A report of closure shall be filed with the council within ninety days after operations producing emissions permanently ceased at any source within the council's jurisdiction.

(((2))) (b) A report of relocation of the source shall be filed with the council no later than ninety days prior to the relocation of the source. Submitting a report of relocation does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC, nor does it relieve the owner or operator from the requirement to obtain a permit or approval to construct if the relocation of the air pollution source would be a new source or modification subject to any federal or state permit to construct rule.

(c) A report of change of owner or operator shall be reported to the council within ninety days after the change in ownership is effective. Submitting the report of change of ownership does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC.

(9) Certification of truth and accuracy. All registrations and reports must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(10) The council shall ensure that the following, as it pertains to sources covered under this rule, is passed on to ecology in a timely manner for inclusion in its permit register:

(a) Public meetings or hearings on draft operating permits;

(b) Receipt of complete applications;

(c) Permit appeals;

(d) Issuance or denial of final permit, permit modifications, or renewals;

(e) Authorization for a source to operate without an operating permit by limiting its potential to emit to levels below those that would require the source to obtain an operating permit;

(f) Periodic summaries of enforcement order and changes made without revising the permit pursuant to WAC 173-401-722.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-115 Standards of performance for new stationary sources. (1) Title 40, Code of Federal Regulations, Part 60 (standards of performance for new stationary sources), in effect on July 1, ((2003)) 2004, as applicable to new stationary sources subject to chapter ((80.50.)) 80.50 RCW is by this reference adopted and incorporated herein with the exception listed in subsection (2) of this section. For the purpose of state administration of the federal regulations adopted by reference hereby, the term "administrator" as used therein shall refer to the council. The following list is provided for informational purposes only:

Subpart A	General Provisions, except CFR 60.5 and 60.6
Subpart D	Fossil fuel fired steam generators for which construction commenced after August 17, 1971, and prior to September 19, 1978, which have a heat input greater than 73 megawatts but not greater than 350 megawatts
Subpart Da	Electric utility steam generating units for which construction commenced after September 18, 1978, which have greater than 73 megawatts but not greater than 350 megawatts
Subpart J	Petroleum refineries which produce less than 25,000 barrels per day of refined products
Subpart K	Storage vessels for petroleum liquid constructed after June 11, 1973, and prior to May 19, 1978, which have a capacity greater than 40, 000 gallons
Subpart Ka	Storage vessels for petroleum liquids constructed after May 18, 1978, which have a capacity greater than 40,000 gallons
Subpart Kb	Volatile organic liquid storage vessels (including petroleum liquid storage vessels) constructed, reconstructed, or modified after July 23, 1984
Subpart Y	Standards for Performance for Coal Preparation Plants
Subpart GG	Stationary gas turbines
Subpart XX	Bulk gasoline terminals
Subpart GGG	Petroleum refineries – compressors and fugitive emission sources
Subpart KKK	Equipment leaks of VOC from onshore natural gas processing plants

Subpart LLL	Onshore natural gas processing; SO_2 emissions
Subpart NNN	VOC emissions from SOCMI distillation operations
Subpart QQQ	VOC emissions from petroleum refinery wastewater emissions
Appendix A	Test Methods
Appendix B	Performance Specifications
Appendix C	Determination of Emission Rate Change
Appendix D	Required Emission Inventory Information
Appendix F	Quality Assurance Procedures

(2) ((Exceptions to adopting)) The following sections of 40 CFR Part 60 are not adopted by reference((.)):

(a) Sections 60.5 (Determination of Construction or Modification) and 60.6 ((are not incorporated herein because they provide for preconstruction review of new stationary sources only on request. By virtue of WAC 173-400-110, such review under the state program is mandatory and an order of approval is required before the construction, installation or establishment of a new stationary source may commence)) (Review of Plans);

(b) 40 CFR Part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities), and subparts C, Cb, Cc, Cd, Ce, BBBB, and DDDD (emission guidelines); and

(c) 40 CFR Part 60, Appendix G, Provisions for an Alternative method of Demonstrating Compliance with 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-140 Appeals procedure. (1) **Appeal of permits issued pursuant to WAC 173-400-110.**

(a) Any conditions contained in an order of approval, or the denial of a notice of construction application issued by the council pursuant to the requirements of WAC 173-400-110 may be appealed as provided in chapter 34.05 RCW; provided that any order, permit, conditions or denial issued pursuant to WAC 173-400-110 which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall promptly mail copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the notice of construction application, along with a notice advising parties of their rights of appeal.

(2) **Appeal of prevention of significant deterioration permits issued pursuant to WAC 173-400-730.**

(a) A PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit by the council may be appealed as provided in chapter 34.05 RCW; provided that a PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140. Such an appeal, however, does not stay the effective date of the permit as a matter of federal law.

(b) A PSD permit issued under the terms of a delegation agreement between the EPA and the council can be appealed to the EPA's environmental appeals board as provided in 40 CFR 124.13 and 40 CFR 124.19.

(3) **Appeal of operating permits issued pursuant to chapter 173-401 WAC.**

(a) A decision to issue or to deny a final permit, or the terms or conditions of such a permit issued by the council pursuant to chapter 173-401 WAC, may be appealed as provided in chapter 34.05 RCW, provided that a decision to issue or to deny a final permit, or the terms or conditions of such a permit issued pursuant to chapter 173-401 WAC which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification, shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall identify any appealable decision or determination as such and shall notify the recipient that the decision may be appealed by filing an appeal pursuant to chapter 34.05 RCW.

(c) The provision for appeal in this section is separate from and additional to any federal rights to petition and review under section 505(b) of the federal Clean Air Act, including petitions filed pursuant to 40 CFR 70.8(c) and 70.8(d).

(d) Appealing parties. Parties that may file the appeal referenced in subsection (4)(a) of this section include any person who submitted comment in the public participation process pursuant to WAC 173-401-800.

(e) As provided in RCW 34.05.570, a person may seek a writ of mandamus in the event that the council fails to take final action on an application for a permit, permit renewal, or permit revision within the deadlines specified by WAC 173-401-700 through 173-401-725.

(4) **Appeal of acid rain permits issued pursuant to chapter 173-406 WAC.**

(a) Terms used in this subsection have the definitions given in WAC 173-406-101.

(b) Appeals of the acid rain portion of an operating permit issued by the council that do not challenge or involve decisions or actions of the administrator under 40 CFR parts 72, 73, 75, 77 and 78 and sections 407 and 410 of the act and regulations implementing sections 407 and 410 shall be conducted according to the procedures in chapter 34.05 RCW; provided that appeals of the acid rain portion of an operating permit issued by the council which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(c) Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR part 78 and section 307 of the act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(d) No administrative appeal or judicial appeal of the acid rain portion of an operating permit shall be allowed more than thirty days following respectively issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

(e) The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

(f) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

(i) The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

(ii) Any standard requirement under WAC 173-406-106;

(iii) The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 CFR part 75;

(iv) Uncontested provisions of the decision on appeal; and

(v) The terms of a certificate of representation submitted by a designated representative under subpart B of 40 CFR part 72.

(g) The council will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within thirty days of the filing of the appeal.

(h) The council will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with WAC 173-401-810 and 173-401-820.

(5) Appeals from notices of violation issued by the council will be handled via the council's appellate review procedure as provided in WAC ((~~463-54-070~~)) 463-70-070 (4)(c).

WSR 06-06-040
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed February 23, 2006, 4:34 p.m., effective March 26, 2006]

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

Purpose: These new rules in chapter 388-825 WAC are necessary to implement ESSB 6090, 2005-2007 conference budget (section 205 (1)(e), chapter 518, Laws of 2005), which establishes a flexible family support pilot program for families who are providing care and support for family members with developmental disabilities. The family support pilot program is funded through June 30, 2007. The division of developmental disabilities (DDD) determined that new sections of chapter 388-825 WAC are necessary to implement the legislature's directive in ESSB 6090. When effective, these rules replace the emergency rules filed as WSR 06-02-042 on December 29, 2005.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040.

Other Authority: Section 205 (1)(e), chapter 518, Laws of 2005; Title 71A RCW.

Adopted under notice filed as WSR 05-24-090 on December 6, 2005.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's Note below.

A final cost-benefit analysis is available by contacting Steve Brink, P.O. Box 45310, Olympia, WA 98507-5310, phone (360) 725-3416, fax (360) 407-0955, e-mail brinksc@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 33, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 33, Amended 0, Repealed 0.

Date Adopted: February 15, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

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 06-07 issue of the Register.

WSR 06-06-044
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 05-271A—Filed February 24, 2006, 10:31 a.m., effective March 27, 2006]

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

Purpose: Amending WAC 232-28-284 Spring black bear damage seasons and regulations. This order corrects a mistake that appeared in WSR 06-02-063 filed on January 3, 2006. The commission adopted WAC 232-28-284 with the number of permits available for the Capitol Forest hunt being 100, not 75 that [was] indicated on the previous order.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-284.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 05-21-113 on October 18, 2005.

Changes Other than Editing from Proposed to Adopted Version: Changes, if any, from the text of the proposed rule and reasons for difference:

In the permit table

- To correct an error, change the number of permits available for the Capitol Forest hunt from 75 back to 100.
- Hancock Forest Management would like to continue spring bear season. So the following line was added to the permit table.

Kapowsin South[a]	That portion of GMUs 653 and 654 that is designated as Kapowsin South by Hancock Forest Management	100	April 15 - June 15

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

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

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

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

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

Date Adopted: December 2, 2005.

Nancy Burkhart
for Ron Ozment, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 04-327, filed 1/3/05, effective 2/3/05)

WAC 232-28-284 ((~~2005~~)) Spring black bear ((~~damage~~)) seasons and regulations. ((~~Spring black bear hunting seasons under this section constitute a three-year pilot program to reduce black bear damage to trees.~~))

Who may apply: Anyone with a valid Washington big game license, which includes black bear as a species option.

Hunt areas, ((~~permits~~)) permit levels, and season dates for each license year:

Hunt name	Hunt area	((~~2005~~)) Permits	((~~2005~~)) Season dates[b]
Blue Creek	GMU 154	15	April 15 - May 31
Dayton	GMU 162	15	April 15 - May 31
Tucannon	GMU 166	10	April 15 - May 31
Wenaha	GMU 169	30	April 15 - May 31
Mt. View	GMU 172	15	April 15 - May 31
Lick Creek	GMU 175	15	April 15 - May 31
Grande Ronde	GMU 186	5	April 15 - May 31
Capitol Forest[a]	That portion of Capitol Forest within GMU 663	100	April 15 - June 15
((~~Kapowsin (All)~~)	~~PLWMA 401 in GMU 653 and 654~~	~~100~~	~~April 15 - June 15~~))
Kapowsin South [a]	That portion of GMUs 653 and 654 that is designated as Kapowsin South by Hancock Forest Management	100	April 15 - June 15

[a] Spring black bear hunting seasons under this hunt area constitute a pilot program to reduce black bear damage to trees.

[b] Permits are valid for the license year they are issued.

Bag limit: One black bear per black bear special permit season.

License required: A valid big game hunting license, which includes black bear as a species option, is required to hunt black bear. One black bear transport tag is included with a big game hunting license that has black bear as a species option.

Hunting method: Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting black bear. The use of dogs or bait to hunt black bear is prohibited statewide.

Submitting bear teeth: Successful bear hunters must submit the black bear premolar located behind the canine tooth of the upper jaw.

WSR 06-06-046
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed February 24, 2006, 1:05 p.m., effective March 27, 2006]

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

Purpose: This rule (Rule 17803) explains the use tax reporting responsibilities of persons who distribute or cause the distribution of any article of tangible person [personal] property, except newspapers, the primary purpose of which is to promote the sale of products of services.

Effective July 1, 2005, the department adopted revisions to Rule 17803 on an emergency basis to reflect chapter 514, Laws of 2005, which provides a use tax exemption for delivery charges made for the delivery of direct mail if the charges are separately stated. This rule making action incorporates this provision into the permanent Rule 17803. Subsection (5)(b) was also reworded to more clearly explain that a con-

sumer owes use tax on the measure of tax with respect to both the value of promotional material article used and the value of services rendered in respect to altering, imprinting, or improving promotional material when the consumer contracts with separate persons for the promotional material and services to prepare the material for distribution.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-17803 Use tax on promotional material.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 06-01-004 on December 8, 2005.

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

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

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

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

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

Date Adopted: February 24, 2006.

Janis P. Bianchi, Manager
Interpretations and
Technical Advice Unit

AMENDATORY SECTION (Amending WSR 05-03-051, filed 1/11/05, effective 7/1/05)

WAC 458-20-17803 Use tax on promotional material. (1) **Introduction.** Persons who distribute or cause to be distributed any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services, are subject to use tax on the value of the property. RCW 82.12.010, 82.12.020, and chapter 367, Laws of 2002. This ((~~rule~~)) section explains the use tax reporting responsibilities of consumers when such property is delivered directly to persons other than the consumer from outside Washington. For the purposes of this ((~~rule~~)) section, the term "promotional material" is used in describing such property where applicable.

This rule provides numerous examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances. For purposes of these examples, presume the promotional material is delivered to persons within Washington.

Chapter 514, Laws of 2005, changed the taxability of delivery charges associated with direct mail. Refer to subsection (5) of this section for further information.

(2) **What is the use tax?** The use tax complements the retail sales tax by imposing a tax of a like amount when a consumer uses tangible personal property or certain retail services within this state. RCW 82.12.020. The tax does not apply to the use of any property or service if the present user, donor, or bailor previously paid retail sales tax under chapter 82.08 RCW with respect to the property used or the service obtained. See WAC 458-20-178 (Use tax) for an explanation of the use tax and use tax reporting requirements.

(3) **Who is liable for the use tax on promotional material?** The use tax is imposed on the consumer. Effective June 1, 2002, the law provides that with respect to promotional material distributed to persons within this state, the consumer is the person who distributes or causes the distribution of the promotional material. A consumer as defined in this rule is responsible for remitting use tax only if the consumer has nexus in Washington.

(a) **Example 1.** Department Store contracts with Printer ((~~in Idaho,~~)) to print promotional material advertising sale merchandise available at Department Store's Washington locations. Printer ((~~delivers~~)) distributes promotional material to ((~~Seattle Mailing Bureau, with whom Department Store has contracted to prepare the material for distribution to~~)) Department Store's customers. Department Store is the consumer of the promotional material and is liable for use tax on promotional material distributed ((~~within~~)) into Washington. Neither Printer((~~, Seattle Mailing Bureau,~~)) nor Department Store's customers are consumers of this promotional material.

(b) **Example 2.** Retailer contracts with Seattle Advertising Agency for advertising services. Advertising Agency makes a single charge for all services, which includes designing, printing, and distributing catalogs to potential customers. Advertising Agency contracts with California Printer to print and prepare for distribution promotional material advertising a new Washington location. Retailer is the consumer of the catalogs and is liable for use tax on the promotional material sent to Washington addresses. Neither Advertising Agency nor potential customers are consumers of this promotional material.

(4) **What is promotional material?** Promotional material is any article of tangible personal property, except newspapers, displayed or distributed in the state of Washington for the primary purpose of promoting the sale of products or services. Examples of promotional material include, but are not limited to, advertising literature, circulars, catalogs, brochures, inserts (but not newspaper inserts), flyers, applications, order forms, envelopes, folders, posters, coupons, displays, signs, free gifts, or samples (such as carpet or textile samples).

(a) **Is advertising contained on billing statements promotional material?** It is presumed that the primary purpose of billing statements and statements of account is to secure payment for goods or services previously purchased. Thus, unless the facts and circumstances indicate that the primary purpose of the property is to promote the sale of goods and services, billing statements and statements of account are not considered promotional material. Attaching, affixing, or otherwise incorporating property promoting the sale of goods or services does not alter the primary purpose of billing state-

ments and statements of account. However, flyers, inserts, or other separate property enclosed with billing statements or statements of account that promote the sale of goods or services are promotional material and subject to use tax.

(i) **Example 1.** Richland Attorney contracts with Oregon Printer to print and prepare for distribution monthly billing statements and return remittance envelopes to Attorney's clients. The contract also includes printing and inserting flyers promoting Attorney's estate planning services. The primary purpose of the flyers is to solicit the sale of services. Consequently, the flyers are promotional material. The primary purpose of the billing statements is to secure payment for services rendered. The billing statements are not promotional material.

(ii) **Example 2.** Department Store prints the monthly billing statements for its store credit card in Atlanta, Georgia, and mails them to customers located in Washington. Although the billing statement includes three sentences noting an upcoming sale, this information does not alter the primary purpose of the billing statement, which is to secure payment for services rendered. The billing statements are not promotional material.

