

April 7, 1999

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ISSUE 99-07



IN THIS ISSUE

Agriculture, Department of
Assistance Programs, Division of
Basic Health Plan
Bates Technical College
Bellingham Technical College
Benton Clean Air Authority
Blueberry Commission
Board of Natural Resources
Community and Technical Colleges,
State Board for
Community, Trade and Economic Development,
Department of
Convention and Trade Center
Corrections, Department of
Ecology, Department of
Economic Services Administration
Edmonds Community College
Education, State Board of
Engineers and Land Surveyors, Board of
Registration for Professional
Financial Institutions, Department of
Financial Management, Office of
Fish and Wildlife, Department of
Forest Practices Board
Gambling Commission
Governor's Task Force on School-to-Work
Transition
Governor, Office of the
Health Care Authority
Health, Department of
Indeterminate Sentence Review Board
Insurance Commissioner's Office
Interagency Integrated Pest Management
Coordinating Committee
Labor and Industries, Department of
Lake Washington Technical College
Library Commission
Library, Washington State
Licensing, Department of
Liquor Control Board
Medical Assistance Administration
Natural Resources, Department of
Peninsula College
Pierce College
Plumbers, Advisory Board of
Public Employees Benefits Board
Puget Sound Air Pollution Control Agency
Retirement Systems, Department of
Revenue, Department of
Secretary of State
Shoreline Community College
Skagit Valley College
Social and Health Services, Department of
Southwest Air Pollution Control Authority
Supreme Court, State
Transportation Improvement Board
Transportation, Department of
Utilities and Transportation Commission
Washington State Patrol
Western Washington University
Yakima Valley Community College

(Subject/Agency index at back of issue)
This issue contains documents officially
filed not later than March 24, 1999

CITATION

Cite all material in the Washington State Register by its issue number and sequence within that issue, preceded by the acronym WSR. Example: the 37th item in the August 5, 1981, Register would be cited as WSR 81-15-037.

PUBLIC INSPECTION OF DOCUMENTS

A copy of each document filed with the code reviser's office, pursuant to chapter 34.05 RCW, is available for public inspection during normal office hours. The code reviser's office is located on the ground floor of the Legislative Building in Olympia. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. Telephone inquiries concerning material in the Register or the Washington Administrative Code (WAC) may be made by calling (360) 786-6697.

REPUBLICATION OF OFFICIAL DOCUMENTS

All documents appearing in the Washington State Register are prepared and printed at public expense. There are no restrictions on the republication of official documents appearing in the Washington State Register. All news services are especially encouraged to give wide publicity to all documents printed in the Washington State Register.

CERTIFICATE

Pursuant to RCW 34.08.040, the publication of rules or other information in this issue of the Washington State Register is hereby certified to be a true and correct copy of such rules or other information, except that headings of public meeting notices have been edited for uniformity of style.

DENNIS W. COOPER
Code Reviser

STATE MAXIMUM INTEREST RATE

(Computed and filed by the State Treasurer under RCW 19.52.025)

The maximum allowable interest rate applicable for the month of April 1999 pursuant to RCW 19.52.020 is twelve point zero percent (12.00%).

NOTICE: FEDERAL LAW PERMITS FEDERALLY INSURED FINANCIAL INSTITUTIONS IN THE STATE TO CHARGE THE HIGHEST RATE OF INTEREST THAT MAY BE CHARGED BY ANY FINANCIAL INSTITUTION IN THE STATE. THE MAXIMUM ALLOWABLE RATE OF INTEREST SET FORTH ABOVE MAY NOT APPLY TO A PARTICULAR TRANSACTION.

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The Washington State Register is an official publication of the state of Washington. It contains proposed, emergency, and permanently adopted administrative rules, as well as other documents filed with the code reviser's office pursuant to RCW 34.08.020 and 42.30.075. Publication of any material in the Washington State Register is deemed to be official notice of such information.

Mary F. Gallagher Dilley
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Subscription Clerk

STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

1. ARRANGEMENT OF THE REGISTER

The Register is arranged in the following nine sections:

- (a) **PREPROPOSAL**-includes the Preproposal Statement of Intent that will be used to solicit public comments on a general area of proposed rule making before the agency files a formal notice.
- (b) **EXPEDITED REPEAL**-includes the Preproposal Statement of Inquiry that lists rules being repealed using the expedited repeal process. Expedited repeals are not consistently filed and may not appear in every issue of the register.
- (c) **PROPOSED**-includes the full text of formal proposals, continuances, supplemental notices, and withdrawals.
- (d) **EXPEDITED ADOPTION**-includes the full text of rules being changed using the expedited adoption process. Expedited adoptions are not consistently filed and may not appear in every issue of the Register.
- (e) **PERMANENT**-includes the full text of permanently adopted rules.
- (f) **EMERGENCY**-includes the full text of emergency rules and rescissions.
- (g) **MISCELLANEOUS**-includes notice of public meetings of state agencies, rules coordinator notifications, summaries of attorney general opinions, executive orders and emergency declarations of the governor, rules of the state Supreme Court, and other miscellaneous documents filed with the code reviser's office under RCW 34.08.020 and 42.30.075.
- (h) **TABLE**-includes a cumulative table of the WAC sections that are affected in the current year.
- (i) **INDEX**-includes a cumulative index of Register Issues 01 through 24.

Documents are arranged within each section of the Register according to the order in which they are filed in the code reviser's office during the pertinent filing period. Each filing is listed under the agency name and then describes the subject matter, type of filing and the WSR number. The three part number in the heading distinctively identifies each document, and the last part of the number indicates the filing sequence with a section's material.

2. PRINTING STYLE—INDICATION OF NEW OR DELETED MATERIAL

RCW 34.05.395 requires the use of certain marks to indicate amendments to existing agency rules. This style quickly and graphically portrays the current changes to existing rules as follows:

- (a) In amendatory sections—
 - (i) underlined material is new material;
 - (ii) ~~deleted material~~ is (~~lined out between double parentheses~~);
- (b) Complete new sections are prefaced by the heading **NEW SECTION**;
- (c) The repeal of an entire section is shown by listing its WAC section number and caption under the heading **REPEALER**.

3. MISCELLANEOUS MATERIAL NOT FILED UNDER THE ADMINISTRATIVE PROCEDURE ACT

Material contained in the Register other than rule-making actions taken under the APA (chapter 34.05 RCW) does not necessarily conform to the style and format conventions described above. The headings of these other types of material have been edited for uniformity of style; otherwise the items are shown as nearly as possible in the form submitted to the code reviser's office.

4. EFFECTIVE DATE OF RULES

- (a) Permanently adopted agency rules normally take effect thirty-one days after the rules and the agency order adopting them are filed with the code reviser's office. This effective date may be delayed or advanced and such an effective date will be noted in the promulgation statement preceding the text of the rule.
- (b) Emergency rules take effect upon filing with the code reviser's office unless a later date is provided by the agency. They remain effective for a maximum of one hundred twenty days from the date of filing.
- (c) Rules of the state Supreme Court generally contain an effective date clause in the order adopting the rules.

5. EDITORIAL CORRECTIONS

Material inserted by the code reviser's office for purposes of clarification or correction or to show the source or history of a document is enclosed in [brackets].

1998 - 1999

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue Number	Closing Dates ¹			Distribution Date	First Agency Hearing Date ³	Expedited Adoption ⁴
	Non-OTS and 30 p. or more	Non-OTS and 11 to 29 p.	OTS ² or 10 p. max. Non-OTS	Count 20 days from -	For hearing on or after	First Agency Adoption Date
For Inclusion in -	File no later than 12:00 noon -					
98 - 16	Jul 7, 98	Jul 21, 98	Aug 5, 98	Aug 18, 98	Sep 7, 98	Oct 2, 98
98 - 17	Jul 22, 98	Aug 5, 98	Aug 19, 98	Sep 2, 98	Sep 22, 98	Oct 17, 98
98 - 18	Aug 5, 98	Aug 19, 98	Sep 2, 98	Sep 16, 98	Oct 6, 98	Oct 31, 98
98 - 19	Aug 26, 98	Sep 9, 98	Sep 23, 98	Oct 7, 98	Oct 27, 98	Nov 21, 98
98 - 20	Sep 9, 98	Sep 23, 98	Oct 7, 98	Oct 21, 98	Nov 10, 98	Dec 5, 98
98 - 21	Sep 23, 98	Oct 7, 98	Oct 21, 98	Nov 4, 98	Nov 24, 98	Dec 19, 98
98 - 22	Oct 7, 98	Oct 21, 98	Nov 4, 98	Nov 18, 98	Dec 8, 98	Jan 2, 99
98 - 23	Oct 21, 98	Nov 4, 98	Nov 18, 98	Dec 2, 98	Dec 22, 98	Jan 16, 99
98 - 24	Nov 4, 98	Nov 18, 98	Dec 2, 98	Dec 16, 98	Jan 5, 99	Jan 30, 99
99 - 01	Nov 25, 98	Dec 9, 98	Dec 23, 98	Jan 6, 99	Jan 26, 99	Feb 20, 99
99 - 02	Dec 9, 98	Dec 23, 98	Jan 6, 99	Jan 20, 99	Feb 9, 99	Mar 6, 99
99 - 03	Dec 23, 98	Jan 6, 99	Jan 20, 99	Feb 3, 99	Feb 23, 99	Mar 20, 99
99 - 04	Jan 6, 99	Jan 20, 99	Feb 3, 99	Feb 17, 99	Mar 9, 99	Apr 3, 99
99 - 05	Jan 20, 99	Feb 3, 99	Feb 17, 99	Mar 3, 99	Mar 23, 99	Apr 17, 99
99 - 06	Feb 3, 99	Feb 17, 99	Mar 3, 99	Mar 17, 99	Apr 6, 99	May 1, 99
99 - 07	Feb 24, 99	Mar 10, 99	Mar 24, 99	Apr 7, 99	Apr 27, 99	May 22, 99
99 - 08	Mar 10, 99	Mar 24, 99	Apr 7, 99	Apr 21, 99	May 11, 99	Jun 5, 99
99 - 09	Mar 24, 99	Apr 7, 99	Apr 21, 99	May 5, 99	May 25, 99	Jun 19, 99
99 - 10	Apr 7, 99	Apr 21, 99	May 5, 99	May 19, 99	Jun 8, 99	Jul 3, 99
99 - 11	Apr 21, 99	May 5, 99	May 19, 99	Jun 2, 99	Jun 22, 99	Jul 17, 99
99 - 12	May 5, 99	May 19, 99	Jun 2, 99	Jun 16, 99	Jul 6, 99	Jul 31, 99
99 - 13	May 26, 99	Jun 9, 99	Jun 23, 99	Jul 7, 99	Jul 27, 99	Aug 21, 99
99 - 14	Jun 9, 99	Jun 23, 99	Jul 7, 99	Jul 21, 99	Aug 10, 99	Sep 4, 99
99 - 15	Jun 23, 99	Jul 7, 99	Jul 21, 99	Aug 4, 99	Aug 24, 99	Sep 18, 99
99 - 16	Jul 7, 99	Jul 21, 99	Aug 4, 99	Aug 18, 99	Sep 7, 99	Oct 2, 99
99 - 17	Jul 21, 99	Aug 4, 99	Aug 18, 99	Sep 1, 99	Sep 21, 99	Oct 16, 99
99 - 18	Aug 4, 99	Aug 18, 99	Sep 1, 99	Sep 15, 99	Oct 5, 99	Oct 30, 99
99 - 19	Aug 25, 99	Sep 8, 99	Sep 22, 99	Oct 6, 99	Oct 26, 99	Nov 20, 99
99 - 20	Sep 8, 99	Sep 22, 99	Oct 6, 99	Oct 20, 99	Nov 9, 99	Dec 4, 99
99 - 21	Sep 22, 99	Oct 6, 99	Oct 20, 99	Nov 3, 99	Nov 23, 99	Dec 18, 99
99 - 22	Oct 6, 99	Oct 20, 99	Nov 3, 99	Nov 17, 99	Dec 7, 99	Jan 1, 00
99 - 23	Oct 20, 99	Nov 3, 99	Nov 17, 99	Dec 1, 99	Dec 21, 99	Jan 15, 00
99 - 24	Nov 3, 99	Nov 17, 99	Dec 1, 99	Dec 15, 99	Jan 4, 00	Jan 29, 00

¹All documents are due at the code reviser's office by 12:00 noon on or before the applicable closing date for inclusion in a particular issue of the Register; see WAC 1-21-040.

²A filing of any length will be accepted on the closing dates of this column if it has been prepared and completed by the order typing service (OTS) of the code reviser's office; see WAC 1-21-040. Agency-typed material is subject to a ten page limit for these dates; longer agency-typed material is subject to the earlier non-OTS dates.

³At least twenty days before the rule-making hearing, the agency shall cause notice of the hearing to be published in the Register; see RCW 34.05.320(1). These dates represent the twentieth day after the distribution date of the applicable Register.

⁴A minimum of forty-five days is required between the distribution date of the Register giving notice of the expedited adoption and the agency adoption date. No hearing is required, but the public may file written objections. See RCW 34.05.230, as amended by section 202, chapter 409, Laws of 1997.

REGULATORY FAIRNESS ACT

The Regulatory Fairness Act, chapter 19.85 RCW, was enacted in 1982 to minimize the impact of state regulations on small business. Amended in 1994, the act requires a small business economic impact analysis of proposed rules that impose more than a minor cost on twenty percent of the businesses in all industries, or ten percent of the businesses in any one industry. The Regulatory Fairness Act defines industry as businesses within a four digit SIC classification, and for the purpose of this act, small business is defined by RCW 19.85.020 as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees."

Small Business Economic Impact Statements (SBEIS)

A small business economic impact statement (SBEIS) must be prepared by state agencies when a proposed rule meets the above criteria. Chapter 19.85 RCW requires the Washington State Business Assistance Center (BAC) to develop guidelines for agencies to use in determining whether the impact of a rule is more than minor and to provide technical assistance to agencies in developing a SBEIS. All permanent rules adopted under the Administrative Procedure Act, chapter 34.05 RCW, must be reviewed to determine if the requirements of the Regulatory Fairness Act apply; if an SBEIS is required it must be completed before permanent rules are filed with the Office of the Code Reviser.

Mitigation

In addition to completing the economic impact analysis for proposed rules, state agencies must take reasonable, legal, and feasible steps to reduce or mitigate the impact of rules on small businesses when there is a disproportionate impact on small versus large business. State agencies are encouraged to reduce the economic impact of rules on small businesses when possible and when such steps are in keeping with the stated intent of the statute(s) being implemented by proposed rules. Since 1994, small business economic impact statements must contain a list of the mitigation steps taken, or reasonable justification for not taking steps to reduce the impact of rules on small businesses.

When is an SBEIS Required?

When:

The proposed rule has more than a minor (as defined by the BAC) economic impact on businesses in more than twenty percent of all industries or more than ten percent of any one industry.

When is an SBEIS Not Required?

When:

The rule is proposed only to comply or conform with a federal law or regulation, and the state has no discretion in how the rule is implemented;

There is less than minor economic impact on business;

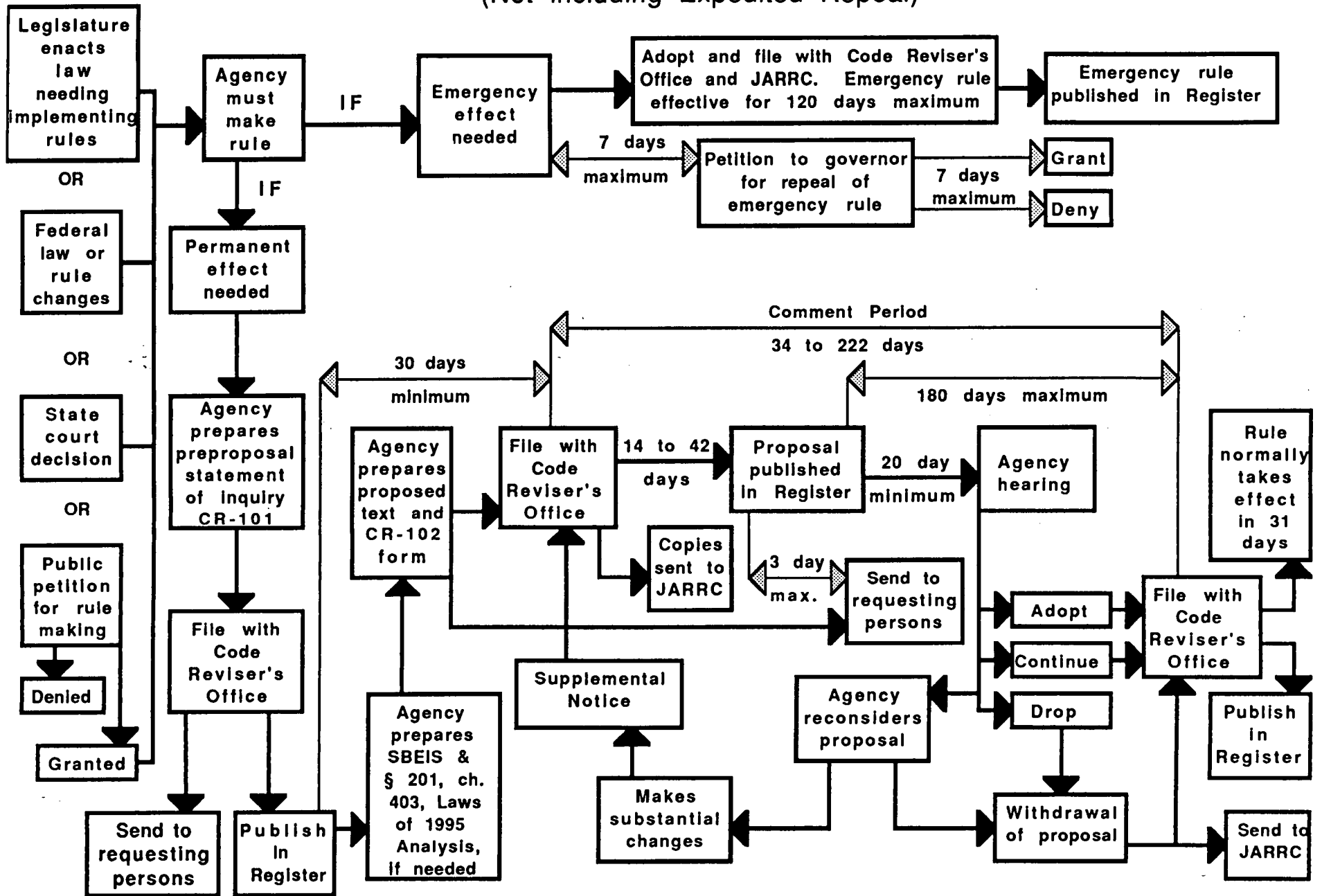
The rule **REDUCES** costs to business (although an SBEIS may be a useful tool for demonstrating this reduced impact);

The rule is adopted as an emergency rule, although an SBEIS may be required when an emergency rule is proposed for adoption as a permanent rule; or

The rule is pure restatement of state statute.