(iii) **Example 3.** The following month, Department Store's billing statement includes a detachable coupon for fifteen percent off selected items purchased during a specified period. Although the detachable coupon solicits the sale of goods or services, it does not alter the primary purpose of the billing statement, which is to secure payment for goods or services already purchased. The billing statement and detachable coupon are not promotional material.

(iv) **Example 4.** In the third month, Department Store lengthens the billing statement to include information promoting the grand opening of a location. Although the lengthened portion of the billing statement contains information promoting the sale of goods or services, it does not alter the primary purpose of the billing statement, which is to secure payment for goods or services already purchased. The lengthened billing statement is not promotional material.

(b) **When are envelopes considered promotional material?** Envelopes used solely to mail property to promote the sale of goods or services are considered promotional material and subject to use tax.

Envelopes used to mail nonpromotional material, such as billing statements and statements of account, are used to secure payment for goods purchased or services rendered. The same is true of return envelopes that are enclosed for submitting payment. Unless the facts and circumstances indicate otherwise, the presumption is that the primary purpose of envelopes used for mailing both promotional and nonpromotional material in the same envelope is not to promote the sale of goods and services. Thus, envelopes and return envelopes used for dual purposes are not subject to use tax, even though promotional material may be printed on or attached to the envelopes. Although the imprinted or attached material promotes the sale of goods or services, it does not alter the primary purpose of the envelopes.

(i) **Example 1.** Bank mails brochures, applications, and return envelopes from Atlanta, Georgia, to Washington addresses promoting Bank's credit card. The primary purpose of envelopes used to mail the brochures, applications, and return envelopes is to solicit the sale of services. The envelopes, brochures, and applications are promotional material.

(ii) **Example 2.** Telephone Company mails monthly billing statements to Washington customers from St. Louis, Missouri. Inserts promoting the sale of various telephone accessories are included. Return envelopes to be used in making payment of the statement amount are also enclosed. The primary purpose of the envelopes used to mail the billing statements and the return envelopes is to secure payment. Neither the mailing envelopes nor the return envelopes are promotional material.

(iii) **Example 3.** Mortgage Company mails monthly billing statements to Washington residents from its administrative offices in Nevada. The enclosed return envelope for customers to use in making payment includes an attachment promoting additional banking services. Although the attachment to the return envelopes contains advertising information, it does not alter the primary purpose of the envelope which is to obtain payment. Neither the mailing envelopes nor the return envelopes are promotional material.

(5) **What is the measure of tax?** The measure of the use tax is the value of the article used. For the purposes of computing the use tax due on promotional material, the measure of tax is the amount of consideration paid for the promotional material without deduction for the cost of materials, labor, or other service charges, even though such charges may be stated or shown separately on invoices. Except as noted below, it also includes the amount of any freight, delivery, or other like transportation charge paid or given by the consumer to the seller. The value of the promotional material also includes any tariffs or duties paid. If the total consideration paid does not represent the true value of the article used, the value must be determined as nearly as possible according to the retail selling price at place of use of similar materials of like quality and character. RCW 82.12.010.

A consumer who has paid retail sales or use tax that is due in another state with respect to promotional material that is subject to use tax in this state may take a credit for the amount of tax so paid. RCW 82.12.035. For further information, refer to WAC 458-20-178 (Use tax).

(a) **((~~Does the measure of tax include delivery charges?~~)) Delivery charges.** Chapter 514, Laws of 2005, altered the measure of the use tax with respect to the value of delivery charges made for the delivery of direct mail.

(i) **Delivery charges May 17, 2005, and after.** Effective May 17, 2005, amounts derived from delivery charges for the delivery of direct mail may be deducted from the measure of use tax when the delivery charge is separately stated on an invoice or similar billing invoice provided to the buyer.

(ii) **Delivery charges from June 1, 2002, through May 16, 2005.** The measure of tax includes all delivery charges. Postage is a delivery charge and is therefore included in the measure of tax if the cost is part of the consideration paid by the consumer to the seller. RCW 82.08.010 and 82.12.010. It is immaterial if amounts charged for postage are stated or shown separately on invoices. Amounts charged for postage and other delivery costs are not included in the measure of tax only if the amounts are not part of the consideration paid. ((~~For discussion about when postage is and is not considered~~

part of the consideration paid, please refer to WAC 458-20-141 (Duplicating industry and mailing bureaus).))

(A) **When are delivery charges part of the consideration paid?** Charges for postage or other delivery costs are considered part of the consideration paid if the permit to use precanceled stamps, a postage meter, or an imprint account for bulk mailings is in the name of the party contracted to provide and/or prepare promotional material for distribution. Such parties are liable to the post office for payment and the consumer's payment of such amounts represents a payment on the sale of tangible personal property or the services provided. For further information, refer to WAC 458-20-111 (Advances and reimbursements).

(B) **When are delivery charges not part of the consideration paid?** Charges for postage or other delivery costs are not considered part of the consideration paid if the permit to use precanceled stamps or a permit imprint account for bulk mailings is in the consumer's name. The consumer in these cases has primary or secondary liability for payment of the postage costs. (Refer to WAC 458-20-111 for information about advances and reimbursements.)

(iii) **What is direct mail?** "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address. RCW 82.08.010 and chapter 514, Laws of 2005.

(iv) **What are delivery charges?** "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. RCW 82.08.010.

(b) **What is the measure of tax when a consumer contracts with one ((party)) person for the promotional material and a ((third party)) separate person to prepare the material for distribution?** ((The use tax is imposed on consumers of certain services rendered in respect to tangible personal property for use in this state when the retail sales tax has not been paid. RCW 82.12.020. These services generally include labor and services rendered in respect to altering, imprinting, or improving tangible personal property and include activities performed typically by mailing bureaus or houses, such as addressing, labeling, binding, folding, sealing, and tabbing.))

A consumer of promotional materials is subject to use tax on the value of the promotional material and the value of ((the)) certain services ((used. The value of the service used is the amount of consideration paid for the service and includes delivery charges such as postage. RCW 82.12.010 and 82.08.010)) rendered in respect to promotional material used in this state when the retail sales tax has not been paid.

The use tax is imposed on the value of the article used in this state. The tax is also imposed on the value of labor and services rendered in respect to altering, imprinting, or improving tangible personal property for use in this state when the retail sales tax has not been paid. RCW 82.12.020. With respect to promotional material, this includes activities typically performed by mailing bureaus or mail houses to prepare material for distribution, such as addressing, labeling, binding, folding, sealing, and tabbing.

(i) For discussion about activities performed by mailing bureaus, refer to WAC 458-20-141 (Duplicating activities and mailing bureaus).

(ii) For discussion about activities performed by the printing industry, refer to WAC 458-20-144 (Printing industry).

(c) **What is the measure of tax when a consumer manufactures its own promotional materials?** The measure of use tax is the value of the promotional material. Refer to WAC 458-20-112 (Value of products). A consumer who manufactures its own promotional material may also be conducting manufacturing activities and should refer to WAC 458-20-134 (Commercial or industrial use) and WAC 458-20-136 (Manufacturing, processing for hire, fabricating).

(6) **Determining the applicable local use tax rate.** For purposes of determining the applicable rate of local use tax for promotional material, the following guidelines must be followed unless the consumer obtains prior written approval from the department to use an alternative method. Refer to (c) of this subsection for an explanation of the circumstances under which the department will consider approving alternate methods and how to obtain such approval.

(a) **Operations directed from within Washington.** The applicable local taxing jurisdiction and tax rate is the in-state location from where the consumer directs or manages its Washington operations.

(i) **Example 1.** Department Store operates ten locations in western Washington. Department Store's corporate headquarters, the location from where it manages its in-state operations, is in Seattle. The local use tax rate for Seattle is the applicable rate.

(ii) **Example 2.** Retailer, a national company with headquarters in Chicago, Illinois, operates multiple locations in Washington. Retailer manages its Washington operations from a location in Spokane. The local use tax rate for Spokane is the applicable rate.

(b) **Operations directed from outside Washington.** A consumer that manages or directs its Washington activities from outside the state must equally apportion the value of the promotional material among the local tax jurisdictions where the consumer conducts its business activities. Promotional material that is targeted to specific business locations of the consumer must be apportioned solely between those business locations. Targeted material is material specifically distributed to promote sales of products or services solely at a specific location(s) and at a different price(s) or terms than those offered at all other Washington locations.

(i) **Example 1.** Bank directs the operations of its four Washington branches from its headquarters in Sacramento, California. The branches are in Seattle, unincorporated King County, Tacoma, and Everett. For purposes of determining use tax liability, twenty-five percent of the value of the promotional material must be equally apportioned to Seattle, unincorporated King County, Tacoma, and Everett.

(ii) **Example 2.** Furniture Store, headquartered in Nevada, orders 100,000 flyers from a Portland, Oregon, printer to be mailed to Washington households announcing the opening of its new store in Spokane. Customers will receive a ten percent discount on all items purchased at the Spokane store. This discount will not apply to purchases made at Store C's other Washington locations. The local use tax rate for Spokane is the applicable rate.

(iii) **Example 3.** Restaurant manages the operations of its Washington locations from Portland, Oregon. Restaurant contracts to have coupon books printed and mailed to households in Clark and Cowlitz counties. The coupons are accepted only at the Vancouver and Longview locations. The value of the promotional material must be equally apportioned to both locations.

(iv) **Example 4.** Ohio Manufacturer has no offices, warehouses, or storefront locations in Washington. A salesperson operating from the person's Kent home solicits sales from Washington distributors for the manufacturer. Manufacturer mails promotional material to its distributors' customers in Washington. The local use tax rate for Kent is the applicable rate.

(v) **Example 5.** Michigan Wholesaler without offices, warehouses, or storefront locations in Washington sends salesperson into Washington to solicit sales. Wholesaler mails promotional material to potential customers in Washington. The applicable local use tax rate is a uniform statewide local rate of .005.

(c) **Are there alternative methods for determining the place of first use?** For purposes of reporting use tax on promotional material, the department may agree to allow a consumer to use another method of determining the applicable local use tax rate provided that the method proposed by the consumer results in an equal or more equitable distribution of the tax. A consumer may request written approval for the use of an alternative method by contacting the department's taxpayer services division at:

Department of Revenue
Taxpayer Services
P.O. Box 47478
Olympia, WA 98504-7478

WSR 06-06-050
PERMANENT RULES
DEPARTMENT OF AGRICULTURE
[Filed February 27, 2006, 4:21 p.m., effective March 30, 2006]

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

Purpose: RCW 15.65.055 and 15.66.025 both state that the director of the department of agriculture shall have regulatory authority on the production of rapeseed by variety and geographical location until such time as the rapeseed commodity commission is formulated. A commission has been formed, named the Washington canola commission. Therefore, the department is repealing chapter 16-570 WAC as the regulatory authority, which has passed from the department to the canola commission. This action will eliminate any confusion about jurisdiction of authority.

Citation of Existing Rules Affected by this Order: Repealing chapter 16-570 WAC.

Statutory Authority for Adoption: RCW 15.65.055 and 16.66.025 [15.66.025].

Adopted under notice filed as WSR 06-01-110 on December 21, 2005.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 4.

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

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

Date Adopted: February 27, 2006.

William E. Brookreson
Deputy Director

WSR 06-06-065
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES
[Filed February 28, 2006, 11:09 a.m., effective April 1, 2006]

Effective Date of Rule: April 1, 2006.

Purpose: Residence modification, chapter 296-14 WAC, Industrial insurance. Pursuant to chapter 411, Laws of 2005 (EHB 2185), L&I was directed to implement rules that will establish guidelines and processes for providing residence modification assistance to workers who have sustained catastrophic injury.

Statutory Authority for Adoption: RCW 51.04.010, 51.04.020, 51.32.240, and chapter 411, Laws of 2005 (EHB 2185).

Adopted under notice filed as WSR 05-22-084 on November 1, 2005.

Changes Other than Editing from Proposed to Adopted Version:

WAC 296-14-6200 What is a residence modification?

- Example added for clarity.

WAC 296-14-6206 Which residences may be eligible to be modified?

- Amended wording to allow payment for a residence to be brought to state or local code when the work is required to complete a necessary and approved modification.

WAC 296-14-6210 What is the maximum amount of the residence modification benefit?

- Amended wording to allow payment up to maximum benefit in effect at the time each residence modification is approved.

WAC 296-14-6212 Can the worker receive additional modification benefits for the same residence?

- Amended wording to allow payment up to maximum benefit in effect at the time each residence modification is approved.

WAC 296-14-6222 What is a residence modification consultant, and how are they involved in the process of residence modification?

- Amended wording to allow qualified department staff to provide residence modification services without obtaining a provider number.

WAC 296-14-6230 What will the supervisor consider when approving or denying a residence modification request?

- Deleted subsection (11) because this element is no longer necessary as a result of the changes to WAC 296-14-6210 and 296-14-6212.

WAC 296-14-6238 Who receives payment from the department?

- Amended wording to allow reimbursement to the worker for any payment already made to the contractor for approved and completed residence modification.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 21, Amended 0, Repealed 0.

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

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

Date Adopted: February 28, 2006.

Gary Weeks
Director

NEW SECTION

WAC 296-14-6200 What is a residence modification? A residence modification is a permanent change to an existing residence or a repair of a modification previously approved and paid for by the department or self-insured employer, or a modification made when constructing a new residence.

Household appliances such as refrigerators, washers, and dryers, are generally not residence modifications and the department or self-insured employer will approve them only under unique circumstances as approved by the supervisor.

Example: As part of an approved residence modification, the kitchen counters are lowered. To meet the needs of the worker, the department or self-insured employer may approve the purchase of a drop-in range or cooktop.

NEW SECTION

WAC 296-14-6202 What is the residence modification benefit? The residence modification benefit is a sum of money used to modify a worker's residence for purposes of safety, mobility and activities of daily living, when those modifications are made necessary by the nature of the worker's condition subsequent to a catastrophic injury. Activities of daily living are tasks required for self-care, communication and mobility and include, but are not limited to, bathing, bed mobility, dressing, eating, grooming, toileting and transfers.

NEW SECTION

WAC 296-14-6204 Which workers may be eligible to receive benefits for residence modifications? Residence modification benefits are only available to workers with an allowed catastrophic injury claim. Catastrophic injuries are the most serious of conditions and include, but are not limited to, head trauma, paralysis and amputation.

NEW SECTION

WAC 296-14-6206 Which residences may be eligible to be modified? Before the department or self-insured employer will consider an application for modification, the residence must meet the following criteria:

(1) The residence must be structurally sound and free of obvious structural defects. The department may request a safety inspection. The department or self-insured employer will not pay for a residence to be brought up to state and local code except as required to complete a necessary and approved modification.

(2) The residence can be adapted to be suitable for the worker's needs for purposes of daily living.

(3) In the opinion of the worker's health care providers, the worker can live in the residence after modification.

NEW SECTION

WAC 296-14-6208 When may the worker request residence modification benefits? The worker may request residence modification at any time when his or her allowed claim is either open or the worker has been determined to be permanently and totally disabled.

NEW SECTION

WAC 296-14-6210 What is the maximum amount of the residence modification benefit? The maximum amount of the benefit is the state's average annual wage at the time that each modification request is approved. The department or self-insured employer will not pay for modifications that

exceed the maximum amount. The department or self-insured employer may make several payments, so long as the total paid does not exceed the maximum benefit.

NEW SECTION

WAC 296-14-6212 Can the worker receive additional modification benefits for the same residence? The department can pay for additional or subsequent residence modifications so long as the cost does not exceed the maximum benefit in effect at the time that each modification request is approved.

NEW SECTION

WAC 296-14-6214 Can a worker receive residence modification benefits for more than one house? No. The department or self-insured employer will pay for residence modifications on only one residence for each catastrophically injured worker.

NEW SECTION

WAC 296-14-6216 How can a worker begin the process of requesting residence modification benefits? The worker may inquire about residence modification benefits by contacting his or her adjudicator. The department or self-insured employer will then refer the worker to a residence modification consultant for evaluation.

NEW SECTION

WAC 296-14-6218 How does the department or self-insured employer determine the worker's residence for purposes of residence modification? The department or self-insured employer will consider modifying a residence when the worker lives in and considers the residence to be his or her permanent residence. It is not required that the worker own or rent the residence.

NEW SECTION

WAC 296-14-6220 What type of residence may the department or self-insured employer modify? The department or self-insured employer may modify a standard house, a residential unit in a multiunit dwelling, or a manufactured/mobile residence.

The department or self-insured employer will only authorize modification of manufactured/mobile residences when the factory assembled structures division of the department reviews and approves the plans in advance.

The department or self-insured employer will not approve modification of commercial coaches.

The department or self-insured employer will not approve modification of recreational vehicles or recreational park trailers used as permanent residences, unless the local jurisdiction allows recreational vehicles or recreational park trailers to be used as a dwelling, and the factory assembled structures division of the department reviews and approves the plans in advance.

NEW SECTION

WAC 296-14-6222 What is a residence modification consultant, and how are they involved in the process of residence modification? When the worker has notified the department or self-insured employer of his or her intention to request a residence modification, the department or self-insured employer will require an on-site evaluation by a residence modification consultant.

A residence modification consultant must be either a licensed physical or occupational therapist, or licensed nurse, and must be trained or experienced in both rehabilitation of catastrophic injuries and in modifying residences. The department or self-insured employer will pay for the services of the residence modification consultant pursuant to department provider rules.

The residence modification consultant will assist the worker, the contractor and the worker's health providers to determine what modifications will be requested and submit a written report to the department or self-insured employer and the worker. If modifications are approved, the residence modification consultant may assist the worker and the contractor if requested by the department or self-insured employer.

NEW SECTION

WAC 296-14-6223 Will the department pay for professional services needed to design a residence modification? Yes. However, the department or self-insured employer will not pay for professional services prior to approval of the residence modification.

If approved, the cost of architectural, engineering, predesign and planning services will be included in the residential modification benefit. The cost for services should be included in the residence modification request.

NEW SECTION

WAC 296-14-6224 What must the worker submit to the department in a completed request for a residence modification? For the department to process a residence modification request, the worker must provide the adjudicator with at least the following information:

(1) Documentation of residence ownership. If the worker does not own the residence, he or she must submit the actual owner's proof of ownership and written legal permission signed by the actual owner to modify the residence as indicated in the proposed plan; and

(2) A report signed by the residence modification consultant for all necessary modifications; and

(3) Competing and detailed bids from two licensed, registered and bonded contractors.

Exceptions: If it is not possible to obtain two bids, a written explanation of the circumstances must be provided.
If family or friends will perform free labor, they need not be licensed, registered and bonded, but must still submit a bid for the cost of materials.

(4) A copy of the acknowledgment of responsibilities letter signed by both the worker and the contractor. A copy of this form can be obtained from the department.

NEW SECTION

WAC 296-14-6226 What other information must be submitted to the department in a completed application for a residence modification? (1) The attending health services provider may need to submit medical documentation verifying the worker's condition and the necessity for any residence modification.

(2) The residence modification consultant must submit an evaluation, based on an in-home inspection, of the worker's needs for safety, mobility and activities of daily living. This evaluation must be in the form of a written report with pictures or drawings.

(3) Any additional information requested by the department or self-insured employer that might be needed to evaluate a specific request.

NEW SECTION

WAC 296-14-6228 Who will approve or deny a request for residence modification? The department will pay the benefit only with the approval of the supervisor of industrial insurance. A self-insured employer may pay the benefit without the supervisor's approval, but may not deny the benefit. The supervisor of industrial insurance alone has the authority to deny a residence modification benefit.

NEW SECTION

WAC 296-14-6230 What will the supervisor consider when approving or denying a residence modification request? The supervisor will consider requests for residence modifications on a case-by-case basis. The supervisor may approve all or part of the requested modifications, based on what is reasonable and necessary for the individual worker.

In order to determine what is reasonable and necessary, the supervisor will review the completed application and will consider at least the following:

(1) Whether the worker is eligible to receive a residence modification benefit; and

(2) The needs and preferences of the individual worker, based on information provided by the injured worker; and

(3) Whether the proposed residence is appropriate for modification; and

(4) Whether the proposed modifications are appropriate for the style, nature and condition of the residence; and

(5) The attending health care provider's opinions of the medical condition, physical needs of the worker and whether the worker can reside in the residence after the modifications are complete; and

(6) The residence modification consultant's evaluation of whether the proposed modification is necessary to meet the worker's current need for safety, mobility and activities of daily living; and

(7) Whether the contractor's proposed plan will satisfy the necessary modification; and

(8) Whether the proposed plans submitted by the contractors are consistent with state guidelines for specially adapted residential housing, if any; and

(9) The contractor's proposed modification plan is consistent with the guidelines established by the United States Department of Veterans Affairs in their publication entitled "*Handbook for Design: Specially Adapted Housing*," or the recommendations published in "*The Accessible Housing Design File*" by Barrier Free Environments, Inc.; and

(10) Whether the proposed modifications are being provided at the least cost while maintaining quality.

NEW SECTION

WAC 296-14-6232 What happens if the residence modification costs exceed the maximum benefit? The department or self-insured employer may approve a payment of a portion of a residence modification request, not to exceed the maximum benefit. The department or self-insured employer will identify the portions of the residence modification for which payment will be approved based on the worker's current need for safety, mobility and activities of daily living.

If the costs of the proposed modifications of an existing residence exceed the benefit, the worker is responsible for payment of the balance of the costs. The worker must choose one of the following options:

(1) Adjust their request for modifications to remain within the benefit; or

(2) Obtain additional financing. If the worker chooses to obtain additional financing, he or she must submit to the department written verification of the additional financing from the funding source. The supervisor will deny the residence modification if the worker is unable to cover the additional costs.

NEW SECTION

WAC 296-14-6234 Can a worker apply the residence modification benefit to the cost of building a new residence? Yes. However, the benefit may be applied only to the cost difference between a standard residence structure and the modified structure.

NEW SECTION

WAC 296-14-6236 How is a worker advised that the supervisor has approved or denied the request for residence modification benefits? The department will notify the worker, contractors, homeowner (if not the worker), residence modification consultant, attending health services provider and employer of the supervisor's decision in writing.

NEW SECTION

WAC 296-14-6238 Who receives payment from the department? The department will pay the contractor directly and/or reimburse the worker for any payment already made to the contractor for approved and completed residence modifications. In order to determine that modifications have been satisfactorily completed, the department will require the following documents to be submitted before releasing final payment:

(1) A signed letter of satisfaction from the worker; and

(2) A positive report of a final inspection from the appropriate inspection authorities, if required; and

(3) A report of an inspection from the residence modification consultant if requested by the department; and

(4) A release of lien form signed by the contractors or subcontractors or both.

WSR 06-06-066

PERMANENT RULES

DEPARTMENT OF LABOR AND INDUSTRIES

[Filed February 28, 2006, 11:10 a.m., effective April 1, 2006]

Effective Date of Rule: April 1, 2006.

Purpose: Workers' compensation self insurance rules and regulations, chapter 296-15 WAC. This chapter governs employers who are permitted to self insure their workers' compensation obligation pursuant to Title 51 RCW. This filing includes modifications in the following areas: Certification requirements, including both financial requirements and claims administration structure requirements, vocational reporting requirements, including ninety-day employability assessment reports and vocational rehabilitation outcome reporting, reporting requirements when initiating and terminating time loss, financial information reporting requirements, submissions of protests and reopening applications to the department, and time frames for payment of penalties.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-15-031 Employee stock ownership plan self insurance application, 296-15-041 Joint venture self insurance application, 296-15-051 Public entity self insurance application, 296-15-061 Employer group self insurance application, 296-15-120 Log of occupational injuries and illnesses, 296-15-500 What vocational rehabilitation reports are required for self-insured employers?, and 296-15-510 What is the process used for vocational rehabilitation with regard to self-insured employers?; and amending WAC 296-15-001 Definitions, 296-15-021 Individual firm self insurance application, 296-15-140 Expense of out-of-state audit, 296-15-181 Funding the benefits of an insolvent self insurer, 296-15-420 After a self-insured claim is filed, 296-15-450 Closure of self-insured claims, 296-15-480 After a self-insured claim is closed, and 296-15-490 When a self-insured claim is on appeal.

Statutory Authority for Adoption: RCW 51.04.020, 51.14.020, 51.32.190, 51.14.090, and 51.14.095.

Adopted under notice filed as WSR 05-23-146 on November 22, 2005.

Changes Other than Editing from Proposed to Adopted Version: Proposed language in WAC 296-15-021 (6)(b)(ii) (*"The department may require an unaltered copy of the agreement for clarification"*) was removed in agreement with public comment that unaltered copy is unnecessary for the purposes of the WAC. Proposed language in WAC 296-15-350 (2)(b) (*"at all times"*) was removed in agreement with public comment that department-approved claims administrators will have brief absences due to illness or vacation. In WAC 296-15-430(5), the proposed reporting requirement of five days has been extended to fifteen days in agreement with public comment that five days does not reasonably allow for timely submittal.

A final cost-benefit analysis is available by contacting Trista Zugel, P.O. Box 44321, Olympia, WA 98504-4321, phone (360) 902-5122, fax (360) 902-4249, e-mail zugy235@lni.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 12, Amended 8, Repealed 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 12, Amended 8, Repealed 7.

Number of Sections Adopted Using Negotiated Rule Making: New 12, Amended 8, Repealed 7; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 28, 2006.

Gary Weeks
Director

AMENDATORY SECTION (Amending WSR 98-24-121, filed 12/2/98, effective 1/2/99)

WAC 296-15-001 Definitions. (1) "Substantially similar" ((~~means~~)):

((~~(1)~~)) (a) The text of the department's document has not been altered or deleted; and

((~~(2)~~)) (b) The self-insurer's document has the text:

((~~(a)~~)) (i) In approximately the same font size;

((~~(b)~~)) (ii) With the same emphasis (bolding, italics, underlining, etc.); and

((~~(c)~~)) (iii) In approximately the same location on the page as the department's document.

(2) "Third-party administrator": An entity which contracts to administer workers' compensation claims for a self-insured employer.

(3) "Claims management entity": All individuals designated by the self-insured employer to administer workers' compensation claims, including self-administered organizations and third-party administrators.

AMENDATORY SECTION (Amending WSR 99-23-107, filed 11/17/99, effective 12/27/99)

WAC 296-15-021 ((~~Individual firm self insurance application.~~)) Self-insurance certification requirements and application process. ((~~(1) What does individual firm mean when applying for certification to self insure workers' compensation benefits? When applying for certification to self insure workers' compensation benefits, an individual firm means a sole proprietor, partnership or corporation which is responsible for its own audited financial statements.~~

~~(2) What minimum requirements must an individual firm meet to apply for self insurance certification? The department~~

~~will consider an individual firm's application for self insurance certification if it:~~

~~(a) Meets the department's net worth requirement;~~

~~(b) Has been in business for three years; and~~

~~(c) Has acceptable accident prevention programs in place for at least six months in Washington locations.~~

~~(3) How does an individual firm apply? The individual firm must submit Self Insurance Application SIF-1 L&I form F207-001-000 and three years of financial statements with the most recent year's financial statement audited by a certified independent public accountant.~~

~~(4) What happens after an individual firm submits its application to the department? After the department receives an application from an individual firm, the department will:~~

~~(a) Conduct an evaluation of the written accident prevention program in effect at a sample of the applicant's locations;~~

~~(b) Consider all matters related to the application; and~~

~~(c) Notify the individual firm whether certification is approved or denied thirty days before the requested certification date unless more time is needed.~~

~~(5) What if the application is denied? The application will be denied if the individual firm does not meet the department's financial and/or accident prevention program requirements. If the application is denied for:~~

~~(a) Financial reasons, the individual firm may reapply after its next independently audited financial statement is available. The department may require the applicant to provide additional information.~~

~~(b) Accident prevention program deficiencies, the individual firm may be required to wait six months before reapplying.~~

~~(c) Both financial reasons and accident prevention program deficiencies, the individual firm may reapply after its next independently audited financial statement is available. The department may also require the applicant to wait six months before reapplying.~~

~~(6) What if the application is approved?~~

~~(a) If the application is approved, the individual firm must do all of the following before certification will be granted:~~

~~(i) Provide written acknowledgment L&I form F207-144-000 of its responsibility to pay benefits on all claims incurred during its period of self insurance. This obligation will continue even if the individual firm voluntarily or involuntarily surrenders its self insurance certification.~~

~~(ii) Provide surety in the amount determined necessary by the department. Surety must be filed with the department on a form provided by the department. Initial surety will be the greatest of:~~

~~(A) The minimum surety. This amount is calculated annually by department actuaries and is equal to the projected average current cost of a permanent total disability claim, including time loss, pension reserve and other claim costs paid prior to pension.~~

~~(B) The estimated annual amount of accident fund and medical aid fund premiums the self insurer would have paid if still in the state fund.~~

~~(C) The estimated amount of developed incurred benefits based on the self insurer's past experience with state fund adjusted for changes in the benefit schedules and exposure.~~

~~(D) The estimated average annual incurred losses made by an independent qualified actuary and accepted by the department.~~

~~Surety will never be established at a level lower than the minimum surety amount. The department may increase the initial surety amount if other conditions are expected to alter the potential claim costs and/or the self insurer's ability to pay them. A decrease will not be considered during the first three years of certification.~~

~~(iii) Pay its share of any state fund deficit or insufficiency. See the Employer's Guide to Self Insurance L&I form F207-079-000 for how the deficit share is calculated.~~

~~(iv) Obtain the services of an individual or service organization with an individual qualified to administer a Washington workers' compensation program.~~

~~(A) A qualified claim administrator has satisfactorily demonstrated to the department:~~

~~(I) A thorough knowledge in Title 51 RCW and all workers' compensation rules; and~~

~~(II) An expertise in claim adjudication.~~

~~(B) The claim administrator must also have the authority to make prompt:~~

~~(I) Payment of all compensation and assessments when due; and~~

~~(II) Decisions regarding claim adjudication and awards.~~

~~(C) If a service organization will be used, submit a copy of the service contract.~~

~~(I) The contract copy may delete clause(s) relating to payment of services.~~

~~(II) However, if payment for services is based on the number of claims filed by the self insurer's workers, this must be explained in detail. The department may require an unaltered copy of the agreement for clarification.~~

~~(b) The self insured individual firm will be held accountable for:~~

~~(i) Its entire workers' compensation program, including all actions on its claims, regardless of whether it contracts with a service organization or administers its own program; and~~

~~(ii) Complying with and keeping informed of all changes to industrial insurance laws and rules.~~

~~(c) Certification of an individual self insurer will include all of its subsidiaries (fifty percent owned and/or financial interest controlled by) or divisions doing business in Washington. One certificate will be issued to an approved self insurer. The subsidiaries or divisions will be considered one self insurer for all industrial insurance purposes.~~

~~(d) The effective date of certification will be the first day of the quarter after the department receives the surety and required documentation. If the applicant fails to provide the required information before the approved certification date and later wishes to follow through, the department will require the individual firm to reapply.~~

~~(7) What if an individual firm is a subsidiary of a corporation?~~

~~(a) If an individual self insured firm has a parent(owner of fifty percent and/or having controlling financial interest), the parent must provide the department with its written guarantee L&I form F207-040-000 to assume responsibility for~~

all workers' compensation liabilities of the subsidiary if the subsidiary defaults on its liabilities.

(b) If a parent fails to provide a guarantee, the department will require the subsidiary to provide surety at one hundred twenty-five percent of its actual requirement. The subsidiary must continue to provide surety at the higher level as long as it has no parental guarantee.)) (1) **What requirements must an employer meet to apply for self-insurance certification?** An employer must meet all the following minimum criteria:

(a) Be in business for three years prior to applying for self-insurance.

(b) Have a written accident prevention program in place in Washington state for at least six months prior to making application.

(c) Have total assets worth at least twenty-five million dollars as verified by audited financial statements prepared by independent certified accountants.

(d) Demonstrate positive earnings in the current year and two out of the last three years. The overall earnings for the last three years must also be positive.

(e) Have a current liquidity ratio of at least 1.3 to 1, and a debt to net worth ratio of not greater than 4 to 1.

(2) **When are applications processed?** The department processes applications for certification the quarter after the application is accepted. Self-insurance certification for approved applicants will be effective the quarter following processing.

(3) **What documentation must be submitted with an application?** The following documentation must be submitted with each self-insurance application:

(a) A completed application form (Form F207-001-000) with a nonrefundable application fee. The application fee is reviewed annually by the department and is based on the administrative costs incurred in processing an application, but in no instance will it be less than two hundred fifty dollars.

(b) Three years of audited financial statements prepared by independent certified accountants. The audited financial statements must be in the name of the applicant.

(c) A list of all of the applicant's physical locations and addresses in Washington state, including all subsidiary operations.

(d) A copy of the written accident prevention program for each of the applicant's operations in Washington. If the applicant or any of its subsidiaries has multiple locations, more than one copy of the accident prevention program may be required.

(e) A completed Self-Insurance Certification Questionnaire (Form 207-176-000).

(4) **What happens during the application review process?** The department:

(a) Assesses the accident prevention program at department-selected sites.