RULE-MAKING PROCESS

(Not including Expedited Repeal)



WSR 99-07-005
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF COMMUNITY,
TRADE AND ECONOMIC DEVELOPMENT

[Filed March 5, 1999, 11:35 a.m.]

Subject of Possible Rule Making: The purpose of this review is to update references in chapter 194-22 WAC from "the Washington State Energy Office" to "the Washington Department of Community, Trade and Economic Development."

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 43.21F.045.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The Energy Office was dissolved July 1, 1996, and these duties were transferred to the Department of Community, Trade and Economic Development. This rule is to establish the process by which the state of Washington and Washington state utilities will initiate and implement state-wide electric load curtailment when there is an insufficient supply of electric energy.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Utilities and Transportation Commission (UTC) and Military Department, Emergency Management Division. The UTC has been contacted and they are waiting on this change to accept a curtailment plan from Puget Power.

Process for Developing New Rule: The Department of Community, Trade and Economic Development will accept and respond to any written comments on the proposed changes.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by sending comments to Cory Plantenberg, P.O. Box 43173, Olympia, WA 98504-3173, phone (360) 956-2101, fax (360) 956-2108.

March 4, 1999

Jean L. Ameluxen, Director
 Intergovernmental Relations

WSR 99-07-014
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 9, 1999, 7:50 a.m.]

Subject of Possible Rule Making: General occupational health standards, chapter 296-62 WAC, Part M.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 49.17.040.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To clarify the rule and incorporate federal OSHA changes and departmental interpretive policies.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other state or federal agencies (other than OSHA) are known that regulate this subject.

Process for Developing New Rule: The department must adopt rules identical to or at-least-as-effective-as OSHA rules as required by the OSHA/WISHA state plan agreement. Parties interested in the formulation of these rules for proposal may contact the individuals listed below. The public may also participate by commenting after amendments are proposed by providing written comments or giving oral testimony during the public hearing process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Ken Lewis, Project Manager, phone (360) 902-4568, fax (360) 902-5529, Department of Labor and Industries, WISHA Services Division, P.O. Box 44620, Olympia, WA 98504-4620.

March 9, 1999

Gary Moore
 Director

WSR 99-07-015
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 9, 1999, 7:52 a.m.]

Subject of Possible Rule Making: Chapter 296-155 WAC, Safety standards for construction work.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 49.17.040.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Clarify the rule and consider incorporating revisions proposed by the department's Construction Advisory Committee.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other state or federal agencies (other than OSHA) are known that regulate this subject.

Process for Developing New Rule: Parties interested in the formulation of these rules for proposal may contact the individuals listed below. The public may also participate by commenting after amendments are proposed by providing written comments or giving oral testimony during the public hearing process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Ken Lewis, Project Manager, phone (360) 902-4568, fax (360) 902-5529, Department of Labor and Industries, WISHA Services Division, P.O. Box 44620, Olympia, WA 98504-4620.

March 9, 1999

Gary Moore
 Director

WSR 99-07-026**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
RETIREMENT SYSTEMS**

[Filed March 10, 1999, 9:12 a.m.]

Subject of Possible Rule Making: Amend rules to comply with new laws, recodifications and rule revisions. Clarify that certain rules apply only to Teacher's Retirement System (TRS) Plan 1.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.50.050.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Amend rules to:

- Comply with RCW 41.32.802 (1)(a), 41.50.790, 41.32.530 (2)(b), 41.40.188 (2)(b), (3)(c), and 41.40.660 (3)(c) passed after rules were adopted;
- Clarify that certain rules apply only to TRS Plan 1;
- Conform to clear rule-writing principles;
- Update references to conform to recodification of RCW 41.40.120 to RCW 41.40.023;
- Update rule references to conform to chapter 415-108 WAC revisions of 1998.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Because the department already has existing rules on this subject in place, the department did not seek input on the preliminary draft prior to filing the CR-101. Copies of the draft rules will be circulated to interested parties for comment. Interested parties include those persons known to the department, such as state employees, family members and any other person who requests a copy and/or opportunity to comment.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Elyette M. Weinstein, Rules Coordinator, phone (360) 664-7307, fax (360) 664-3618, Legal/Legislative Affairs, Department of Retirement Systems, Mailstop 48380, P.O. Box 48380, Olympia, WA 98504-8380.

March 9, 1999

Elyette M. Weinstein
Rules Coordinator**WSR 99-07-039****PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Children's Administration)

[Filed March 12, 1999, 11:24 a.m.]

Subject of Possible Rule Making: Background inquiries, WAC 388-330-010 through 388-330-060.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.15.030.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The licensing requirements for child care facilities are being reviewed and as part of that

process and to comply with the governor's executive order on regulatory reform, chapter 388-330 WAC will be reviewed. Also changes in federal legislation on background clearances for foster and adoptive parents requires an update of state WAC language.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Department of Health, State Fire Marshal's Office, and Department of Community, Trade and Economic Development. Representatives from these agencies will be involved in the review process.

Process for Developing New Rule: Meetings with stakeholders will be held to allow for input and review any proposed changes in these rules. Additionally, DSHS welcomes the public comments or participation in the development of any changes in the current rules. Anyone interested in participating should contact the staff person indicated below. After the rules are drafted, DSHS will file a copy with the Office of the Code Reviser with a notice of proposed rule making, and send a copy to everyone participating and/or affected by any changes.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jean L. Croisant, Licensing Program Manager, Children's Administration, Division of Program and Policy, P.O. Box 45710, Olympia, WA 98504-5710, (360) 902-7992, TDD (360) 902-7906, fax (360) 902-7904, e-mail loje300@dshs.wa.gov.

March 10, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit**WSR 99-07-040****PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING**

[Filed March 12, 1999, 1:53 p.m.]

Subject of Possible Rule Making: Chapter 308-96A WAC, Vehicle license.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 46.01.110, 46.12.225.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rule making may be required as a result of Referendum 49. The rule will assist in the implementation of the motor vehicle excise tax credit.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Patrick J. Zlateff, Rules Coordinator, Title and Registration Services, Vehicle Services, Mailstop

48001, P.O. Box 2957, Olympia, WA 98507-2957, phone (360) 902-3718, fax (360) 664-0831, TDD (360) 664-8885.

March 11, 1999

Deborah McCurley, Administrator
Title and Registration Services

WSR 99-07-042
PREPROPOSAL STATEMENT OF INQUIRY
SECRETARY OF STATE
[Filed March 15, 1999, 9:43 a.m.]

Subject of Possible Rule Making: Defining methods of mailing absentee ballots.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 29.04.080, 29.04.210.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Currently, there are no rules or statutes regulating the level of mail service with regard to absentee ballots - especially whether absentee ballots are forwardable or not. The result is inconsistent practices in counties.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Sheryl Moss, P.O. Box 40232, Olympia, WA 98504-0232, phone (360) 664-3653, fax (360) 664-3657.

March 15, 1999
Donald F. Whiting
Assistant Secretary of State

WSR 99-07-060
PREPROPOSAL STATEMENT OF INQUIRY
PENINSULA COLLEGE
[Filed March 17, 1999, 9:41 a.m.]

Subject of Possible Rule Making: Updating Title 132A WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28B.50.140 and chapter 28B.50 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Peninsula College's WACs need revision to correspond with current policies, practices, and procedures.

Process for Developing New Rule: Open discussion, public input.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Bonnie Cauffman, Rules Coordinator, Peninsula College, 1502 East Lauridsen Boulevard, Port Angeles, WA 98362, phone (360) 417-6212, fax (360) 417-6220.

March 16, 1999
Bonnie Cauffman
Rules Coordinator

WSR 99-07-079
WITHDRAWAL OF PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING
[Filed March 18, 1999, 1:32 p.m.]

The Department of Licensing hereby withdraws WSR 99-07-040 filed with your office on March 12, 1999.

Deborah McCurley
Acting Administrator
Title and Registration Services

WSR 99-07-080
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING
[Filed March 18, 1999, 1:33 p.m.]

Subject of Possible Rule Making: Chapter 308-57 WAC, Motor vehicle excise tax.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 46.01.110, 46.12.225.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rule making may be required as a result of Referendum 49. The rule will assist in the implementation of the motor vehicle excise tax credit.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Patrick J. Zlateff, Rules Coordinator, Title and Registration Services, Vehicle Services, Mailstop 48001, P.O. Box 2957, Olympia, WA 98507-2957, or by phone (360) 902-3718, fax (360) 664-0831, TDD (360) 664-8885.

March 18, 1999
Deborah McCurley, Administrator
Title and Registration Services

WSR 99-07-084
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF AGRICULTURE
[Filed March 18, 1999, 3:01 p.m.]

Subject of Possible Rule Making: Permanent renewal of brands - Heritage brands.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 16.57.023.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To establish criteria and fees for the permanent renewal of brands registered by the Department of Agriculture as passed during the 1998 legislative session.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Working with industry associations and stakeholder groups.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Julie C. Sandberg, Assistant Director, Washington State Department of Agriculture, Consumer and Producer Protection Division, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1852, fax (360) 902-2086.

March 16, 1999

Julie C. Sandberg
Assistant Director

WSR 99-07-086

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF AGRICULTURE

[Filed March 19, 1999, 11:23 a.m.]