(b) Analyzes the financial information supplied by the applicant. The department may also consider relevant information obtained from other sources to assess the applicant's financial strength.

(c) Reviews the completed Claims Administration Questionnaire and attachments. Additional information may be requested.

The department determines whether the application is denied or tentatively approved. The department notifies each applicant of its decision. If the department denies an application, it will state the reasons for the denial in its notification.

(5) **If the application is denied, when may the applicant submit a new application?** If an application is denied for deficiencies in its accident prevention program, the applicant may submit a new application for certification after the corrections to the program are made and have been in place for six months.

If the application is denied for financial reasons, the applicant may submit a new application for certification after the next annual audited financial statement is available.

If the application is denied because the claims administration organization is deficient, the applicant may submit a new application for certification after corrections to the program are made.

(6) **What if the application is tentatively approved?** The applicant must submit the following:

(a) Surety in the amount determined by the department and issued on the department form.

(b) A signed copy of the service agreement with a third-party administrator, if applicable.

(i) The contract copy may delete clauses(s) relating to payment of services.

(ii) However, if payment for services is based on the number of claims filed by the self-insurer's workers, this must be explained in detail.

(c) A copy of any excess insurance (reinsurance) policy including Washington state endorsements, if obtained.

(d) A signed copy of the Acknowledgement of Self-Insurance Responsibilities form.

(e) Payment of any outstanding premium of the applicant's state industrial insurance account.

(f) Payment of the applicant's estimated portion of the deficit, if a deficit condition in the state industrial insurance fund exists at the time of application.

If the required items are not received prior to the end of the quarter, the application may be denied. If the application is denied, the applicant must reapply in order to be considered for self-insurance.

(7) **How is the initial surety requirement established?** The initial surety requirement is established at the highest of the following:

(a) The annual premiums the applicant pays (or would pay) into the state industrial insurance fund; or

(b) The annual average of the last five years of developed incurred costs to the state industrial insurance fund; or

(c) The minimum surety requirement as established annually by the department. The minimum surety requirement is equal to the average total cost of one permanent total disability award.

The applicant has the option of submitting an independent actuarial analysis of its projected liability. The department reserves the right to accept or reject this analysis. In no event will the surety requirement be established at less than the minimum surety in force at that time.

NEW SECTION

WAC 296-15-024 Additional certification requirements. (1) **What if the employer is a joint venture?** A joint venture is defined as two or more employers that have signed a contractual agreement to operate as a single unit for a specified period of time for the completion of a specific task. The department will consider a joint venture's application for self-insurance if the joint venture is sponsored by a current self-insurer.

In addition to the standard certification requirements found in WAC 296-15-021, an application from a joint venture must include:

(a) The name of a sponsoring party. The sponsoring party must be a certified self-insurer in good standing with the department and have a majority financial interest in the assets and profits of the joint venture.

(b) A list of named participants. Each named participant must also:

(i) Demonstrate that it has at least twenty percent interest in the joint venture.

(ii) Submit three years' worth of audited financial statements prepared by certified independent accountants.

(c) A written acknowledgement from each named participant of its joint and several liability for continuing compensation if any participant of the joint venture defaults. This responsibility continues until the department grants a written release to the joint venture or the remaining participant(s) of the joint venture. A written release from the department is granted only after the contract has been completed and a final settlement of the joint venture account has been made.

(d) A written description of the obligations of each participant for the industrial insurance program of the joint venture.

(e) A written acknowledgement of the sponsoring party's responsibilities for the management of all claims and payment of all compensation incurred during the period of the joint venture's self-insurance certification and after the joint venture is dissolved. This acknowledgement must include the sponsor's continuation of benefits if the joint venture or any of the other parties of the joint venture defaults.

(2) **What if the employer is an employee stock ownership program (ESOP)?** An employee stock ownership program is defined as a firm in which the employees have purchased a majority of the financial interest.

If the employees purchase an existing self-insured company, that company would be required to return to the state industrial insurance fund for a minimum of one year before the department would consider its application for self-insurance.

(3) **What additional requirements exist if the employer is a group?** A group is defined as a group of employers authorized under chapter 51.14 RCW to form self-insurance groups.

(a) In addition to the standard certification requirements found in WAC 296-15-021, an application from a group must include:

(i) A copy of the group's bylaws.

(ii) Individual applications for each of its members along with the current audited financial information of each member.

(iii) A current audited consolidated financial statement of the group (if the group exists at the time of the application).

(iv) A listing of the estimated standard premium to be developed for each member individually and the estimated standard premium of the group as a whole.

(v) An indemnity agreement jointly and severally binding the group and each member to comply with the provisions of Title 51 RCW.

(vi) A detailed budget of all projected administrative revenues and expenses for the first year of operation.

(b) When the application for a group is tentatively approved, the applicant must submit the following:

(i) Surety, established at one hundred twenty-five percent of the standard industrial insurance premiums.

(ii) A copy of the aggregate excess insurance coverage policy.

(iii) Documentation of a contingency reserve that is the greater of:

(A) Fifteen percent of the estimated claims liability; or

(B) Twenty-five percent of the standard industrial insurance premium.

NEW SECTION

WAC 296-15-027 Additional requirements for subsidiaries and acquisitions. (1) **What if an individual firm is a subsidiary of a corporation?**

(a) If an individual self-insured firm has a parent (owner of fifty percent and/or having controlling financial interest), the parent must provide the department with its written guarantee, L&I form F207-040-000, to assume responsibility for all workers' compensation liabilities of the subsidiary if the subsidiary defaults on its liabilities.

(b) If a parent fails to provide a guarantee, the department will require the subsidiary to provide surety at one hundred twenty-five percent of its actual requirement. The subsidiary must continue to provide surety at the higher level as long as it has no parental guarantee.

(c) Certification of an individual self-insurer will include all of its subsidiaries (fifty percent owned and/or financial interest controlled by) or divisions doing business in Washington, as well as new acquisitions after certification becomes final. One certificate will be issued to an approved self-insurer. The subsidiaries or divisions will be considered one self-insurer for all industrial insurance purposes.

(2) **What if a certified self-insurer is acquired by another entity?**

(a) If it is an asset only acquisition, the certified self-insurer must surrender its certification and would retain the self-insurance liabilities and must continue to provide benefits. The new owner would be required to obtain industrial insurance coverage through the state fund. If the new owner wishes to become self-insured, it must meet the department's minimum requirements and submit an application according to the normal certification process.

(b) If the acquisition is a stock acquisition, the new owner must either provide a parental guarantee in accordance with WAC 296-15-024(4), or if it wishes to have the self-

insurance certification transferred to the new parent organization, it must:

(i) Provide proof of financial capabilities by furnishing three years of audited financial statements; and

(ii) Furnish evidence of an acceptable claim administration program to oversee a self-insurance program; and

(iii) Demonstrate the existence of an acceptable accident prevention program covering all of its operations in Washington.

AMENDATORY SECTION (Amending Order 74-38, filed 11/18/74, effective 1/1/75)

WAC 296-15-140 Expense of out-of-state audit. ((~~The audit of self-insurance plans at locations outside the state of Washington, shall be at the expense of the self-insurer and the expense incurred in making such audit shall be paid by the self-insurer.~~

~~Such expenses shall be calculated at the usual and normal per diem and travel expense rates established by law and in effect at the time the expenses are incurred.~~)) (1) **When is a self-insurer charged for audit expenses?** The self-insurer must reimburse the department for all travel, per diem and documented expenses as related to the audit when the department representative travels outside the state of Washington.

(2) **How much will the self-insurer be charged?** The self-insured employer is billed the actual costs that the department incurred.

AMENDATORY SECTION (Amending WSR 99-23-107, filed 11/17/99, effective 12/27/99)

WAC 296-15-181 Funding the benefits of an insolvent self-insurer. (1) **What happens when a self-insurer defaults on (stops paying) workers' compensation benefits and assessments?** When a self-insurer stops paying workers' compensation benefits or assessments, and the default is not due to a claims administration decision, the department will take over its surety and claims. ((~~The department will manage the claims and bill the surety each quarter to reimburse benefits paid.~~))

(2) **If a defaulting self-insurer has multiple types of surety, who determines the order in which surety will be used?** The department has the sole authority to determine the order in which surety types will be used.

(3) **What happens if the defaulting self-insurer's surety is exhausted?** When surety is exhausted, the insolvency trust (all self-insurers except school districts, cities and counties) will be assessed quarterly to cover the claim costs paid on behalf of the defaulted self-insurer.

(4) **Who is on the insolvency trust board?** The insolvency trust board consists of the director or designee, three representatives of self-insured employers and one representative of workers. Representatives are nominated by the self-insured and labor communities and are appointed by the director for overlapping two year terms.

(5) **What does the insolvency trust board do?** The board advises the department on insolvency trust matters. The department makes all final decisions.

(6) **What annual report is provided on the insolvency trust fund?** The department provides an annual written status report on the insolvency trust fund as of the end of the previous calendar year to the workers' compensation advisory committee. The report is presented at the committee's first quarterly meeting no later than March 31.

NEW SECTION

WAC 296-15-266 Penalties. What must a self-insurer do when the department issues an order assessing a penalty? The self-insurer must make payment of the penalty assessment on or before the date the order becomes final.

NEW SECTION

WAC 296-15-310 Administrative organization to manage a self-insurance program. Every employer certified to self-insure is obligated to comply with the provisions of Title 51 RCW and the rules and regulations of the department, and to have the necessary administrative processes in place to manage its self-insurance program. Each self-insurer is ultimately responsible for the sure and certain delivery of Title 51 RCW benefits to its injured workers and is accountable for all aspects of its workers' compensation program.

NEW SECTION

WAC 296-15-320 Reporting of injuries. What elements must a self-insurer have in place to ensure the reporting of injuries? Every self-insurer must:

(1) Establish procedures to assist injured workers in reporting and filing claims.

(2) Immediately provide a Self-Insurer Accident Report (SIF-2) form F207-002-000 to every worker who makes a request, or upon the self-insurer's first knowledge of the existence of an industrial injury or occupational disease, whichever occurs first. Only department provided SIF-2 forms may be used. Copies or reproductions are not acceptable.

(3) Establish procedures for ensuring the timely delivery of completed SIF-2s to the claims management entity.

(4) Designate individuals as resources to address employee questions. These resources must:

(a) Have sufficient knowledge to answer routine questions; and

(b) Have responsibility for seeking answers to more complex problems; and

(c) Have detailed knowledge of the self-insurer's claim filing process; and

(d) Be reasonably accessible to employees at every work location.

(5) Maintain a claims log of all workers' compensation claims filed.

(a) For each claim, the log must consist of only the following information:

(i) The complete first and last name of the injured worker (no initials or abbreviations).

(ii) The date of injury, or for an occupational disease, the date of manifestation.

(iii) The claim number found on the department's Self-Insurer Accident Report (SIF-2, form F207-002-000).

(iv) The date the claim is closed.

(v) Whether the claim is a time loss claim or medical only.

(b) The self-insurer must designate the location of the official claims log.

(i) The self-insurer may maintain the log on its premises; or

(ii) The self-insurer may elect to have its third-party administrator maintain the claims log on its behalf. If this option is selected, there must be a written agreement between the self-insurer and the third-party administrator acknowledging that the official claims log is maintained by the third-party administrator.

The self-insurer must notify the department in writing of the location of their official claims log. If the option in (b)(ii) of this subsection is selected, a copy of the written agreement between the self-insurer and the third-party administrator must be provided to the department.

NEW SECTION

WAC 296-15-330 Authorization of medical care. What are the requirements for authorization of medical care? Every self-insurer must:

(1) Authorize treatment and pay bills in accordance with Title 51 RCW and the medical aid rules and fee schedules of the state of Washington.

(2) Provide a written explanation of benefits (EOB) to the provider, with a copy to the worker if requested, for each bill adjustment. A written explanation is not required if the adjustment was made solely to conform to the maximum allowable fees as set by the department.

(3) Establish procedures to ensure prompt responses to inquiries regarding authorization decisions and bill adjustments.

NEW SECTION

WAC 296-15-340 Payment of compensation. What are the requirements for payment of compensation? Every self-insurer must:

(1) Pay time loss compensation in accordance with Title 51 RCW and the rules and regulations of the department.

(2) Select one method for payment of ongoing time loss compensation, either semimonthly or biweekly, and report the selected method to the department.

(3) Provide the department with a detailed written description of any practice of paying workers' regular wages in lieu of time loss compensation, or of paying workers any benefits including sick leave, health and welfare insurance benefits, or any other compensation in conjunction with time loss compensation.

NEW SECTION

WAC 296-15-350 Handling of claims. What elements must a self-insurer have in place to ensure appropriate handling of claims? Every self-insurer must:

(1) Establish procedures for securing the confidentiality of claim information.

(2) Have sufficient numbers of department-approved claims administrators to ensure uninterrupted administration of claims.

(a) There must be at least one department-approved claims administrator involved in the daily management of the employer's claims.

(b) If claims are administered in more than one location, there must be at least one department-approved claims administrator in each location where claims are managed.

(3) Designate one department-approved claims administrator as the department's primary contact person for claim issues.

(4) Designate one address for the mailing of all claims-related correspondence. The self-insurer is responsible for forwarding documents to the appropriate location if an employer's claims are managed by more than one organization.

(5) Establish procedures to answer questions and address concerns raised by workers, providers, or the department.

(6) Ensure claims management personnel are informed of new developments in workers' compensation due to changes in statute, case law, rule, or department policy.

(7) Include the department's claim number in all claim-related communications with workers, providers, and the department.

(8) Legibly date stamp incoming correspondence, identifying both the date received and the location or entity that received it.

(9) Ensure a means of communicating with all injured workers.

NEW SECTION

WAC 296-15-360 Qualifications of personnel. How does an individual become a department-approved claims administrator?

(1) An individual must pass the department's "self-insurance claims administrator" test to be accepted as a department-approved claims administrator. In order to be admitted to take this test, an individual must meet the following requirements:

(a) Submit a completed application form to the department (Form F207-177-000). The application must be received by the department no less than forty-five days prior to the scheduled examination date.

(b) Have a minimum of three years of experience in the administration of time loss claims under Title 51 RCW. The experience must have occurred within the five years immediately prior to the filing of the application.

The department will review the application and determine if the applicant meets the minimum requirements to take the examination. Notification will be mailed to the applicant no less than fourteen days prior to the scheduled examination date.

If an applicant fails the examination, he or she must submit another completed application requesting to take the examination again. An applicant must wait six months after a failed result before retaking the examination.

(2) The designation of department-approved claims administrator is valid for five years or until an individual

retakes the examination, whichever occurs first. The most recent examination results will always reflect an individual's status as a claims administrator. To maintain approved status, an individual must:

(a) Make application as outlined in subsection (1) of this section; and

(b) Pass the "self-insurance claims administrator" examination again.

The department-approved claims administrator is responsible for notifying the department of any changes in his or her mailing address, work location, or employment status.

NEW SECTION

WAC 296-15-370 Notification to the department. When must a self-insurer notify the department about changes in its administrative organization? Any changes to the self-insurer's established administrative organization must be reported to the department in writing, within ten days of the effective date of the change.

AMENDATORY SECTION (Amending WSR 98-24-121, filed 12/2/98, effective 1/2/99)

WAC 296-15-420 After a self-insured claim is filed. (1) **What must a self-insurer do when beginning time loss (TL) benefits on a claim?**

((~~When beginning time loss payments, a self-insurer must:~~))

When	Send to the worker	Send to the department	The department will
((~~At the same time as~~)) On the date of the first TL payment.	A complete and accurate SIF-5[1] and SIF-5A[2].		
Within 5 working days of first TL payment.		Copies of the SIF-2, SIF-5, and SIF-5A.	Allow the claim UNLESS a request for interlocutory order (see subsection (2)) or denial (see subsection (3)) has been received.
If kept on salary[3], within 5 working days of the date the first TL payment would have been due.	A complete and accurate SIF-5 and SIF-5A.	Copies of the SIF-2, SIF-5, and SIF-5A.	Allow the claim UNLESS a request for interlocutory order (see subsection (2) of this section) or denial (see subsection (3) of this section) has been received.

1 The SIF-5 is the Self-Insurer's Report on Occupational Injury or Disease. Use a form substantially similar to L&I form F207-005-000.

2 The SIF-5A is the Time Loss Calculation Rate Notice. Use a form substantially similar to L&I form F207-156-000.

3 If the worker is kept on salary, report the amount of time loss the worker would have been entitled to on the SIF-5.

(2) **How must a self-insurer request an interlocutory[1] order?**

When requesting an interlocutory order from the department, a self-insurer must:

When	Send to the worker	Send to the department	The department will	And the self-insurer pays
Within 60[2] days of claim filing.	A complete and accurate SIF-5 and SIF-5A if TL was paid or if worker was kept on salary.	Copies of the SIF-2, SIF-5 (with the interlocutory order box checked), SIF-5A, AND all ((~~medical and other pertinent information~~)) records excluding bills AND a reasonable explanation why an ((~~investigation~~)) interlocutory order is needed.	If it agrees, issue an interlocutory order.	Provisional TL if the worker is eligible AND other benefits as entitled. Ongoing medical treatment and vocational services are NOT PAYABLE unless the claim is allowed.
			If it disagrees, issue an allowance order if the facts show the claim should be allowed.	TL if the worker is eligible, and other entitled benefits.

1 An interlocutory order places a claim in provisional status while the self-insurer investigates the validity of the claim.

2 When not specified, time is in calendar days.

(3) **How must a self-insurer request claim denial from the department?**

When requesting claim denial from the department, a self-insurer must:

When	Send to the worker	Send to the department	The department will	And the self-insurer pays
Within 60 days of claim filing.	SIF-4.((*))[1] Copy to the attending or treating doctor.	SIF-4 AND all ((~~medical and other pertinent information supporting denial~~)) records excluding bills.	If it agrees, issue a denial order. The denial order will restate the self-insurer's right to request reimbursement of provisional TL from the worker.	For all medical evaluations and diagnostic studies used to make the determination.
			If it finds insufficient information to make a decision, issue an interlocutory order AND direct the employer to obtain the necessary information.	Provisional TL if the worker is eligible and other benefits as entitled. Ongoing medical treatment and vocational services are NOT PAYABLE unless the claim is allowed.
			If it disagrees, issue an allowance order if the facts show the claim should be allowed.	TL if the worker is eligible AND other entitled benefits.

((~~*~~)) [1]The SIF-4 is the Self-Insured Employer's Notice of Denial of Claim. Use a form substantially similar to L&I form F207-163-000.

(4) **What if a self-insurer does not request allowance, denial, or an interlocutory order for a claim within sixty days?**

If a self-insurer does not request allowance, denial, or an interlocutory order within sixty days, the department will intervene and adjudicate the claim. The department may obtain additional medical information to make the determination. The claim remains in provisional status until the department makes the determination.

The exception to this requirement is the allowance of medical only claims. Self-insurers are not required to request allowance for medical only claims.

(5) **Must a self-insurer submit an SIF-5 each time the department requests one?**

Yes. A self-insurer must submit a complete and accurate SIF-5 within ten working days of receipt of a written request from the department.

(6) **What must a self-insurer do when the department requests information on a claim by certified mail?**

A self-insurer must submit all requested information ((~~in its possession~~)) concerning the claim within ten working days of receipt of the department's request by certified mail.

(7) **How long does a self-insurer have to provide a copy of the claim file to the worker or worker's representative?**

A self-insurer must provide a copy of the claim file within fifteen days of receiving a written request from the worker or worker's representative. Unless the worker or representative requests a particular portion of the file, the self-insurer must provide a copy of the entire file.

(8) **When may a self-insurer charge a worker or his/her representative for a copy of the claim file?**

A self-insurer must provide the first copy of a claim file free of charge. Upon receipt of a subsequent written request, the self-insurer must provide any material not previously supplied free of charge. The self-insurer may charge the worker or any representative a reasonable fee for any material previously supplied.

(9) **What must a self-insurer do when it terminates time loss ((~~because it has found the worker ineligible for vocational services~~))?**

((~~Within five working days~~)) No later than the date of time loss termination, a self-insurer must notify ((~~the department it has found~~)) the worker ((~~ineligible for vocational services. Use an Employability Assessment Report (EAR) substantially similar to L&I form F207-121-000~~)) in writing of the reasons for time loss termination. If termination is based on a release to work not received directly from the worker, attach a copy of the release to the notice.

NEW SECTION

WAC 296-15-430 Vocational services. (1) **When must a self-insurer submit an Employability Assessment Report (EAR) to the department?**

(a) Within five working days of the date time loss benefits are terminated because the worker is not eligible for vocational services.

Note: An EAR is not required if the worker is not eligible for vocational services because they returned or were released to work at the job at time of injury.

(b) Within five working days of when the self-insurer finds the worker eligible for vocational services.

The self-insurer must use an Employability Assessment Report (EAR) substantially similar to L&I form F207-121-000.

(2) **When must a self-insurer submit a vocational rehabilitation plan to the department?** A self-insurer must submit a vocational plan to the department with a copy to the worker within ten calendar days after being signed by the worker, vocational rehabilitation provider, and the employer.

(3) **What must the vocational rehabilitation plan include?**

(a) An assessment of the worker's skills and abilities considering the worker's physical capacities and mental status, aptitudes and transferable skills gained through prior work experience, education, training and avocation;

(b) The services necessary to enable the worker to become employable in the labor market;

(c) Labor market survey supportive of the worker's employability upon plan completion;

(d) Documentation of the time and costs required for completion of the plan;

(e) A direct comparison of the worker's skills, both existing and those to be acquired through the plan, with potential types of employment to demonstrate a likelihood of plan success;

(f) A medically approved job analysis for the proposed retraining job goal;

(g) Any other information that may significantly affect the plan; and

(h) An agreement signed by the provider and worker that:

(i) Acknowledges that the provider and the worker have reviewed, understand and agree to the vocational rehabilitation plan; and

(ii) Sets forth the provider's and worker's responsibilities for the successful implementation and completion of the vocational rehabilitation plan.

The provider must use forms approved by, or substantially similar to forms used by, the department in order to document the agreement.

(4) **What is required for a formal review of the vocational rehabilitation plan?** The employer or the worker may request the department review the vocational rehabilitation plan. The reasons for the review must be stated in writing, and the request must be made prior to completion or termination of the plan.

(5) **What must the self-insurer do when the vocational rehabilitation plan is successfully completed?** The self-insurer must submit a closing report to the department within fifteen working days of terminating time loss benefits. The closing report shall contain at least the following:

(a) Documentation of the worker's successful completion of the vocational plan; and

(b) Documentation of whether or not the worker has returned to work at the time of the report.

(6) **What must the self-insurer do if the vocational rehabilitation plan is not successfully completed?** The self-insurer must either:

(a) Continue time loss benefits and submit a new or modified vocational rehabilitation plan to the department within ten calendar days after being signed by the worker, vocational rehabilitation provider, and the employer; or

(b) Within five working days of the date time loss benefits are terminated because the worker is not eligible for vocational services, submit an Eligibility Assessment Report (EAR) to the department with supporting documentation assessing the worker's employability status.

AMENDATORY SECTION (Amending WSR 98-24-121, filed 12/2/98, effective 1/2/99)

WAC 296-15-450 Closure of self-insured claims. (1) **Who closes self-insured claims?**

The department has the authority to close all self-insured claims. Self-insurers have the authority to close certain claims.

Within two years of claim closure, the department may require a self-insurer to pay additional benefits on a claim the self-insurer closed if the self-insurer:

(a) Made an error in benefits paid; or

(b) Violated the conditions of claim closure.

(2) **What claims may a self-insurer close?**

A self-insurer may close	**If the**	**With time loss?**	**Other requirements?**	**With PPD?**	((~~**If a previous determinative order was issued?**~~
Medical only (MO) claims	Claim was filed on or after ((~~07/26/81~~)) 07/01/90 and before 08/01/97	Without	None.	Without[1]	~~May not be closed by the employer.~~
Time loss (TL) claims	((~~Injury/illness occurred~~)) Claim was filed on or after 07/01/86 and before 08/01/97	With	1. Not if the department issued an order resolving a dispute; AND	Without[1]	~~May be closed by the employer if the order did not resolve a dispute~~

A self-insurer may close	If the	With time loss?	Other requirements?	With PPD?	((~~If a previous determinative order was issued?~~
			2. Only if the worker returned to work with the employer of record at the same job or at a job with comparable wages and benefits.[2]		
All claims: Medical only (MO) claims Time loss (TL) claims Permanent partial disability (PPD) claims	((~~Injury/illness occurred~~)) Claim was filed on or after 08/01/97	With or without	1. Not if the department issued an order resolving a dispute; AND 2. Only if the worker returned to work with the employer of record at the same job or at a job with comparable wages and benefits;[2] AND 3. Only if the closing medical report was sent to the attending or treating doctor and 14[3] days allowed for response.	With or without	~~May be closed by the employer if the order did not resolve a dispute.~~))

[1] A self-insurer may not close a claim with PPD if the injury or illness occurred before 08/01/97.

[2] Comparable means the wages and benefits are at least ninety-five percent of the wages and benefits received by the worker at the time of injury.

[3] When not specified, time is in calendar days.

(3) **When a self-insurer is closing a PPD claim, what must it do with the closing medical report?**

When a self-insurer is closing a PPD claim, it must send the closing medical report to the attending or treating doctor, and the doctor must be allowed fourteen days to respond. When the attending or treating doctor responds:

Within 14 days	And the doctor AGREES with	And the doctor DISAGREES with	Then the self-insurer	
Within	Fixed and stable and PPD rating		MAY	Close the claim.
Does not respond			MAY	Close the claim
Within or before the order is issued		Fixed and stable	MUST	1. Obtain a supplemental medical opinion from (an) examiner(s) listed on the department's approved examiner's list; OR 2. Forward the claim to department for closure. The department may require additional medical examinations.
Within or before the order is issued	Fixed and stable	PPD rating	MUST	1. Obtain a supplemental medical opinion from (an) examiner(s) listed on the department's approved examiner's list; OR 2. Forward the claim to department for closure. The department may require additional medical examinations.
Not within, after the order is issued, but before the order is final		Fixed and stable and/or PPD rating	MUST	Forward the claim including the doctor's response to the department as a protest within five working days of receipt.

(4) **What must a self-insurer do with a closing medical report, regardless of who is closing the claim?**

A self-insurer must send the closing medical report to the attending or treating doctor. If the doctor responds that he/she does not concur with the results, the self-insurer must:

(a) Obtain a supplemental medical opinion from (an) examiner(s) listed on the department's approved examiner's list in order to do the closing action itself; OR

(b) Forward the claim to department for closure. The department may require additional medical examinations.

(5) **When a self-insurer is closing a claim, what written notice must it provide to the worker and attending or treating doctor?**

At claim closure, a self-insurer must send the closing order to the worker and attending or treating doctor.

(a) For a MO claim, use a Self-Insurer's Claim Closure Order and Notice substantially similar to F207-020-111.

(b) For a TL claim, use a Self-Insured Employers' Time Loss Claim Closure Order and Notice substantially similar to F207-070-000. Include a complete and accurate SIF-5 substantially similar to L&I form F207-005-000 with the worker's copy.

(c) For a PPD claim:

(i) When no TL or loss of earning power (LOEP) was paid, use a form substantially similar to L&I form F207-165-000 (MO with PPD). Include a complete and accurate SIF-5 with the worker's copy.

(ii) When TL or LOEP was paid, use a form substantially similar to L&I form F207-164-000 (TL with PPD). Include a complete and accurate SIF-5 with the worker's copy.

(6) **When a self-insurer is closing a claim, what information must it submit to the department?**

A self-insurer must submit to the department:

(a) MO claim closures by the end of the month following closure. These may be transferred electronically or reported by paper.

(i) Closures transferred electronically must be in the department's format.

(ii) Closures submitted in paper must include the SIF-2 L&I form F207-002-000 showing the date of closure and any vocational services provided.

(b) TL and PPD claim closures at the time of closure. Include copies of each of the following:

(i) SIF-2 if not previously submitted.

(ii) Closure order.

Note: If no one protests the self-insurer's closure order, it will become final and binding in sixty days, just like a department order.

(iii) A PPD Payment Schedule, if necessary, substantially similar to L&I form F207-162-000.

(A) A payment schedule is required when the amount of the award is more than three times the state's average monthly wage at the date of injury. At initial/down payment, send copies to the worker and the department.

(B) The first payment of the PPD award must be paid within five working days of claim closure. Continuing payments must be paid according to the established payment schedule.

(iv) A complete and accurate SIF-5 ((~~(with the Rehabilitation Outcome Report (ROR) portion completed if vocational services were provided)~~)) showing all requirements for closure have been met, any TL or LOEP paid, period of payment, and total amount paid.

(7) **When the department is closing a claim, what must the self-insurer submit when requesting claim closure?**

When a self-insurer is asking the department to close the claim, it must submit:

(a) A complete and accurate SIF-5 ((~~(with the ROR portion completed if vocational services were provided)~~)); and

(b) All ((~~medical and other pertinent information (~~)) records not previously submitted to the department((~~)~~)) excluding bills.

(8) **When the department has closed a PPD claim, when must the self-insurer create a payment schedule?**

When the department has closed a PPD claim, the self-insurer must create a PPD Payment Schedule substantially similar to L&I form F207-162-000 when the amount of the award is more than three times the state's average monthly wage at the date of injury. At initial/down payment, send copies to the worker and the department.

(9) **When the department has closed a PPD claim, when must the self-insurer make the first payment of the award?**

When the department has closed a PPD claim, the self-insurer must make the first payment of the award without delay. Continuing payments must be paid according to the established payment schedule.

NEW SECTION

WAC 296-15-470 When a worker files for reopening. When must a self-insurer forward an application to reopen a claim to the department? A self-insurer must forward an application to reopen a claim to the department within five working days of receipt.

AMENDATORY SECTION (Amending WSR 98-24-121, filed 12/2/98, effective 1/2/99)

WAC 296-15-480 ((~~After~~)) When a self-insured claim is ((~~closed~~)) protested. ((~~(1)~~)) When must a self-insurer submit a worker's written protest or appeal to the department?

A self-insurer must submit a written protest ((~~or appeal~~)) by a worker to the department within five working days of receipt. The date the protest ((~~or appeal~~)) is received by the self-insurer is considered the date the protest ((~~or appeal~~)) is received by the department.

((~~(2) When must a self-insurer forward an application to reopen a claim to the department?~~

~~A self-insurer must forward an application to reopen a claim to the department within five working days of receipt.~~))

AMENDATORY SECTION (Amending WSR 98-24-121, filed 12/2/98, effective 1/2/99)

WAC 296-15-490 When a self-insured claim is on appeal. (1) **When must a self-insurer submit a worker's written appeal to the department?** A self-insurer must submit to the department a written appeal by a worker within

five working days of receipt. The date the appeal is received by the self-insurer is considered the date the appeal is received by the department.

(2) **How may department orders be defended in self-insured appeals?**

The department may ask the office of the attorney general to represent the department at the board of industrial insurance appeals.

((~~(2)~~)) (3) **What must a self-insurer send to the department when any party appeals a claim to superior or appellate court?**

When any party appeals a claim to superior or appellate court, the self-insurer must promptly send to the department copies of the notice of appeal, judgment, and all other relevant information.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-15-031	Employee stock ownership plan self insurance application.
WAC 296-15-041	Joint venture self insurance application.
WAC 296-15-051	Public entity self insurance application.
WAC 296-15-061	Employer group self insurance application.
WAC 296-15-120	Log of occupational injuries and illnesses.
WAC 296-15-500	What vocational rehabilitation reports are required for self-insured employers?
WAC 296-15-510	What is the process used for vocational rehabilitation with regard to self-insured employers?

WSR 06-06-069
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed February 28, 2006, 2:14 p.m.]

Effective Date of Rule: April 1, 2006.

Purpose: To incorporate the new appraiser qualifications criteria established by the appraiser qualifications board of the appraisal foundation and implement changes requiring real estate appraiser trainees to become registered in accordance with RCW 18.140.280. The rule changes will require real estate appraiser trainees to register with the department of licensing, establish requirements for supervisory appraisers, eliminate redundancy and clarify existing language.

Citation of Existing Rules Affected by this Order: Amending WAC 308-125-010, 308-125-020, 308-125-030, 308-125-040, 308-125-045, 308-125-050, 308-125-065, 308-125-070, 308-125-075, 308-125-090, 308-125-110, 308-125-120, 308-125-200, 308-125-210, and 308-125-225.

Statutory Authority for Adoption: RCW 18.140.030 (1), (7), (8), and (15).

Adopted under notice filed as WSR 06-03-051 on January 11, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 9, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 15, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 15, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 15, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 15, Repealed 0.

Date Adopted: February 28, 2006.

Ralph C. Birkedahl
Real Estate Appraiser
Program Manager

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-010 Definitions. (1) Words and terms used in these rules shall have the same meaning as each has in the Certified Real Estate Appraiser Act, (chapter 18.140 RCW) and the Uniform Standards of Professional Appraisal Practice (USPAP).