Subject of Possible Rule Making: Rules relating to the use of mevinphos (Phosdrin), WAC 16-219-016.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 15.58.040 and 17.21.030.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department has conducted a review of the above-mentioned rule under the provisions of the Governor's Executive Order 97-02 and has determined that the rules are necessary and should be retained. Past problems which caused human exposures lead to the adoption of the Phosdrin rule. Phosdrin is a highly toxic, class 1 organophosphate insecticide. In 1993, it became the only effective pesticide for the control of certain aphids on tree fruits. A risk/benefit evaluation determined that continued use of Phosdrin was an unacceptable health hazard. Chapter 16-219 WAC was adopted to prohibit the sale and use of Phosdrin in the state of Washington. The rule should not be changed or repealed to insure continued protection against possible Phosdrin exposure.

Process for Developing New Rule: A rules review was conducted in accordance with the Governor's Executive Order 97-02. Results of this review will be shared with representatives of the rule stakeholders for input.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The department is seeking input on its decision to retain the rule. You may comment by writing to the Washington State Department of Agriculture, Administrative Regulations Unit, P.O. Box 42560, Olympia, WA 98504-2560, or fax at (360) 902-2092, or e-mail kbromley@agr.wa.gov. Comments should be made by May 7, 1999.

For a copy of the review report, contact Laurie Mauer- man, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560.

March 18, 1999

Bob Arrington
Assistant Director

WSR 99-07-087

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF AGRICULTURE

[Filed March 19, 1999, 11:25 a.m.]

Subject of Possible Rule Making: Rules relating to picloram (Tordon) in Spokane County, WAC 16-230-510 through 16-230-520.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 15.58.040 and 17.21.030.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department has conducted a review of the above-mentioned rules under the provisions of the Governor's Executive Order 97-02 and has determined that the rules are necessary and should be retained. In the late 1970s the product picloram was detected in ground water in a small area of Spokane County. Picloram is a product which is easily leached into ground water especially in areas of shallow aquifers. Chapter 16-230 WAC was adopted with the intent to protect/safeguard health, welfare and safety of the people of Washington by prohibiting the use of picloram in certain areas of Spokane County. The rule is necessary to prevent possible recurrence of ground water contamination by picloram.

Process for Developing New Rule: A rules review was conducted in accordance with the Governor's Executive Order 97-02. Results of this review will be shared with representatives of the rule stakeholders for input.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The department is seeking input on its decision to retain the rules. You may comment by writing to the Washington State Department of Agriculture, Administrative Regulations Unit, P.O. Box 42560, Olympia, WA 98504-2560, or fax at (360) 902-2092, or e-mail kbromley@agr.wa.gov. Comments should be made by May 7, 1999.

For a copy of the review report, contact Laurie Mauer- man, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560.

March 18, 1999

Bob Arrington
Assistant Director

WSR 99-07-088

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF AGRICULTURE

[Filed March 19, 1999, 11:27 a.m.]

Subject of Possible Rule Making: Rules relating to restricted use pesticides - ziram, WAC 16-219-010.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 15.58.040 and 17.21.030.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department has conducted a review of the above-mentioned rule under the provisions of the Governor's Executive Order 97-02 and has determined that the rules are necessary and should be retained. The rule requires personal protection equipment be worn for

an additional fourteen days beyond what is required on the ziram label when entering an area treated with dry wettable formulations of ziram. The rule was developed to address adverse dermal effects to workers involved in the harvest of bosc pears that have been treated with ziram. This requirement has greatly reduced dermal effects from exposure during harvest. The rule should remain unchanged to continue protection of workers during bosc pear harvest.

Process for Developing New Rule: A rules review was conducted in accordance with the Governor's Executive Order 97-02. Results of this review will be shared with representatives of the rule stakeholders for input.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The department is seeking input on its decision to retain the rule. You may comment by writing to the Washington State Department of Agriculture, Administrative Regulations Unit, P.O. Box 42560, Olympia, WA 98504-2560, or fax at (360) 902-2092, or e-mail kbromley@agr.wa.gov. Comments should be made by May 7, 1999.

For a copy of the review report, contact Laurie Mauerma, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560.

March 18, 1999
Bob Arrington
Assistant Director

WSR 99-07-093

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF ECOLOGY

[Order 99-07—Filed March 22, 1999, 2:48 p.m.]

Subject of Possible Rule Making: Wood-fired boiler reasonably available control technology (RACT) determination under chapter 173-400 WAC, General regulations for air pollution sources, chapter 173-405 WAC, Kraft pulping mills, chapter 173-410 WAC, Sulfite pulping mills, chapter 173-433 WAC, Solid fuel burning devices, and chapter 173-434 WAC, Solid waste incinerator facilities.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 70.94.154, the Washington Clean Air Act.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: This rule making is being entered into to provide affected sources within the source category "wood-fired boilers" RACT-level emission limitations and applicable definitions. In addition to the aforementioned changes, it is the intention of the air quality program to reorganize chapter 173-434 WAC, Solid waste incinerator facilities, into a general, all-purpose rule that regulates various combustion-type source categories.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Environmental Protection Agency (EPA) regulates new sources of wood-fired boiler emissions. No other state agency regulates air emissions from wood-fired boilers. Local air authorities may have jurisdiction over some of the affected sources. The Department of Ecology will seek the input and advice of these agencies by including a local air

authority representative to the wood-fired boiler advisory committee.

Process for Developing New Rule: The rule will be developed through the application of the DRAFT Source Category RACT Guidelines document. The air quality program has established an advisory committee of interested parties who will provide the agency with input.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Peter Lyon, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, (360) 407-7530.

March 15, 1999

Mary E. Burg
Program Manager

WSR 99-07-095

PREPROPOSAL STATEMENT OF INQUIRY GAMBLING COMMISSION

[Filed March 22, 1999, 4:36 p.m.]

Subject of Possible Rule Making: Washington blackjack.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 9.46.070.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Legislation was passed in 1997 allowing house-banked card games, which would include traditional blackjack. Washington blackjack is a derivative of blackjack, therefore it [is] no longer needed, or in the alternative should be revised to its pre-1996 version.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Ben Bishop, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 438-7640; Sherri Winslow, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 438-7654, ext. 301; or Susan Arland, Public Information Officer, P.O. Box 42400, Olympia, WA 98504-2400, (360) 438-7654, ext. 374.

Meetings: Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, (360) 254-6100, on May 13 and 14, 1999; at the Double Tree Inn, 252 North 20th Avenue, Pasco, WA 99301, (360) 371-2000, on June 10 and 11, 1999; and at the Best Western Icicle Inn, 505 Highway 2, Leavenworth, WA 98826, (509) 548-7000, on July 8 and 9, 1999.

Susan Arland
Public Information Officer

WSR 99-07-096
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF CORRECTIONS

[Filed March 22, 1999, 4:43 p.m.]

Subject of Possible Rule Making: Site selection of correctional facilities.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 72.01.090.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department is revising its site selection process for correctional facilities. The location of a correctional facility is an important consideration for the department, the public, local government, and other interested stakeholders. The department seeks to identify a process that encourages public participation and support from local government. Adding rules will set standards governing the department's process and will assist interested parties in making informed decisions about future correctional facility site selection. In addition, consistent with the State Environmental Policy Act, chapter 43.21C RCW, the rules will provide a basic framework for the department's site selection process, with due consideration of a number of critical factors, including the early evaluation of environmental issues relating to the site and any necessary infrastructure.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None for the process of site selection for correctional facilities.

Process for Developing New Rule: Negotiated rule making. Public comments and recommendations in the course of drafting rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Gary Banning, Department of Corrections, Rules, Contracts, and Public Disclosure, P.O. Box 41114, Olympia, WA 98504-1114, phone (360) 753-5770, fax (360) 664-2009.

March 22, 1999
 Joseph D. Lehman
 Secretary

WSR 99-07-099
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 23, 1999, 11:14 a.m.]

Subject of Possible Rule Making: Chapter 296-17 WAC, Workers' compensation general reporting rules.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 51.16.035 and 51.04.020(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Labor and industries is required by law to establish rules which govern the reporting and collection of premiums applicable to the workers' compensation classification plan. Labor and industries will be working with the business community to identify the rules

which are difficult to understand and replace them if needed with clearer and easier to understand rules using the clear rule-writing format.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Labor and industries will solicit input from the business community through mail surveys, focus meetings and informal public meetings.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Labor and industries will notify businesses by mail when focus and informal public meetings have been scheduled. Individuals interested in participating in preliminary meetings can contact Ken Woehl or Sandra Chakones of the classification services unit at (360) 902-4776.

March 22, 1999

Gary Moore

Director

WSR 99-07-100
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 23, 1999, 11:15 a.m.]

Subject of Possible Rule Making: Chapter 296-17 WAC, Workers' compensation premium rates, expected loss tables and experience rating plan.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 51.16.035 and 51.04.020(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Labor and industries is required by law to establish and maintain a workers' compensation classification plan and set premium rates in accordance with recognized principles of insurance. By law the plan is to recognize the hazardous nature of each industry and assign insurance rates respective with the hazard of each industry. Labor and industries is required to adjust these rates annually or more frequently if needed to ensure solvency of the insurance trust funds.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Labor and industries bases its insurance rates for each industry on the loss and reporting information supplied by employers. Industries whose employers have had an improved loss record from the previous evaluation period will as a general rule experience a reduction in rates while industries whose employers experienced an increase in losses will generally see their insurance rates increase. Labor and industries will also evaluate the need for an overall rate adjustment for all industries.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Labor and industries has tentatively schedule two formal public hearings. The first hearing is to be held at the Spokane labor and industries office on November 3, 1999, at

10 a.m. The second hearing is to be held at the Tumwater labor and industries central office building on November 5, 1999, at 10 a.m. Inquiries can be directed to Ken Woehl of the classification services section at (360) 902-4775.

March 22, 1999

Gary Moore
Director

WSR 99-07-103
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medical Assistance Administration)

[Filed March 23, 1999, 1:37 p.m.]

Subject of Possible Rule Making: WAC 388-478-0075 and 388-478-0085.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090, 74.04.057, 74.04.050, and 74.09.530.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The proposed amendment is necessary to adopt new federal poverty levels (FPL) effective April 1, 1999.

Process for Developing New Rule: The department invites the interested public to review and provide input into the adopted language of this proposed WAC amendment. The department will distribute draft material for an internal and external review process. All comments are taken into consideration before issuance of the final rule.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Joanie Scotson, Program Manager, Medical Assistance Administration, Mailstop 45530, Olympia, Washington 98504-5530, phone (360) 753-7462, fax (360) 753-7315, TDD 1-800-848-5429, e-mail SCOTSJK@DSHS.WA.GOV.

March 19, 1999

Edith M. Rice
for Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

WSR 99-07-104
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Management Services Administration)

[Filed March 23, 1999, 1:38 p.m.]

Subject of Possible Rule Making: Chapter 388-320 WAC, Public records disclosure—Administrative procedures.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 42.17.250, 34.05.220.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Amend, repeal, or add new

sections in chapter 388-320 WAC. The department's public disclosure rules need to be reviewed, updated, and rewritten according to the criteria in the Governor's Executive Order 97-02.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The Department of Social and Health Services (DSHS) welcomes the public to take part in developing the rule(s). Anyone interested in participating should contact the staff person indicated below. After the rule(s) is drafted, DSHS will file a copy with the Office of the Code Reviser with a notice of proposed rule making, and send a copy to everyone currently on the mailing list and anyone else who requests a copy.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Edith Rice, Office of Legal Affairs, P.O. Box 45850, Olympia, WA 98504-5850, phone (360) 902-7731, fax (360) 902-8292, TTY (360) 902-8324.

March 10, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

WSR 99-07-105
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Assistance Programs)
[Filed March 23, 1999, 1:40 p.m.]

Subject of Possible Rule Making: Correct inadvertent errors and omissions in chapter 388-400 WAC and related rules. Amend chapter 388-400 WAC to reflect changes in program policy. This may require addition of new rules and a new chapter.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.04.510.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Changes in rules are necessary to be in compliance with Executive Order 97-02. Errors and omissions exist in the current WAC and must be resolved to allow for correct administration of programs. Changes need to be made in the WAC in order to reflect changes in the program policy.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: United States Department of Agriculture, Food and Nutrition Services.

Process for Developing New Rule: The Department of Social and Health Services (DSHS) welcomes the public to take part in developing rules. Anyone interested should contact the staff person identified below. After the rule is drafted, DSHS will file a copy with the Office of the Code Reviser with a notice of proposed rule making. A copy of the draft will be sent to everyone on the mailing list and to anyone who requests a copy.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting John Camp, Program Manager, Division of Assistance Programs, Lacey Government Center, P.O. Box 45470, Olympia, WA 98504-4570, phone (360) 413-3232, fax (360) 413-3493, e-mail CAMPJX@DSHS.WA.GOV.

March 15, 1999

Edith M. Rice

for Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

WSR 99-07-111

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF AGRICULTURE

[Filed March 24, 1999, 8:36 a.m.]

Subject of Possible Rule Making: Rules relating to ethyl parathion, WAC 16-219-100 and 16-219-105.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 15.58.040 and 17.21.030.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department has conducted a review of the above-mentioned rules under the provisions of the Governor's Executive Order 97-02 and has determined that the rules are necessary and should be retained. The rule was the result of a number of meetings with beekeepers, growers and applicators concerned about bee kills stemming from ethyl parathion applications to canola. The rule has effectively addressed a very serious issue and repeal of the rule could result in increased bee kills in the future.

Process for Developing New Rule: A rules review was conducted in accordance with Governor's Executive Order 97-02. Results of this review will be shared with representatives of the rules stakeholders for input.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The department is seeking input on its decision to retain the rules. You may comment by writing to the Washington State Department of Agriculture, Administrative Regulations Unit, P.O. Box 42560, Olympia, WA 98504-2560, or fax at (360) 902-2092, or e-mail kbromley@agr.wa.gov. Comments should be made by May 7, 1999.

For a copy of the review report contact Laurie Mauerman, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, (360) 902-2012.

March 23, 1999

Bob Arrington
Assistant Director

WSR 99-07-123

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF AGRICULTURE

[Filed March 24, 1999, 9:44 a.m.]

Subject of Possible Rule Making: To amend and adopt new rules in chapter 16-752 WAC, Noxious weed control.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 17.24, 17.10, 15.13 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Yellow nutsedge is an extremely invasive, economically significant noxious weed which currently occurs in a limited number of sites in this state. If its spread continues unchecked, it will cause significant economic and environmental damage. Spread is particularly likely through movement of contaminated soil, either as topsoil or surrounding the roots of nursery stock and sod. A quarantine may be necessary to prevent shipment of yellow nutsedge through these media.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Washington State Noxious Weed Control Board has designated yellow nutsedge a Class B noxious weed in this state, initiating certain regulatory processes authorized in chapter 17.10 RCW. This board has requested that the Washington State Department of Agriculture (WSDA) also implement a quarantine as a complementary regulatory measure. WSDA will continue to consult with the board.

USDA APHIS regulates certain noxious weeds on a federal level; however, yellow nutsedge is established elsewhere in the nation and is not of federal regulatory significance.

Process for Developing New Rule: Washington State Department of Agriculture representatives discuss proposed rule changes with the Washington State Noxious Weed Control Board, representatives of the nursery industry, and other affected stakeholders, and then publish the rule proposal.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Mary A. Martin Toohey, Assistant Director, WSDA Laboratory Services Division, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1907, fax (360) 902-2094; or Thomas Wessels, Plant Services Program Manager, WSDA Laboratory Services Division, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1984, fax (360) 902-2094.

March 24, 1999

Mary A. Martin Toohey
Assistant Director

WSR 99-07-132

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF AGRICULTURE

[Filed March 24, 1999, 11:10 a.m.]

Subject of Possible Rule Making: Adjust the grain inspection fee schedule (effective September 1999) to reflect the allowable growth rate of 3.32% for FY 2000 for all rates charged or fixed on an hourly basis and unit fees for submit-

ted grain, graded commodity and miscellaneous commodity samples. Remove the "Scale Certification—Weights and Measures Specialist" hourly rate from the grain inspection program fee schedule. Change the title of chapter 16-212 WAC from "Grain, hay, beans, and peas—Inspection fees" to "WSDA grain inspection program—Fee schedule."

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 22.09 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The proposed fee increases are projected to recoup, in part, financial encumbrances due to a rise in the employer share of the health insurance package and in the labor and industries medical aid premiums (both effective July 1998), an increase in the state of Washington self insurance liability program and expenditures due to changes in GIPSA/FGIS equipment requirements. The program also anticipates additional expenditures for legislatively mandated salary increases in September of 1999 and September of 2000. The fee increase is expected to recover a portion of these increases. The removal of the scale specialist citation will move billing responsibility for the service to the weights and measures program. The change in the title of the WAC is for clarity.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The federal grain inspection service must approve fee schedule changes.

Process for Developing New Rule: [No information supplied by agency.]

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Randall R. Deike, Grain Inspection Program Manager, Commodity Inspection Division, 1111 Washington Street S.E., P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1921, fax (360) 902-2085, TDD (360) 902-1996.

March 24, 1999
Robert W. Gore
Assistant Director

WSR 99-07-133

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF REVENUE

[Filed March 24, 1999, 11:39 a.m.]

Subject of Possible Rule Making: Chapter 458-57 WAC.

Adoption of the following new rules in chapter 458-57 WAC, State of Washington Estate and Transfer Tax Reform Act: WAC 458-57-005 Nature of estate tax, definitions, 458-57-015 Valuation of property, property subject to estate tax, how to calculate the tax, 458-57-025 Determining the tax liability of nonresidents, 458-57-035 Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application of payment, and 458-57-045 Administration of the tax—Releases, amended returns, refunds, heirs of escheat estates.

Repeal of the following rules in chapter 458-57 WAC: 458-57-510 Scope of rules, 458-57-520 Nature of estate tax, 458-57-530 Property subject to estate tax, 458-57-540 Residents—Tax imposed, 458-57-550 Valuation, 458-57-560 Imposition of tax, 458-57-570 Tax returns to be filed, 458-57-575 Waiver or cancellation of penalties, 458-57-580 Formula, 458-57-590 Property "located in" Washington, 458-57-600 Reciprocity exemption, 458-57-610 Releases, 458-57-620 Amended returns—Final determination, 458-57-630, Administration—Rules, 458-57-640 Escheat estates—Heirs—How located and proof, 458-57-650 Interest and penalties, and 458-57-660 Refunds.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 83.100.200.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department anticipates replacing the existing seventeen rules in chapter 458-57 WAC with five new rules. These new rules will provide the information in a more concise and logical manner, will update the information provided in the current rules, and will incorporate the following changes in the law:

Chapter 64, Laws of 1988, which changed the statutory authority for adopting rules from RCW 83.100.100 to 83.100.200;

Chapter 149, Laws of 1996, and chapter 145, Laws of 1997, which changed the interest rates and interest calculations that apply to the estate tax program.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Internal Revenue Service administers the federal regulations concerning the federal estate tax. Washington's estate tax program coordinates with and generally complements the federal program. Washington's estate tax liability is limited to the credit provided in the federal statutes for estate tax liabilities imposed by the states. The department's rules coordinates with federal regulations by referencing pertinent sections of the Internal Revenue Code when explaining a taxpayer's potential liability for Washington's estate tax.