(2) ((~~"Appraisal" means the act or process of estimating value; an estimate of value; or of or pertaining to appraising and related functions.~~

~~(3) "Appraisal report" means any communication, written or oral, of an appraisal, review, or consulting service in accordance with the standards of professional conduct or practice, adopted by the director, that is transmitted to the client upon completion of an assignment.~~

~~(4) "Appraisal assignment" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the value of specified interests in, or aspects of, identified real estate. The term "appraisal assignment" may apply to valuation work and analysis work.~~

~~(5) "Certified appraisal" means an appraisal prepared or signed by a state-certified real estate appraiser. A certified appraisal represents to the public that it meets the appraisal standards defined in this chapter.~~

~~(6) "Licensed appraisal" means an appraisal prepared or signed by a state-licensed real estate appraiser. A licensed appraisal represents to the public that it meets the appraisal standards defined in this chapter.~~

~~(7) "Department" means the department of licensing.~~

~~(8) "Director" means the director of the department of licensing.~~

~~(9) "Real estate" means an identified parcel or tract of land, including improvements, if any.~~

~~(10) "Real property" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.~~

~~(11) "Specialized appraisal services" means all appraisal services which do not fall within the definition of appraisal assignment. The term "specialized appraisal service" may apply to valuation work and to analysis work. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis, opinion or conclusion, the work is classified as an appraisal assignment and not a specialized appraisal service.~~

~~(12) "State-certified real estate appraiser" means a person who develops and communicates real estate appraisals, and who holds a valid certificate issued to him/her for either general or residential real estate under this chapter. A state-certified real estate appraiser may designate or identify an appraisal rendered by him/her as a "certified appraisal" and indicate which type of certification is held.~~

~~(13) "State-licensed real estate appraiser" means a person who develops and communicates real estate appraisals, and who holds a valid license issued to him/her for residential real estate under this chapter. A state-licensed real estate appraiser may designate or identify an appraisal rendered by him/her as a "licensed appraisal."~~

~~(14) "Advisory committee" means a committee of seven individuals, of whom at least five are real estate appraisers appointed by the director to provide technical assistance relating to real estate appraisal standards and real estate appraiser experience, education, and examination requirements that are appropriate for each classification of state-certified real estate appraiser.~~

~~(15)~~)) "Appraisal Foundation" means a private association of appraiser professional organizations. The Appraisal Foundation develops appraisal standards which the regulatory agencies must use as minimum standards for federally related transactions and it develops qualification criteria for appraisers.

(3) "Appraisal Subcommittee" means a committee created by Title XI. It monitors all activities related to the implementation of Title XI.

(4) "Appraisal Standards Board" means a board established by the Appraisal Foundation for the purpose of developing, publishing, interpreting and amending the *Uniform Standards of Professional Appraisal Practice*.

(5) "The *Uniform Standards of Professional Appraisal Practice* (USPAP)" means the current edition of the publication in force of the Appraisal Standards Board (ASB) of the Appraisal Foundation. USPAP is the applicable standard for all appraisal practice in the state of Washington regulated under the provisions of chapter 18.140 RCW.

(6) "Appraiser qualifications board" means a board of the Appraisal Foundation for the purpose of developing, publishing, interpreting and amending the real property appraiser qualification criteria.

(7) "Real property appraiser qualification criteria" means the minimum criteria establishing the minimum education, experience and examination requirements for real property appraisers to obtain a state certification as established by the appraiser qualifications board (AQB) of the Appraisal Foundation under the provisions of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989, and any additional qualifying criteria established by the director in accordance with chapter 18.140 RCW.

(8) "Classroom hour" means fifty minutes out of each sixty minute hour.

((~~(16)~~)) (9) "Full-time" means the equivalent twelve-month period in which an applicant works at least one thousand hours in real estate appraisal.

((~~(17) "Licensed or residential real estate appraiser" classification applies to those individuals qualified to appraise one to four residential units.~~

~~(18) "General real estate appraiser" classification applies to those individuals qualified to appraise all types of real property.~~

~~(19) "Federally related transaction" means any real estate-related financial transaction which Federal Financial Institutions Regulatory Agency (FFIRA) or the Resolution Trust Company (RTC) engages in, contracts for, or regulates and which requires the services of an appraiser.~~

~~(20) "Real estate related-financial transaction" means any transaction involving:~~

~~(a) The sale, lease, purchase, investment in, or exchange of real property, including interests in property or the financing thereof;~~

~~(b) The refinancing of real property or interests in real property; and~~

~~(c) The use of real property or interest in property as security for a loan or investment, including mortgage-backed securities.~~

~~(21)~~)) (10) "Required core curriculum" means a set of appraiser subject matter areas (known as "modules") that require a specified number of educational hours at each credential level as established by the appraiser qualifications board.

(11) "Module" means an appraisal subject matter area (and required hours of coverage) as identified in the required core curriculum.

(12) "Residential properties" means one to four single family residential units and lots where the highest and best use is for one to four family purposes.

((~~(22) "Review" means the act or process of critically studying an appraisal report prepared by another.~~)) (13) "Significant professional appraisal assistance" means the work contributed or performed toward the completion of an appraisal report by either a trainee, state-licensed, or state-certified appraiser, while under the direct supervision of a certified residential appraiser or certified general appraiser as required by the department as qualifying appraisal experience for licensing. Significant professional appraisal assistance shall consist of identifying and analyzing the scope of work, collection of data, analyzing data to derive an opinion of value, and writing the appraisal report in accordance with the *Uniform Standards of Professional Appraisal Practice*.

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-020 Application process to take examination. (1) Any person desiring to take an examination for licensure or certification as a state-licensed or state-certified residential real estate appraiser, or as a state-certified general real estate appraiser, must submit a completed examination application with supporting documents and appropriate fee to the department of licensing, business and professions division, at its official address. After the qualifications for the examination have been verified by the department, the applicant shall submit the preapproved examination application, the request for examination and the appropriate fee to the testing service approved by the director.

(2) ((~~An applicant must, as of the date his/her application is filed with the department,~~)) At the time of filing with the department, an application for a state license or certification, the applicant shall possess the requisite ((~~two years (twenty-four months) and two thousand~~)) hours of verifiable real estate appraisal experience((~~: Provided, That effective January 1, 1998, the applicant must possess the verifiable real estate appraisal experience as required by the examination prerequisite for the requested classification~~)). Experience shall be acquired within the requisite time. Qualifying experience shall consist of significant professional appraisal assistance under the supervision of a certified appraiser within the boundaries of the state of Washington except as referenced in WAC 308-125-. . ..

(3) An application and ((~~the nonrefundable application~~)) fee shall be valid for six months from receipt by the department. An applicant may correct any discrepancies in the application other than experience during this six-month period. After six months, if the applicant has not met the prerequisites to sit for the licensure or certification examination, the applicant must submit a new application with the appropriate fee.

(4) Dishonored checks will be considered as an incomplete application.

(5) An applicant shall forfeit all examination fees for any examination or examinations for which the applicant has applied and does not take for any reason, other than through the fault or mistake of the department of licensing or the approved testing agency.

NEW SECTION

WAC 308-125-025 Application process to register as a real estate appraiser trainee. (1) As a prerequisite to registration, the applicant shall present evidence satisfactory to the director of successful completion of the appraiser qualifications board module of qualifying core curriculum of approved qualifying education modules:

(a) Basic appraisal principles, thirty hours.

(b) Basic appraisal procedures, thirty hours.

(c) The National USPAP course or equivalent fifteen hours.

(2) Application for registration as a trainee from persons who have had either a real estate license or real estate appraiser license suspended or revoked shall not be accepted by the department until after the time period of the suspension or revocation has expired.

(3) An applicant for registration as a trainee shall present a completed registration form together with the appropriate fee and copies of core curriculum course completion certificates to the director prior to issuance of the approved trainee registration certificate.

(4) Registration as a trainee may be denied for unprofessional conduct as provided in RCW 18.235.130.

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-030 Examination prerequisite general classification. The general real estate appraiser classification applies to the appraisal of all types of real property.

(1) As a prerequisite to taking the examination for certification as a state-certified general real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than one hundred ((~~sixty-five~~)) eighty classroom hours of ((~~courses in subjects related to real estate appraisal~~)) qualifying education as approved by the director. Each applicant must successfully complete a thirty classroom hour course in the basic principles of real estate appraising and a fifteen classroom hour course in the Uniform Standards of Professional Appraisal Practice as part of the one hundred ((~~sixty-five~~)) eighty classroom hours of course work: Provided, That effective ((~~January 1, 1998~~)) November 1, 2007, the required number of classroom hours is ((~~one hundred eighty.~~

~~(2) An original certification as a state-certified general real estate appraiser shall not be issued to any person who does not possess two years (twenty-four months) of experience as a full-time real estate appraiser in Washington or in another state having comparable certification requirements within the five years immediately preceding the filing of the application for examination and certification. An applicant may accumulate the required experience over the preceding five years; however, a minimum of two years (twenty-four months) is required: Provided, That effective January 1, 1998, this provision shall read:~~)) three hundred in the following core modules:

(a) Basic appraisal principles, thirty hours.

(b) Basic appraisal procedures, thirty hours.

(c) The National USPAP course or equivalent, fifteen hours.

(d) General appraiser market analysis and highest and best use, thirty hours.

(e) Statistics, modeling and finance, fifteen hours.

(f) General appraiser sales comparison approach, thirty hours.

(g) General appraiser site valuation and cost approach, thirty hours.

(h) General appraiser income approach, sixty hours.

(i) General appraiser report writing and case studies, thirty hours.

(j) Appraisal subject matter electives, thirty hours.

(2) An original certification as a state-certified general real estate appraiser shall not be issued to any person who does not possess three thousand hours of appraisal experience

obtained continuously over a period of not less than thirty months in Washington or in another state having comparable certification requirements.

(3) To fulfill the experience requirement, a candidate must have at least ((~~one thousand hours, accumulated over the previous five years, of nonresidential appraisal experience: Provided, That effective January 1, 1998, to fulfill the experience requirement, a candidate must have at least~~)) one thousand five hundred hours of nonresidential appraisal experience.

(4) ((~~The content for courses required prerequisite to taking the examination for certification as a state-certified general real estate appraiser must include coverage of all topics listed below, with particular emphasis on the appraisal of nonresidential properties:~~

~~(a) Influences on real estate value.~~

~~(b) Legal considerations in appraisal.~~

~~(c) Types of value.~~

~~(d) Economic principles.~~

~~(e) Real estate markets and analysis.~~

~~(f) Valuation process.~~

~~(g) Property description.~~

~~(h) Highest and best use analysis.~~

~~(i) Appraisal math and statistics.~~

~~(j) Sales comparison approach.~~

~~(k) Site value.~~

~~(l) Cost approach.~~

~~(m) Income approach.~~

~~(i) Estimation of income and expenses.~~

~~(ii) Operation statement ratios.~~

~~(iii) Direct capitalization.~~

~~(iv) Cash flow estimates.~~

~~(v) Measures of cash flow.~~

~~(vi) Discounted cash flow analysis.~~

~~(n) Valuation of partial interests.~~

~~(o) Appraisal standards and ethics.~~

~~(p) Narrative report writing.~~

~~Preexamination review seminars or examination preparation seminars will not be approved for clock hour credit.~~)) Effective January 1, 2008, applicants for the certified general license must possess a bachelor's degree or higher in any field of study or, in lieu of the required degree, thirty semester credit hours covering the following subject matter courses:

(a) English composition;

(b) Principles of economics (micro or macro);

(c) Finance;

(d) Algebra, geometry or, higher mathematics;

(e) Statistics;

(f) Introduction to computers: Word processing/spreadsheets;

(g) Business or real estate law; and

(h) Two elective courses in accounting, geography, agricultural economics, business management, or real estate;

as approved by the appraiser qualifications board and the director, in addition to the required qualifying core curriculum requirements.

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-040 Examination prerequisite state-certified residential classification. The state-certified residential real estate appraiser classification applies to appraisals of all types of residential property of one to four units without regard to transaction value or complexity and nonresidential property having a transaction value less than two hundred fifty thousand dollars.

(1) As a prerequisite to taking the examination for certification as a state-certified residential real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than one hundred twenty classroom hours of ((~~courses in subjects related to real estate appraisal~~)) qualifying education as approved by the director. Each applicant must successfully complete a thirty classroom hour course in the basic principles of real estate appraising and a fifteen classroom hour course in the Uniform Standards of Professional Appraisal Practice as part of the one hundred twenty classroom hours of course work((~~.~~

~~(2) An original certification as a state-certified residential real estate appraiser shall not be issued to any person who does not possess two years of experience as a full-time real estate appraiser in Washington or in another state having comparable certification requirements within five years immediately preceding the filing of the application for examination and certification. An applicant may accumulate the required experience over the preceding five years; however a minimum of two years (twenty-four months) is required~~)): Provided, That effective January 1, ((~~1998, this provision shall read:~~)) 2007, the required number of classroom hours is two hundred in the following core modules:

(a) Basic appraisal principles, thirty hours.

(b) Basic appraisal procedures, thirty hours.

(c) The National USPAP course or equivalent, fifteen hours.

(d) Residential market analysis and highest and best use, fifteen hours.

(e) Residential appraiser site valuation and cost approach, fifteen hours.

(f) Residential sales comparison and income approaches, thirty hours.

(g) Residential appraiser report writing and case studies, fifteen hours.

(h) Statistics, modeling and finance, fifteen hours.

(i) Advanced residential applications and case studies, fifteen hours.

(j) Appraisal subject matter electives, twenty hours.

(2) An original certification as a state-certified residential real estate appraiser shall not be issued to any person who does not possess two thousand five hundred hours of appraisal experience obtained continuously over a period of not less than twenty-four months in Washington or in another state having comparable certification requirements.

(3) ((~~The content for courses required prerequisite to taking the examination for certification as a state-certified residential real estate appraiser must include coverage of all the topics listed below with particular emphasis on the appraisal of one to four unit residential properties:~~

~~(a) Influences on real estate value.~~

~~(b) Legal considerations in appraisal.~~

~~(c) Types of value.~~

~~(d) Economic principles.~~

~~(e) Real estate markets and analysis.~~

~~(f) Valuation process.~~

~~(g) Property description.~~

~~(h) Highest and best use analysis.~~

~~(i) Appraisal statistical concepts.~~

~~(j) Sales comparison approach.~~

~~(k) Site value.~~

~~(l) Cost approach.~~

~~(m) Income approach.~~

~~(i) Gross rent multiplier analysis.~~

~~(ii) Estimation of income and expenses.~~

~~(iii) Operating expense ratios.~~

~~(iv) Direct capitalization.~~

~~(n) Valuation of partial interests.~~

~~(o) Appraisal standards and ethics.~~

~~(p) Narrative report writing.~~

~~Preexamination review seminars or examination preparation seminars will not be approved for clock hour credit.~~)) Effective January 1, 2008, certified residential real estate appraiser applicants must possess an associate's degree or higher in any field of study or, in lieu of the required degree, twenty-one semester credit hours covering the following subject matter courses:

(a) English composition;

(b) Principles of economics (micro or macro);

(c) Finance;

(d) Algebra, geometry or, higher mathematics;

(e) Statistics;

(f) Introduction to computers: Word processing/spreadsheets; and

(g) Business or real estate law;

as approved by the appraiser qualifications board and the director, in addition to the required core curriculum.

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-045 Examination prerequisite state-licensed classification. The state-licensed real estate appraiser classification applies to appraisal of noncomplex one to four residential units having a transaction value less than one million dollars and complex one to four residential units having a transaction value less than two hundred fifty thousand dollars and nonresidential property having a transaction value less than two hundred fifty thousand dollars.

(1) As a prerequisite to taking the examination for certification as a state-licensed real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than ((~~seventy-five~~)) ninety classroom hours of courses in ((~~subjects related to real estate appraisal~~)) qualifying education as approved by the director. Each applicant must successfully complete a thirty classroom hour course in the basic principles of real estate appraising and a fifteen classroom hour course in the Uniform Standards of Professional Appraisal Practice as part of the seventy-five classroom hours of course work: Provided, That effective January 1, ((~~1998~~)) 2007, the required number of classroom hours is ((~~ninety.~~

~~(2) An original certification as a state-licensed real estate appraiser shall not be issued to any person who does not possess two years of experience as a full-time real estate appraiser in Washington or in another state having comparable certification requirements within five years immediately preceding the filing of the application for examination and certification. An applicant may accumulate the required experience over the preceding five years; however a minimum of two years (twenty-four months) is required: Provided, That effective January 1, 1998, this provision shall read:~~)) one hundred fifty in the following core modules:

(a) Basic appraisal principles, thirty hours.

(b) Basic appraisal procedures, thirty hours.