Process for Developing New Rule: Modified negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Written comments may be submitted by mail, fax, or at the public meeting. Oral comments will be accepted at the public meeting. A preliminary draft of the proposed changes is available upon request. Written comments on and/or requests for copies of the rule may be directed to Pat Moses, Legislation and Policy, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 902-7111, fax (360) 664-0693, e-mail PatM@dor.wa.gov.

Location and Date of Public Meeting: Evergreen Plaza Building, 711 Capitol Way, 2nd Floor Compliance Conference Room, Olympia, WA, on April 27th, 1999, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Ginny Dale by April 16, 1999, TDD 1-800-451-7985 or (360) 586-0721.

March 24, 1999
Claire Hesselholt, Rules Manager
Legislation and Policy Division

WSR 99-07-134**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING**

(Board of Registration for

Professional Engineers and Land Surveyors)

[Filed March 24, 1999, 11:42 a.m.]

Subject of Possible Rule Making: Amendment of WAC 196-24-058 Retired status certificate of registration.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.43.035.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Under Executive Order No. 97-02 this rule was scheduled for evaluation and possible amendment. Minor wording changes are needed to add LLC and delete partnerships in accordance with RCW 18.43.130 (9) and (10). In addition, some of the paragraphs must be referenced back to the appropriate RCW.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Persons may comment by mail, fax or phone to Rick Notestine, Program Director, P.O. Box 9649, Olympia, WA 98507-9649, fax (360) 664-2551, phone (360) 586-7298. Draft language of any rule changes will be distributed to the board's rule making mailing list.

March 24, 1999

George A. Twiss, Executive Director

Board of Registration for

Professional Engineers and Land Surveyors

WSR 99-07-135**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING**

(Board of Registration for

Professional Engineers and Land Surveyors)

[Filed March 24, 1999, 11:43 a.m.]

Subject of Possible Rule Making: New section title providing direct supervision. This new rule will be placed in new chapter 196-23 WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.43.035.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: This new section was taken out of WAC 196-24-095 Seals, and written as a separate rule in order to more clearly define "direct supervision" and to make it easier to find that definition in the rules.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Persons may comment by mail, fax or phone to Rick

Notestine, Program Director, P.O. Box 9649, Olympia, WA 98507-9649, fax (360) 664-2551, phone (360) 586-7298. Draft language of any rule changes will be distributed to the board's rule making mailing list.

March 24, 1999

George A. Twiss, Executive Director

Board of Registration for

Professional Engineers and Land Surveyors

WSR 99-07-136**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING**

(Board of Registration for

Professional Engineers and Land Surveyors)

[Filed March 24, 1999, 11:44 a.m.]

Subject of Possible Rule Making: New section titled signature. This new rule be placed in new chapter 196-23 WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.43.035.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: This new section was taken out of WAC 196-24-095 Seals, and written as a separate rule in order to more clearly define what is meant by an "electronic signature" and to describe how and when a licensee's signature should be used.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Persons may comment by mail, fax or phone to Rick Notestine, Program Director, P.O. Box 9649, Olympia, WA 98507-9649, fax (360) 664-2551, phone (360) 586-7298. Draft language of any rule changes will be distributed to the board's rule making mailing list.

March 24, 1999

George A. Twiss, Executive Director

Board of Registration for

Professional Engineers and Land Surveyors

WSR 99-07-114
EXPEDITED REPEAL
DEPARTMENT OF AGRICULTURE

[Filed March 24, 1999, 9:03 a.m.]

The Following Sections are Proposed for Expedited Repeal: Entire chapter 16-88 WAC, Control of tuberculosis in cervidae.

Rules Proposed for Expedited Repeal Meet the Following Criteria: Rule is no longer necessary because of changed circumstances.

Any person who objects to the repeal of the rule must file a written objection to the repeal within thirty days after publication of this preproposal statement of inquiry.

Address Your Objection to: Dannie McQueen, Administrative Regulation Manager, Administrative Regulation Program, P.O. Box 42560, Olympia, WA 98502-2560.

Reason the Expedited Repeal of the Rule is Appropriate: This rule was adopted in 1993 before there was a federal uniform method and rules for tuberculosis in cervids. At that time rules for control of tuberculosis in cervids was an issue for the small but growing farmed deer and elk industry in this state. Since that time the industry has gone out of business or moved to other states. Since 1993 no cervid farms have applied for any of the classifications offered in the rule. Movement rules for cervids into the state are covered by chapter 16-54 WAC or federal regulations. Without a viable industry which would be subject to this rule, there is no practical reason to keep this rule.

Repealing this rule would not have an effect on animal health in this state. There is no longer a viable cervid industry since the Department of Wildlife rules declared exotic deer as deleterious exotic species and made the commercial raising of native cervids illegal. Fallow deer and reindeer may be raised in the state with registry with Department of Fish and Wildlife, however, there has been no movement of these deer for a number of years except for a few reindeer around the Christmas season.

Since this rule was developed, the USDA, APHIS has published an addendum to the uniform methods and rules (UMR) for bovine tuberculosis eradication that provides program standards and procedures to control and eradicate tuberculosis in farm or ranch raised cervidae. The addendum has been revised several times since 1994.

March 19, 1999
 Candace Jacobs, DVM
 Assistant Director

WSR 99-07-124
EXPEDITED REPEAL
DEPARTMENT OF AGRICULTURE

[Filed March 24, 1999, 9:46 a.m.]

The Following Sections are Proposed for Expedited Repeal: WAC 16-752-115, 16-752-120, 16-752-125, 16-752-130, 16-752-135, 16-752-140, 16-752-145, 16-752-146, 16-752-147, 16-752-150, 16-752-155, 16-752-160, 16-752-165, and 16-752-170.

Rules Proposed for Expedited Repeal Meet the Following Criteria: Rule is no longer necessary because of changed circumstances.

Any person who objects to the repeal of the rule must file a written objection to the repeal within thirty days after publication of this preproposal statement of inquiry.

Address Your Objection to: Mary A. Martin Toohey, Assistant Director, Washington State Department of Agriculture, Lab Services Division, P.O. Box 42560, Olympia, WA 98504-2560.

Reason the Expedited Repeal of the Rule is Appropriate: The portions of the current noxious weed control rules proposed for expedited repeal set forth procedures for the State Noxious Weed Control Board to implement a noxious weeds grant program. This program is authorized in statute (RCW 17.10.250), but it has not been funded or active since 1993. The "noxious weed control account fund" no longer exists, and the State Noxious Weed Control Board has no plans to request its reinstatement. At the March 16, 1999, meeting of the State Noxious Weed Control Board, the board advised Mary Toohey, the Washington State Department of Agriculture representative, unanimously that these WAC sections should be repealed, as they are obsolete.

March 24, 1999
 Mary A. Martin Toohey
 Assistant Director



WSR 99-07-016
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed March 9, 1999, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-24-003.

Title of Rule: Chapter 308-56A WAC, General procedures for making applications for ownership.

Purpose: 1. To meet the criteria set forth in Governor Locke's Executive Order 97-02.

2. To clarify rules and help make them more comprehensible.

Statutory Authority for Adoption: RCW 46.01.110, 46.12.040, 46.16.216.

Summary: Amending WAC 308-56A-140 Department temporary, 308-56A-160 Model year—How determined, 308-56A-200 Lost title and 308-56A-215 Erasures and alterations and incorrect information; and repealing WAC 308-56A-145 Special mailing and 308-56A-205 Release of interest.

Reasons Supporting Proposal: Meet criteria supporting Governor Locke's Executive Order 97-02.

Name of Agency Personnel Responsible for Drafting: Patrick J. Zlateff, 1125 Washington Street S.E., Olympia, 902-3718; Implementation and Enforcement: Eric Andersen, 1125 Washington Street S.E., Olympia, 902-4045.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Special procedures for obtaining a vehicle ownership document.

The anticipated effects will be a clarification of the above-mentioned requirements.

Proposal Changes the Following Existing Rules: Clarify sections needed and repeal those no longer required.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in any industry.

RCW 34.05.328 does not apply to this rule adoption. The contents of the proposed rules are explicitly and specifically dictated by statute.

Hearing Location: Highways-Licenses Building, Conference Room 307, 1125 Washington Street S.E., Olympia, WA 98507, on April 27, 1999, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Patrick J. Zlateff by April 26, 1999, TDD (360) 664-8885, or (360) 902-3718.

Submit Written Comments to: Patrick J. Zlateff, Rules Coordinator, Title and Registration Services, P.O. Box 2957, Olympia, WA 98507-2957, fax (360) 664-0831, by April 26, 1999.

Date of Intended Adoption: May 22, 1999.