(c) The National USPAP course or equivalent, fifteen hours.

(d) Residential market analysis and highest and best use, fifteen hours.

(e) Residential appraiser site valuation and cost approach, fifteen hours.

(f) Residential sales comparison and income approaches, thirty hours.

(g) Residential appraiser report writing and case studies, fifteen hours.

(2) An original certification as a state-licensed real estate appraiser shall not be issued to any person who does not possess two thousand hours of appraisal experience obtained continuously over a period of not less than twenty-four months in Washington or in another state having comparable certification requirements.

((~~(3) The content for courses required prerequisite to taking the examination for certification as a state-licensed real estate appraiser must include coverage of all the topics listed below with particular emphasis on the appraisal of one to four unit residential properties:~~

~~(a) Influences on real estate value.~~

~~(b) Legal considerations in appraisal.~~

~~(c) Types of value.~~

~~(d) Economic principles.~~

~~(e) Real estate markets and analysis.~~

~~(f) Valuation process.~~

~~(g) Property description.~~

~~(h) Highest and best use analysis.~~

~~(i) Appraisal statistical concepts.~~

~~(j) Sales comparison approach.~~

~~(k) Site value.~~

~~(l) Cost approach.~~

~~(m) Income approach.~~

~~(i) Gross rent multiplier analysis.~~

~~(ii) Estimation of income and expenses.~~

~~(iii) Operating expense ratios.~~

~~(n) Valuation of partial interests.~~

~~(o) Appraisal standards and ethics.~~

~~Preexamination review seminars or examination preparation seminars will not be approved for clock hour credit.~~))

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-050 Educational courses—Preexamination. (1) ((In order for courses)) To be accepted under WAC 308-125-030(1), 308-125-040(1), and 308-125-045(1), courses must:

(a) Be a minimum of fifteen classroom hours in length;

(b) Include an examination; ((and))

(c) Be directly related to real estate appraising;

(d) Be approved by the director as identified in the appraiser program's publication *Approved Courses, Real Estate Appraisers*; or

(e) Be approved by the appraiser qualifications board and approved by the director.

(2) The following limitations may apply to course work submitted to the department for approval:

(a) A correspondence course may be acceptable to meet classroom hour requirements only if each course meets the following conditions:

(i) The course has been presented by an accredited college or university which offers correspondence courses in other disciplines;

(ii) An individual successfully completes a written examination administered at a location by an official approved by the college or university; ((and)) or

(iii) The content and length of the course meet the requirements for real estate appraisal-related courses established by the appraiser qualifications board and approved by the director.

(b) Video and remote television educational courses may be used to meet the classroom hour requirements only if each course meets the following conditions:

(i) The course has been presented by an accredited college or university which offers similar courses in other disciplines;

(ii) An individual successfully completes a written examination administered at a location by an official approved by the college or university; ((and)) or

(iii) The content and length of the course meet the requirements for real estate appraisal-related courses established by the appraiser qualifications board and approved by the director.

(c) An applicant shall not receive "dual credit" for courses that have the same or very similar content and are deemed comparable by the department, even if an applicant completes the courses through different course providers.

(3) Copies of official transcript of college records or certificates of course completion will be considered as satisfactory evidence for education requirements.

(4) Preexamination review seminars or examination preparation seminars will not be approved for clock hour credit.

(5) An application shall be submitted for approval not less than ninety days preceding the course start date. Course approval expiration shall be three years from the date of approval, except for the Uniform Standards of Professional Appraisal Practice courses or seminars having a definite date.

(6) All courses approved by the appraiser qualifications board will continue to be accepted by the department as approved courses until the expiration date.

(7) Appraisal course providers who have received the appraiser qualifications board's course approval are not required to submit course material or content materials to the department for approval. The course provider shall submit a secondary provider course content approval application to the department.

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-065 Education((/experience)) credit for teachers of approved real estate appraisal courses. (1) An applicant may receive education credit for teaching an approved real estate appraisal course. One hour of education credit for each hour of teaching an approved real estate appraisal course shall be given.

(2) ((An applicant may receive experience credit for teaching an approved real estate appraisal course. One hour of experience credit for each hour of teaching an approved real estate appraisal course shall be given: Provided, That this provision will expire on January 1, 1998.

(3))) Once an applicant has received credit for teaching an approved real estate appraisal course, an applicant shall not receive credit for teaching that course or any substantially similar course on any subsequent occasion.

(((4) Credit for teaching an approved real estate appraisal course may be used to satisfy education or experience credit, but shall not be used to satisfy both: Provided, That this provision will expire on January 1, 1998.))

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-070 Experience requirements. (1) A minimum of two years (twenty-four months) full-time experience ((is required. To attain the requisite experience an applicant may accumulate hours worked during the preceding five years;)) within five years of application is required for the state licensed and certified residential appraiser. Certified general applicants must accumulate three thousand hours within a minimum of thirty months and a maximum of seven years. However, no more than one thousand five hundred hours may be credited in any consecutive twelve-months ((period: Provided, That this provision will expire on January 1, 1998)) for any of the licensing categories.

(2) Any work product claimed for experience credit dated January 1, 1990, and later shall conform to the Uniform Standards of Professional Appraisal Practice((: Provided, That effective January 1, 1998, the relevant year is 1991.

(3) Any work product claimed for experience credit dated prior to January 1, 1990, shall conform to the following standards: Provided, That effective January 1, 1998, the relevant year is 1991)) in effect at the time the appraisal is completed.

(a) Reports shall be in writing.

(b) ((Reports shall contain the legal address of the subject property.

(c) Reports shall state the effective date of the appraisal.

(d) Reports shall contain a definition of value to be estimated.

~~(e) Reports shall contain a certification signed by the appraiser.~~

~~(f) Reports shall contain a description of the site, land, or buildings as applicable.~~

~~(g) Reports shall address all three approaches to value by either utilization of the approach or indication that the approach is not applicable or inappropriate to the specific property.~~

~~(h) Reports shall include adjustments and the value of the direct sales for the direct sales approach, which either sets forth the reasoning for value or states that the value is evident in ancillary supporting documentation or the report.~~

~~(i) Reports shall include analysis of market rents, expenses, vacancy rates, and capitalization rates when the income approach is used.~~

~~(j) Reports shall include analysis of building costs and site value when the cost approach is used.~~

~~(k) Reports shall include reasoning and supporting documentation for the final value estimate.~~

~~(l) Reports shall be signed and dated by the appraiser.~~

~~(4) An appraiser applying for certification must verify his/her completion of the required experience via affidavit, under oath subject to penalty of perjury on a form provided by the department.~~

~~To demonstrate experience the department may require submission of a log which details hours claimed for experience credit. The department may also require an affidavit from an employer concerning the applicant's length of experience.~~

~~(5) An appraiser performing appraisal work enabling the appraiser to apply for appraisal experience on an hourly basis, includes, but is not limited to, the following:~~

~~Fee and staff appraisal, ad valorem tax appraisal, technical review appraisal, appraisal analysis, real estate consulting, highest and best use analysis, feasibility analysis/study, condemnation/study, teacher of appraisal courses: Provided, That effective January 1, 1998, experience credit for teachers is not available.~~

~~(6) The department reserves the right to contact an employer for confirmation of experience claimed. This will require an employer to confirm via affidavit the experience of an applicant.~~

~~(7) The department may request submission of written reports or file memoranda claimed by the applicant in the applicant's application for experience credit.~~)) An appraisal work file must be available to the director to substantiate work performed.

(3) The department may request appraiser work files to verify, confirm, or compare entries made on the experience log. Failure to provide work files to the department upon its request may disqualify the reports as qualifying experience.

(4) An applicant for certification or license shall certify, under penalty of perjury, the completion of the required experience.

(5) Appraisal work qualifying for appraisal experience includes, but is not limited to, the following: Fee and staff appraisal, ad valorem tax appraisal, appraisal review, appraisal analysis, appraisal consulting, highest and best use analysis, feasibility analysis/study.

(6) The department may require a supervisory appraiser to certify, under penalty of perjury, the applicant's work experience.

(7) The department may request written reports or work files to verify an applicant's experience.

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-075 Allowed credits for appraisal experience. (1) The department shall not grant to state-licensed or state-certified appraisers and applicants experience credits for appraisal experience that exceeds the following hourly allotments for each appraisal:

((~~(a)~~	~~Single family residential (noncomplex)~~	~~12 hours~~
~~(b)~~	~~Single family residential (complex & 2-4)~~	~~20 hours~~
~~(c)~~	~~Single family lot (URAR form)~~	~~8 hours~~
~~(d)~~	~~Single family lot (narrative)~~	~~10 hours~~
~~(e)~~	~~Large land tract (not subdivided)~~	~~25 hours~~
~~(f)~~	~~Subdivisions~~	~~60 hours~~
~~(g)~~	~~Improved commercial/industrial land~~	~~25 hours~~
~~(h)~~	~~Commercial (form)~~	~~40 hours~~
~~(i)~~	~~Commercial (narrative)~~	~~80 hours~~
~~(j)~~	~~Regional mall/high rise office bldg/Hotel~~	~~120 hours~~
~~(k)~~	~~Technical appraisal review (single family)~~	~~4 hours~~
~~(l)~~	~~Technical appraisal review (commercial)~~	~~16 hours~~
~~(m)~~	~~Feasibility study~~	~~80 hours~~
~~(n)~~	~~Real estate consulting (nonresidential)~~	~~40 hours~~
~~(o)~~	~~Agricultural~~	~~60 hours~~))

(a)	Single family residential - exterior form report	6 hours
(b)	Single family residential - form report	12 hours
(c)	Multifamily residential - form report	20 hours
(d)	Residential lot 1 acre or less	8 hours
(e)	Land tract less than or equal to 40 acres	16 hours
(f)	Short plats	20 hours
(g)	Land tract 41-160 acres	24 hours
(h)	Land tract 161-640+ acres	36 hours
(i)	Subdivisions	60 hours
(j)	Commercial/industrial land	25 hours
(k)	Commercial - form report	40 hours
(l)	Commercial - narrative report	80 hours
(m)	Regional mall/high rise office bldg./Hotel	120 hours
(n)	Appraisal review (single family) (not applicable to trainees)	12 hours

(o)	Appraisal review (commercial) (not applicable to trainees)	40 hours
(p)	Feasibility study	80 hours
(q)	Appraisal consulting (nonresidential)	40 hours
(r)	Agricultural	60 hours

(2) The department shall not grant to state-licensed or state-certified appraisers and applicants experience credits for Eminent Domain Appraisals that exceed the following hourly allotments for each appraisal:

(a)	Vacant (single family lot)	((~~32~~)) 24 hours
(b)	Vacant (large land tract)	((~~40~~)) 32 hours
(c)	Single family residential	((~~56~~)) 42 hours
(d)	Multifamily residential	((~~80~~)) 60 hours
(e)	Agricultural (improved)	((~~96~~)) 72 hours
(f)	Industrial (improved)	((~~96~~)) 72 hours
(g)	Commercial (improved)	((~~96~~)) 72 hours
(h)	Very complex damages or benefits	((~~160~~)) 120 hours
(i)	Special purpose improved	((~~72~~)) 54 hours

(3) The department shall not grant to state-licensed or state-certified appraisers and applicants experience credits for Eminent Domain ((~~Technical~~)) Appraisal Reviews that exceed the following hourly allotments for each appraisal:

(a)	Vacant (single family lot)	8 hours
(b)	Vacant (large land tract)	12 hours
(c)	Single family residential	16 hours
(d)	Multifamily residential	24 hours
(e)	Agricultural (improved)	((~~32~~)) 40 hours
(f)	Industrial (improved)	((~~30~~)) 40 hours
(g)	Commercial (improved)	((~~30~~)) 40 hours
(h)	Very complex damages or benefits	((~~40~~)) 50 hours
(i)	Special purpose improved	((~~24~~)) 40 hours

(4) Experience credits for appraisal experience not listed in subsections (1), (2), or (3) shall be determined by the department on a case-by-case basis.

AMENDATORY SECTION (Amending WSR 03-14-091, filed 6/30/03, effective 7/31/03)

WAC 308-125-090 Continuing education required. (1) As a prerequisite to renewal of certification or licensure, the holder of a certificate or license shall present evidence satisfactory to the director of successful completion of the continuing education requirements of this section.

(2) The continuing education requirements for renewal of certification or licensure shall be the completion by the applicant of twenty-eight hours of instruction in courses or seminars which have received the approval of the director. Courses must be completed within the term of certification or licensure immediately preceding renewal. An applicant shall not receive credit in consecutive renewals for courses that have the same or very similar content and are deemed comparable by the department. The holder of a certificate or license will present evidence of successful completion of the seven-hour National USPAP update course or its equivalent((~~, or the fifteen-hour National USPAP course every renewal~~)).

(3) In order for courses or seminars to be accepted under subsection (2) of this section, the course or seminar must be a minimum of two hours in length and be directly related to real estate appraising. However, a maximum of one-half of the continuing education hours required for renewal can be in two-hour seminars or courses.

(4) An examination is not required for courses or seminars taken for continuing education classroom hours. ((~~The exception is the fifteen-hour Uniform Standards of Professional Appraisal Practice (USPAP) course when required by the course provider.~~))

(5) The requirement under subsection (2) of this section may be met by participation other than as a student in educational process and programs approved by the director including teaching, program development, and authorship of textbooks and other written instructional materials.

(6) Courses or seminars taken to satisfy the continuing education requirement for general real estate appraisers, should include coverage of real estate appraisal related topics, such as:

(a) Ad valorem taxation.

(b) Arbitrations.

(c) Business courses related to practice of real estate appraisal.

(d) Construction estimating.

(e) Ethics and standards of professional practice.

(f) Land use planning, zoning, and taxation.

(g) Management, leasing, brokerage, timesharing.

(h) Property development.

(i) Real estate appraisal (valuations/evaluations).

(j) Real estate financing and investment.

(k) Real estate law.

(l) Real estate litigation.

(m) Real estate related computer applications.

(n) Real estate securities and syndication.

(o) Real property exchange.

(p) Such other presentations approved by the director.

(7) Courses or seminars taken to satisfy the continuing education requirement for residential real estate appraisers should include coverage of real estate appraisal related topics, such as:

(a) Ad valorem taxation.

(b) Business courses related to practice of real estate appraisal.

(c) Construction estimation.

(d) Ethics and standards of professional practice.

(e) Land use planning, zoning, taxation.

(f) Property development.

(g) Real estate financing and investment.

(h) Real estate law.

(i) Real estate related computer applications.

(j) Real estate securities and syndication.

(k) Real property exchange.

(l) Real estate feasibility and marketability studies.

(m) ((~~Such other presentations approved by the director.~~

~~(n) Real estate securities and syndication.~~

~~(o) Real estate property exchange.~~

~~(p)~~)) Such other presentations approved by the director.

(8) Courses or seminars taken to satisfy the continuing education requirement for licensed real estate appraisers should include coverage of real estate appraisal related topics, such as:

(a) Ad valorem taxation.

(b) Arbitration.

(c) Business courses related to practice of real estate appraisal.

(d) Construction estimating.

(e) Ethics and standards of professional practice.

(f) Land use planning, zoning, and taxation.

(g) Management, leasing brokerage, timesharing.

(h) Property development.

(i) Real estate appraisal (valuations/evaluations).

(j) Real estate law.

(k) Real estate litigation.

(l) Real estate financing and investment.

(m) Real estate appraisal related computer applications.

(n) Real estate securities and syndication.

(o) Real property exchange.

(p) Such other presentations approved by the director.

(9) The director may approve continuing education credit for attendance at the real estate appraiser commission meeting of no more than two hours.

NEW SECTION

WAC 308-125-095 Responsibilities of the appraiser supervisor. (1) A certified real estate appraiser licensed by the state of Washington may supervise trainees in accordance with the following provisions:

(a) Not more than three real estate appraiser trainees may be supervised in accordance with the appraiser qualifications board standards unless written authorization by the department is granted to exceed that number of trainees at any one time.

(b) Supervision of trainees in the process of appraising real property shall occur within the boundaries of the state of Washington and comply with jurisdictional and established agreements with other states. If a trainee is supervised by a certified appraiser who is licensed in both the state of Washington and with another state or has a temporary license in another state; and the trainee is registered as a trainee in that other state by either temporary permit, license, or registration, then the appraisal assignments shall qualify as work experience on the experience log.

(c) Authorization to exceed supervision of three trainees may be granted by the director upon approval of a written request and under the provisions of subsection (2) of this section.

(d) A registered real estate appraiser trainee may assist in the completion of an appraisal report, including determination of an opinion of value and may sign the appraisal report, provided that he/she is actively and personally supervised by a state-certified real estate appraiser, and provided that the appraisal report is reviewed and signed by the state-certified real estate appraiser; and provided the state-certified appraiser accepts total responsibility for the appraisal report.

(e) The certified appraiser shall:

(i) Personally inspect with the trainee, at a minimum, the interior of twenty-five subject properties.

(ii) Personally review and verify each appraisal report prepared by the trainee as entered on the trainee experience log as qualifying work experience prior to the log being submitted to the department by the supervised trainee.

(iii) Personally review and verify each appraisal report prepared by a state licensed or certified residential appraiser as entered on the qualifying work experience log prior to the log being submitted to the department by the licensee.

(iv) Comply with all USPAP requirements.

(v) Maintain a separate "properties inspected with trainee" log for each supervised trainee. This log must be made available to the department upon request and is to be submitted with trainee's application for license or certification.

(2) Authorization may be granted by the director to a certified appraiser to exceed the number of trainees allowed to be supervised providing:

(a) The certified appraiser has more than five years certified experience.

(b) The certified appraiser shall make a written application to the department requesting to supervise not more than three trainees with less than one year experience; and three trainees with more than one year experience; and five trainees with greater than two years experience. The total number of supervised trainees shall not exceed eight for all experience levels at any one time.

(c) The certified appraiser shall prepare and maintain trainee progress reports and make them available to the department until such time as the trainee becomes certified or licensed or after two years has lapsed since supervising the trainee.

(d) The certified appraiser shall provide to the department a mentoring plan for consideration prior to the department authorizing supervision of more than three trainees.

AMENDATORY SECTION (Amending WSR 93-17-020, filed 8/10/93, effective 9/10/93)

WAC 308-125-110 ((~~Address change.~~)) Business location and/or physical address and mailing address. It is the responsibility of each applicant ((~~state-licensed and certified~~)) state-certified and licensed real estate appraiser, and registered real estate appraiser trainee to notify the department ((~~of licensing, real estate appraiser program unit,~~)) of a change of business ((~~address~~)) location and/or physical and mailing address for receiving certified mail and service documents. Change of address notification shall be made within ten days of the change of address. If appraisal work files are stored at another location from the appraiser's place of business then such location shall be reported to the director upon request.

AMENDATORY SECTION (Amending WSR 02-03-011, filed 1/4/02, effective 5/1/02)

WAC 308-125-120 Fees and charges. The following fees shall be paid under the provisions of chapter 18.140 RCW:

Title of Fee		Fee
(1)	Application for examination	$246.00
(2)	Examination	((~~100.00~~)) 106.00**
(3)	Reexamination	((~~100.00~~)) 106.00**
(4)	Original certification	206.00*
(5)	Certification renewal	407.00*
(6)	Late renewal penalty	38.00
(7)	Duplicate certificate	28.00
(8)	Certification history record	27.00
(9)	Application for reciprocity	246.00
(10)	Original certification via reciprocity	206.00*
(11)	Temporary practice	150.00
(12)	Trainee registration	100.00
(13)	Trainee registration renewal	100.00

* Proposed fees for these categories marked with an asterisk include an estimated $25.00 to be submitted by the state to Federal Government. Title XI, SEC. 1109 requires each state to submit a roster listing of state certified appraisers to the Appraiser Subcommittee "no less than annually." The state is also required to collect from such individuals who perform appraisals in federally related transactions, an annual registry fee of "not more than $50," such fees to be transmitted by the state to the federal government on an annual basis.

** Charges for categories marked with a double asterisk are determined by contract with an outside testing service.

AMENDATORY SECTION (Amending WSR 05-05-097, filed 2/16/05, effective 3/19/05)

WAC 308-125-200 Standards of practice. (1) The standard of practice governing real estate appraisal activities will be the ((~~2005~~)) edition of the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation in effect on the date of the appraisal report. A copy of the Uniform Standards of Professional Appraisal Practice is available for review and inspection at the office of the Real Estate Appraiser Unit Office, Olympia, Washington. The Uniform Standards of Professional Appraisal Practice is a copyright document. Copy of the full text may be obtained from the Appraisal Foundation at The Appraisal Foundation, P.O. Box 96734, Washington, DC 20090-6734.

(2) Expert review appraisers as defined by RCW 18.140.010(11) while performing expert reviews pursuant to chapter 18.140 RCW are ((~~exempt from~~)) required to comply with the Uniform Standards of Professional Appraisal Practice, Standard 3 review provisions while performing expert reviews for the director.

AMENDATORY SECTION (Amending WSR 93-17-020, filed 8/10/93, effective 9/10/93)

WAC 308-125-210 Required records—Accessibility of records to the department of licensing. All appraisers certified or licensed under chapter 18.140 RCW must retain records required by the Uniform Standards of Professional Appraisal Practice for a minimum of five years or at least two years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last. Such records will be subject to random audit by the department without notice and must be readily available for inspection by a representative of the department.

AMENDATORY SECTION (Amending WSR 93-17-020, filed 8/10/93, effective 9/10/93)

WAC 308-125-225 Meetings—Notice. The real estate appraiser ((~~advisory committee~~)) commission meets at the call of the director. ((~~Individuals desiring notice of the date, time, location, and agenda of the meetings must make a written request to the real estate appraiser program.~~)) Regular meetings are scheduled in February, May, August and November on the third Friday. Department requirements may necessitate altering scheduled meetings in accordance with RCW 42.30.075. Special meetings are in accordance with RCW 42.30.080.

WSR 06-06-076
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed February 28, 2006, 4:26 p.m., effective March 31, 2006]

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

Purpose: The division of child support (DCS) is amending WAC 388-14A-2160 to bring it into conformance with current federal law. DCS seeks to update and clarify its procedures regarding reporting to consumer reporting agencies.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-2160.

Statutory Authority for Adoption: RCW 26.23.120, 74.08.090, 74.20A.310.

Adopted under notice filed as WSR 06-03-020 on January 6, 2006.

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

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

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

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

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

Date Adopted: February 23, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2160 If my information is confidential, can DCS report me to a credit bureau? (1) When a consumer reporting agency, ((~~as defined by 45 C.F.R. 303.105(a)~~)) sometimes called a credit bureau, requests information regarding the amount of overdue support owed by a noncustodial parent (NCP), the division of child support (DCS) provides this information ((~~if the amount of the support debt exceeds one thousand dollars~~)).

(2) In addition to responding to requests for information by consumer reporting agencies, DCS reports to those agencies information regarding overdue support owed by an NCP. DCS then updates the information on a regular basis, even after the NCP brings the account current.

(3) Before releasing information to the consumer reporting agency, DCS sends a written notice concerning the proposed release of the information to the NCP's last known address.

((~~(3)~~)) (4) The notice gives the NCP ten days from the date of the notice to request a conference board to contest the accuracy of the information. If the NCP requests a conference board, DCS does not release the information until a conference board decision has been issued.

(5) A noncustodial parent (NCP) who disagrees with the information supplied by DCS to a consumer reporting agency may file a notice of dispute under the federal Fair Credit Reporting Act, 15 USC 1681.

WSR 06-06-077
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed February 28, 2006, 4:28 p.m., effective March 31, 2006]

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

Purpose: The division of child support (DCS) is adopting new sections in chapter 388-14A WAC in response to a petition for rule making asking DCS to put our policy regarding proration of support into rule: WAC 388-14A-4700 How do I ask the division of child support to prorate a child support obligation?, 388-14A-4705 When does the division of child support prorate a monthly support obligation?, 388-14A-4710 When does the division of child support not prorate a monthly support obligation?, and 388-14A-4715 What can I do if I don't agree with DCS' decision on whether or not to prorate support?

Statutory Authority for Adoption: RCW 34.05.330, 26.21.016, 26.23.030, 74.08.090, and 74.20.040.

Adopted under notice filed as WSR 06-03-021 on January 6, 2006.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 4, Amended 0, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 0, Repealed 0.

Date Adopted: February 23, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-14A-4700 How do I ask the division of child support to prorate a child support obligation? (1) As a general rule, if support is owed for any day of a given month, the entire monthly support obligation is owed for that month.

(2) Either party to a support order may request that the division of child support (DCS) prorate the monthly obligation under a child support order. The request must state the reason why the party is requesting proration of the monthly obligation.

(3) This request may be made in writing or orally, in person or by phone.

(4) DCS' response may be made in writing or orally, in person or by phone.

(5) This rule and WAC 388-14A-4705 through WAC 388-14A-4715 apply only to the enforcement of a support obligation, not to the establishment of an obligation.

NEW SECTION

WAC 388-14A-4705 When does the division of child support prorate a monthly support obligation? The division of child support (DCS) may prorate a monthly support obligation under the following circumstances:

(1) An order is entered terminating the noncustodial parent's (NCP's) support obligation and the order specifies that the NCP's obligation should be prorated;

(2) A superior or tribal court order is entered requiring that support for a given month be prorated; or

(3) When a conference board convened under WAC 388-14A-6400 decides that support for a given month should be prorated.

NEW SECTION

WAC 388-14A-4710 When does the division of child support not prorate a monthly support obligation? (1) Unless a case fits the criteria outlined in WAC 388-14A-4705, the division of child support (DCS) does not prorate a monthly support obligation.

(2) When a support order provides that the noncustodial parent's support obligation for a particular child terminates as of the child's birthday or graduation date, the entire monthly

support obligation is owed, no matter what day of the month the birthday or graduation falls on.

(3) If a conference board convened under WAC 388-14A-6400 decides that support for a given month should not be prorated, DCS does not prorate for that month.

NEW SECTION

WAC 388-14A-4715 What can I do if I don't agree with DCS' decision on whether or not to prorate support? (1) If the noncustodial parent (NCP) or custodial parent (CP) asks the division of child support (DCS) to prorate support, DCS advises the parties of its decision whether to prorate or not to prorate support for a given month.

(2) If the NCP or the CP disagrees with DCS' decision, the aggrieved party may request a conference board under WAC 388-14A-6400.

(3) Either the NCP or the CP may proceed in superior court to seek an order stating whether support should be prorated.

WSR 06-06-078
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed February 28, 2006, 4:30 p.m., effective March 31, 2006]

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

Purpose: The division of child support is amending WAC 388-14A-1055 Can the division of child support collect support owed or assigned to another state?, to correct a reference to the United States Code.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1055.

Statutory Authority for Adoption: RCW 26.21.016, 34.05.020, 74.08.090, 74.20.040(3), 74.20A.310.

Adopted under notice filed as WSR 06-03-045 on January 10, 2006.

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

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

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

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

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

Date Adopted: February 23, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-1055 Can the division of child support collect support owed or assigned to another state? (1) The division of child support (DCS) may, at the request of another state, collect child support which has been assigned to that state under 42 U.S.C. ((~~602 (a)(26)(A)~~)) 608 (a)(3)(A).

(2) DCS uses the remedies in chapters 26.23, 74.20 and 74.20A RCW to collect support on behalf of another state or IV-D agency.

WSR 06-06-087
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed March 1, 2006, 10:53 a.m., effective April 1, 2006]

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

Purpose: Periodic review of all rules by an agency under Executive Order 97-02.

Citation of Existing Rules Affected by this Order: Amending WAC 308-97-011 and 308-97-230.

Statutory Authority for Adoption: RCW 46.16.160.

Adopted under notice filed as WSR 06-03-083 on January 13, 2006.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: February 24, 2006.

Liz Luce
Director

AMENDATORY SECTION (Amending WSR 04-01-163, filed 12/22/03, effective 1/22/04)

WAC 308-97-011 Definitions. "Motor carrier" ((~~is a person or business who owns, leases or operates a vehicle which carries freight and/or passengers and either:~~

~~(1) The vehicle has a gross vehicle weight or combined gross vehicle weight greater than twenty-six thousand pounds;~~

~~(2) Is a trailer with a gross vehicle weight rating of greater than ten thousand pounds; or~~

~~(3) Carries sixteen or more passengers, including the driver~~)) means an entity engaged in the transportation of goods or persons. The term includes a for-hire motor carrier,

private motor carrier, contract motor carrier, or exempt motor carrier.

AMENDATORY SECTION (Amending WSR 04-01-163, filed 12/22/03, effective 1/22/04)

WAC 308-97-230 Appointment of vehicle trip permit agents. (1) **Who can sell vehicle trip permits?**

((~~Vehicle trip permits may be sold by those entities cited in RCW 46.16.160. These entities include~~)) Government agencies and nongovernmental organizations, including:

(a) Department of transportation;

(b) Department of licensing;

(c) County auditors;

(d) Vehicle licensing offices; and

(e) Private businesses approved by the department of licensing.

(2) **How does a ((~~nongovernmental organization~~)) private business obtain approval to sell vehicle trip permits?**

((~~Nongovernmental organizations must:~~))

(a) Apply to the department of licensing;

(b) ((~~Execute an~~)) Enter into a written agreement ((~~to abide by the requirements of this section and RCW 46.16.160~~)) with the department;

(c) Provide a surety bond; and

(d) Provide ((~~transmission~~)) fee schedule if issuing permits electronically.

(3) **How ((~~do I~~)) does a private business obtain an application to ((~~become an agent for selling~~)) sell vehicle trip permits?**

((~~Any nongovernmental organization may~~)) Obtain an application form from the department of licensing, prorate and fuel tax section.

(4) **What are ((~~the components of~~)) you required to do under the agreement?**

((~~The components of the agreement require the agent to:~~)) You are required to:

(a) ((~~Timely account and pay all permit~~)) Pay fees on time;

(b) ((~~Subject their books and~~)) Make your records ((~~to periodic~~)) available for audit;

(c) Pay all interest and penalties ((~~upon any deficiency~~));

(d) Maintain records of transmittals for a period of four calendar years and ((~~make~~)) have these records available to the department ((~~or its representative~~)) during business hours ((~~at the agent's office~~));

(e) ((~~Mail or deliver~~)) Send transmittals ((~~at least~~)) to the department on a bimonthly ((~~to the department by the last Friday of each recording period for permit sales covering the preceding fifteen days~~)) basis. Transmittals must be ((~~accompanied by~~)) included with the appropriate fees; and ((~~any documents required by the department;~~))

(f) ((~~Reimburse~~)) Pay the department for ((~~the administrative fee and excise tax of~~)) any unaccounted for permit(s)((~~, which is missing, lost, or otherwise unaccounted for. For the purposes of this section, "excise tax" means the tax collected as explained in RCW 46.16.160(9)~~)).

(5) **What are the requirements of a surety bond?**

The ((~~requirements of a surety~~)) bond ((~~are to~~)) must:

(a) Be on a form provided by the department of licensing; and

(b) Meet the ((~~provisions~~)) requirements of chapter 48.28 RCW for a corporate surety bond; and

(c) Be ((~~executed~~)) signed by the applicant ((~~as principal~~)); and

(d) Be payable to the state ((~~conditioned upon the performance of all the requirements of this section and RCW 46.16.160, including payment~~)) of Washington; and

(e) Be conditioned upon the performance of all the requirements of this section and RCW 46.16.160; and

(f) Require payment of ((~~any and~~)) all permit fees, ((~~payment of~~)) audit assessments, interest and penalties ((~~due or which become due~~)); and

((~~(e)~~)) (g) Be ((~~in an amount~~)) equal to the ((~~monetary~~)) value of vehicle trip permits issued to ((~~an~~)) the agent by the department.

(6) ((~~What is the agent fee for selling a vehicle transit permit?~~

~~The agent fee is the filing fee mandated by RCW 46.01.140.~~

~~(7)~~)) **How ((~~may~~)) can vehicle trip permits be issued?**

((~~Vehicle trip~~)) Permits ((~~may~~)) can be issued in original form or, by((~~:~~

~~(a) Original manual form;~~

~~(b) Facsimile of the manual form; or~~

~~(c) Authorized electronic form~~)) fax, or electronic means.

((~~(8)~~)) (7) **If the permit is issued by ((~~facsimile~~)) fax or other electronic means, ((~~may the agent collect~~)) can an additional ((~~transmission~~)) fee be collected?**

Yes. As long as the fee does not exceed that listed on the ((~~transmission~~)) schedule filed with the department.

((~~(9)~~)) (8) **What happens if ((~~the agent~~)) you fail((~~s~~)) to comply with the agreement?**

The department ((~~may, after proper notice, served personally or by an affidavit of mailing,~~)) can revoke ((~~the~~)) your appointment ((~~of any agent who has~~)) if you have violated any provisions of ((~~RCW 46.16.160, chapter 308-97 WAC, or breached the appointment~~)) the agreement. Upon notice ((~~of revocation of an agent's appointment, the agent~~)) you must return ((~~to the department any~~)) all remaining vehicle trip permits ((~~in inventory~~)) and ((~~any~~)) all money owed to the department.