March 8, 1999

Deborah McCurley, Administrator
 Title and Registration Services

AMENDATORY SECTION (Amending WSR 93-14-084, filed 6/30/93, effective 7/31/93)

WAC 308-56A-140 (~~Departmental~~) **Department temporary permit.** (~~When proper vehicle ownership documentation is not immediately available, the department may, at its option, issue a temporary permit. Department temporary permits are valid for no longer than sixty days and authorize operation of the vehicle upon the roadways of this state. Temporary permits are available at all vehicle licensing offices.~~

~~Application for a temporary permit shall be on forms provided by the department and must be completed in accordance with the instructions issued by the department. The temporary permit fee and all title and licensing fees, except any fee for license plates, must be paid at the time the temporary permit is issued.~~

~~The license plate fee will be collected when the license plates are issued. If license fees are being paid monthly in accordance with RCW 46.16.135, the license fees paid must be for at least the entire term of the temporary permit being issued.~~

~~The hard copy of the temporary permit must be displayed according to instructions on the permit and the signed registration must be carried in the vehicle or the towing vehicle.)~~ **(1) What is a department temporary permit? A department temporary permit is a permit issued in lieu of registration and license plates when:**

(a) The vehicle is not sold by a licensed Washington dealer;

(b) The vehicle is not currently licensed in Washington; and

(c) Proper vehicle documentation is not available but is likely to be available within sixty days.

(2) Where do I obtain a department temporary permit? Department temporary permits are available at all Washington vehicle license agencies.

(3) What fees are required to be paid when applying for a department temporary permit? In addition to other fees prescribed by law, the department temporary permit fee, title application fee and licensing fees must be paid at the time the department temporary permit is issued. Fees for license plates shall be collected when the department temporary permit is cleared and the license plate(s) are issued.

(4) How do I display the department temporary permit? The hard copy of the department temporary permit must be displayed according to instructions on the permit and the signed registration must be carried in the vehicle or the towing vehicle.

(5) How many months of gross weight must I purchase with a department temporary permit for my vehicle, which is eligible for monthly gross weight? If you have a vehicle that is eligible for monthly gross weight, you must purchase a minimum of two months gross weight license to correspond with the duration of the department temporary permit. You may receive credit as described in WAC 308-96A-220 for gross weight license already purchased.

(6) How do I obtain license plates and registration for my vehicle that has been issued a department temporary permit? You may obtain license plates and new registration for your vehicle that has been issued a department temporary

PROPOSED

permit by submitting the necessary documents and fees to any Washington vehicle license agency.

(7) What fees are required to be paid when clearing a department temporary permit? In addition to other fees as prescribed by law, the title application fee and license plate fees must be paid at the time the temporary permit is cleared.

(8) How do I obtain a replacement vehicle title application/registration certificate portion of the department temporary permit, if the original is not available? You may obtain a photocopy of the certificate portion of the department temporary permit only at the issuing county's auditor/agent office. If the department temporary permit was issued at a department-staffed vehicle licensing office, you must obtain a replacement from that office. You must provide the vehicle identification number or the department temporary permit number.

(9) How do I obtain a replacement for the department temporary permit placard which is displayed in the vehicle window? You may obtain a replacement department temporary permit placard at any vehicle services office. You must provide the vehicle title application/registration certificate, VIN, or the department temporary permit number.

(10) How do I obtain a replacement department permit if both the application/registration certificate and the display placard are lost, stolen, or destroyed? You may obtain a photocopy of the vehicle title application/registration certificate portion of the department temporary permit only at the issuing county's auditor/agent office. If the department temporary permit was issued at a department-staffed vehicle licensing office, you must obtain a replacement from that office. You must provide the vehicle identification number or the department temporary permit number. The replacement department temporary permit placard may also be obtained at these locations.

AMENDATORY SECTION (Amending WSR 97-07-014, filed 3/11/97, effective 4/11/97)

WAC 308-56A-160 Model year—How determined. ((Model year is the year used to designate a discrete vehicle model irrespective of the calendar year in which the vehicle was actually produced so long as the actual production period is less than two years.

(1) The model year for a vehicle, including kit vehicles defined in RCW 46.04.251, is the model year assigned by the manufacturer. The manufacturer shall adopt a standard for assigning model year based on either the date of manufacture or features of the vehicle. The standard must be such that all vehicles assigned a model year which are manufactured on the same date with the same features are assigned the same model year. The model year shall be designated on the manufacturer's certificate of origin (MCO) or similar documents provided by the completing vehicle manufacturer. The model year of a kit vehicle shall not be the model year of the vehicle the kit replicates.

(2) Manufacturers of chassis or incomplete vehicles sold to motor home or recreational vehicle manufacturers who issue separate MCOs need not assign model year to these vehicles. The final stage manufacturer of these vehicles shall

assign the model years as provided in subsection (1) of this section. In the event a model year is assigned by both the incomplete vehicle manufacturer and the completing manufacturer, the completing manufacturer assigned model year shall be used on the certificates of ownership and registration.

(3) In the event an original manufacturer has not assigned a model year or the vehicle is rebuilt, home made, street rod assembled, or is a kit vehicle, the Washington state patrol or other person authorized by the director to make vehicle inspections will use the following criteria to establish the model year:

(a) The model year for a homemade vehicle will be the year of inspection for the purpose of making an application for certificate of ownership.

(b) When possible, the model year will be determined from the vehicle identification number (VIN). When the VIN does not identify the production date, corresponding production records of the original manufacturer shall be used.

(c) The model year for assembled vehicles will be determined by the Washington state patrol based on the date of manufacture of the vehicle which the vehicle most closely resembles.

(4) For purposes of this section the following terms shall have the meanings indicated:

(a) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused vehicles or remanufactures vehicles. Manufacture shall include the assembling, altering, or converting of a vehicle to the extent the vehicle qualifies for a change in the series and body type appearing on its title, MCO or similar document.

(b) "Incomplete vehicle" means an assemblage consisting, as a minimum, of frame and chassis structure, power train, steering system, suspension system, and braking system, to the extent that those systems are to be part of the completed vehicle, that requires further manufacturing operation, other than the additions of readily attachable components, such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, to become a completed vehicle.

(c) "Model" means a name which a manufacturer applies to a family of vehicles of the same type, make, line, series, and body type.

(d) "Assembled and homemade vehicles" have the meaning provided in WAC 308-56A-455. (1) **How is a model year assigned to a vehicle?** The model year for a vehicle, as defined in RCW 46.04.251 is the model year assigned by the manufacturer.

(2) **Are there standards for assigning model years that manufacturers must follow?** Manufacturers shall adopt standards for assigning model years based on either the date of manufacture or features of the vehicle. The standards shall be such that all vehicles assigned a model year that are manufactured in the same year with the same features are assigned the same model year. Manufacturers shall designate the model year on the manufacturer's certificate of origin (MCO) or similar documents.

(3) **How are model years assigned to vehicles that are incomplete, such as certain recreational vehicles?** Manufacturers of chassis or incomplete vehicles sold to motor

home or recreational vehicle manufacturers who issue separate MCOs need not assign model year to these vehicles. The final stage manufacturer of these vehicles shall assign the model year as provided in subsection (2) of this section. In the event a model year is assigned by both the incomplete vehicle manufacturer and the completing manufacturer, the completing manufacturer assigned model year shall be used on the certificates of ownership and registration.

(4) How will a model year be assigned to my vehicle if the manufacturer did not assign one? If an original manufacturer has not assigned a model year, or your vehicle is rebuilt, homemade, is a street rod, assembled or is a kit vehicle, the Washington state patrol or other person authorized by the director to make vehicle inspections shall use the following criteria to establish the model year:

(a) The model year for a homemade vehicle will be the year of inspection for the purpose of making an application for certificate of ownership.

(b) When possible, the model year will be determined from the vehicle identification number (VIN). When the VIN does not identify the production date, corresponding production records of the original manufacturer shall be used.

(c) The model year for assembled vehicles will be determined by the Washington state patrol based on the date of manufacture of the vehicle which the vehicle most closely resembles. The model year of a kit vehicle shall not be the model year of the vehicle the kit replicates.

(5) For purposes of this section the following terms shall have the meanings indicated:

(a) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused vehicles or remanufactured vehicles. Manufacture shall include the assembling, altering, or converting of a vehicle to the extent the vehicle qualifies for a change in the series and body type appearing on its title, MCO or similar documents.

(b) "Incomplete vehicle" means an assemblage consisting of, as a minimum, frame and chassis structure, power train, steering system, suspension system and braking system, to the extent that those systems are to be part of the completed vehicle, that requires further manufacturing operation, other than the additions of readily attachable components, such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, to become a completed vehicle.

(c) "Model" means a name which a manufacturer applies to a family of vehicles of the same type, make, line, series, and body type.

(d) "Assembled and homemade vehicles" have the meaning provided in WAC 308-56A-455.

AMENDATORY SECTION (Amending Order MV 208, filed 7/31/74)

WAC 308-56A-200 (~~Lost title.~~) Replacement Washington certificate of ownership. ((If the last issued certificate of title has been lost or destroyed:

(1) An application for a duplicate certificate of title must be accompanied by an affidavit of loss or destruction in a form approved by the department and signed by the legal owner.

(2) An application for transfer or reissue of title may be accepted if accompanied by

(a) An affidavit of loss or destruction in a form approved by the department signed by the legal owner of record; and

(b) A proper release of interest.

(3) And the title is from a foreign state or jurisdiction;

(a) The owner of record in that foreign state must apply for a duplicate title from the state issuing the certificate of title or registration and that duplicate certificate must be attached to the application for a Washington certificate of title.

(b) If undue hardship would result from the necessity of obtaining a duplicate certificate, a letter verifying the ownership of the vehicle from the issuing state will be accepted in lieu of a foreign certificate if that letter of verification is no more than 30 days old.

(c) If the foreign certificate or letter of verification shows a person other than the person making the application for Washington certificate of title, the person or persons shown must release his/her or their interest either by endorsement on the certificate or on a release of interest form.)) (1) **What is a replacement certificate of ownership?** A replacement certificate of ownership replaces certificates of ownership that are:

(a) Lost;

(b) Mutilated;

(c) Stolen; or

(d) Destroyed.

(2) **What documents and information do I need to provide to the department to obtain a replacement certificate of ownership?** You need to provide an explanation of the disposition of the certificate of ownership that you are replacing as well as a vehicle description to include, but not limited to, the model year, make, and vehicle identification number or the Washington license plate number. This information may be presented to the department on a notarized or certified:

(a) Approved affidavit of loss form, letter of request from the owner of record; or

(b) Affidavit in lieu of title.

(3) **Who needs to sign the request for a replacement certificate of ownership?** All legal owners shown on department records should sign the request for the replacement certificate of ownership. Their signatures must be certified or notarized in accordance with WAC 308-56A-275.

(4) **What do I do if I find my certificate of ownership after I receive a replacement?** Once a replacement certificate of ownership is issued, any previously issued certificate of ownership is void and, if found, must be destroyed.

AMENDATORY SECTION (Amending Order MV 208, filed 7/31/74)

WAC 308-56A-215 (~~Incorrect endorsements or~~) **Erasures and alterations and incorrect information.** (1) ((If a title or application has been signed in error, a line must be drawn through the erroneous signature. An affidavit must be attached to explain when, why and by whom the signature was stricken. A release of interest is required from the person signing in error unless that person has signed the affidavit.

~~(2) If an erasure has been made on a title or application, an affidavit must be attached. The affidavit must state why and by whom the erasure was made. A release of interest must be signed by the one whose name was erased.~~

~~(3) A name erroneously shown on the title as the purchaser must have either a release of interest from the erroneously named purchaser or a statement by the owner of record that the sale was not completed.)~~ **Will the department accept a certificate of ownership application for certificate of ownership or supporting documents if it has been altered?** The department may refuse to accept any certificate of ownership when ownership or vehicle information has been altered. A replacement ownership document may be required.

(2) What does the department require when a certificate of ownership, an application for certificate of ownership or supporting documents has been altered?

(a) The department may require an affidavit explaining any erasure or alteration on the application, certificate of ownership, or any supporting documentation.

(b) The department may require a notarized/certified release of interest when:

(i) A signature or name that has been altered or erased appears on an application; or

(ii) A security interest is named to be shown on the new certificate of ownership and the applicant claims there is no lien; or

(iii) A security interest is shown incorrectly or is altered on the application for certificate of ownership. In lieu of a release of interest, Washington licensed vehicle dealers may attach an affidavit explaining the error in the security interest.

(c) If an erasure has been made on a title or application, an affidavit must be attached. The affidavit must state why and by whom the erasure was made. The one whose name was erased must sign a release of interest.

(d) A name erroneously shown on the title as the purchaser must have either a release of interest from the erroneously named purchaser or a statement by the owner of record that the sale was not completed.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 308-56A-145 Special mailing.
- WAC 308-56A-205 Release of interest.

WSR 99-07-025
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Medical Assistance Administration)

[Filed March 10, 1999, 8:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 97-20-014.

Title of Rule: Chapter 388-527 WAC, Estate recovery.

Purpose: Eliminates exemptions from estate recovery for clients with community property agreements, exempts costs of state-funded protective services from estate recovery and adds effective dates. Chapter 388-527 WAC has been rewritten to comply with the principles of Executive Order 97-02.

Statutory Authority for Adoption: RCW 43.20B.080 and 74.08.090.

Statute Being Implemented: RCW 74.34.010 and 43.20B.080.

Summary: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Joanie Scotson, Medical Assistance Administration, 617 8th S.E., Olympia, WA, (360) 753-7462; Implementation and Enforcement: Margaret French, Office of Financial Recovery, P.O. Box 9501, Olympia, WA, (360) 664-5500.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is necessary because of federal law, 42 USC 1396p and state court decision, Washington State Supreme Court Dec. 636188/63713-0.

Explanation of Rule, its Purpose, and Anticipated Effects: See Purpose above.

Proposal Changes the Following Existing Rules: See Purpose above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses. It concerns eligibility policy and affects only clients and staff.

RCW 34.05.328 applies to this rule adoption. These rules do meet the definition of a significant legislative rule but DSHS is exempt from preparing a cost benefit analysis under RCW 34.05.328 (5)(b)(vii).

Hearing Location: Lacey Government Center (behind Tokyo Bento Restaurant), 1009 College Street S.E., Room 104-B, Lacey, WA 98503, on May 11, 1999, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Paige Wall by April 26, 1999, phone (360) 902-7540, TTY (360) 902-8324, e-mail pwall@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Paige Wall, Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 902-8292, by May 11, 1999.

Date of Intended Adoption: No sooner than May 12, 1999.

February 24, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

PROPOSED

Chapter 388-527 WAC

~~((MEDICAL OVERPAYMENT/REPAYMENT))~~
ESTATE RECOVERYNEW SECTION

WAC 388-527-2700 Purpose. The department will recover from the estate of a deceased client, the cost of medical care correctly paid on the client's behalf by the department as described by this chapter.

AMENDATORY SECTION (Amending Orders 3893 and 3893A, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95)

WAC 388-527-2730 Estate recovery definitions.
~~((1)(a))~~ For estate recovery purposes(~~(, "estate" includes)~~):

~~((i) For a client who dies before July 1, 1995 all real and personal property and any other assets that pass upon the client's death:~~

~~(A) Under the client's will;~~

~~(B) By intestate succession pursuant to chapter 11.04 RCW; or~~

~~(C) Under chapter 11.62 RCW; or~~

~~((ii)) "Estate" means all real and personal property and any other assets that pass upon the client's death under the client's will or by intestate succession pursuant to chapter 11.04 RCW or under chapter 11.62 RCW. An estate also includes:~~

~~(1) For a client who (~~dies~~) died after June 30, 1995 (~~all real and personal property and any other assets that pass upon the client's death:~~~~

~~(A) Under the client's will;~~

~~(B) By intestate succession pursuant to chapter 11.04 RCW; or~~

~~(C) Under chapter 11.62 RCW; and~~

~~(D)) and before July 27, 1997, nonprobate assets as defined by RCW 11.02.005, except property passing through a community property agreement(:~~

~~(b)) ; or~~

~~(2) For a client who died after July 26, 1997, nonprobate assets as defined by RCW 11.02.005.~~

The value of the estate shall be reduced by any valid liability against the deceased client's property at the time of death.

~~((2)) "Long-term care services" means the services administered directly or through contract by the aging and adult services administration of the department, including but not limited to nursing facility care and home and community services.~~

"State-funded long-term care" means the long-term care services that are paid only with state funds (~~and do not include federal funds~~).

~~((3)) "Medical assistance" means the federal aid medical care program provided (~~to categorically needy persons as defined~~) under Title XIX of the Federal Social Security Act.~~

NEW SECTION

WAC 388-527-2733 No liability for medical care. (1) The client's estate is not liable for services provided before July 26, 1987.

(2) The client's estate is not liable when the client died before July 1, 1994 and on the date of death there was:

(a) A surviving spouse; or

(b) A surviving child who was either:

(i) Under twenty-one years of age; or

(ii) Blind or disabled as defined under chapter 388-511 WAC.

(3) The estate of a frail elder or vulnerable adult under RCW 74.34.010 is not liable for the cost of adult protective services (APS) paid for only by state funds.

NEW SECTION

WAC 388-527-2737 Deferring recovery. When a client died after June 30, 1994 and received services after June 30, 1994, recovery from the estate is deferred until:

(1) The death of the surviving spouse, if any; and

(2) There is no surviving child who is:

(a) Under twenty-one years of age, or

(b) Blind or disabled as defined under chapter 388-511 WAC.

AMENDATORY SECTION (Amending Orders 3893 and 3893A, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95)

WAC 388-527-2740 Age when recovery applies. The client's age and the date when services were received determines whether the client's estate is liable for the cost of medical care provided (~~depends, in part, upon the client's age and when the services were received~~). Subsection (1) of this section covers liability for medical assistance and subsection (2) covers liability for state-funded long-term care services. An estate may be liable under both subsections.

(1) For a client who on July 1, 1994 was:

(a) (~~If a client was~~) Age sixty-five or older (~~on July 1, 1994~~), the client's estate is liable for medical assistance that was subject to recovery and which was provided on and after the date the client became age sixty-five(~~(-)~~) or after July 26, 1987, whichever is later;

(b) (~~If the client was~~) Age fifty-five through sixty-four years of age (~~on July 1, 1994~~), the client's estate is liable for medical assistance that was subject to recovery and which was provided on and after July 1, 1994(~~(-)~~); or

(c) (~~If a client was~~) Under age fifty-five (~~on July 1, 1994~~), the client's estate is liable for medical assistance subject to recovery provided on and after the date the client became age fifty-five.

(2) The client's estate is liable for state-funded long-term care services provided on and after July 1, 1995 regardless of the client's age when the services were provided.

AMENDATORY SECTION (Amending Order 3893, filed 9/6/95, effective 10/7/95)

WAC 388-527-2742 Services subject to recovery. The medical services the client received and the dates when services were provided determines whether the client's estate is liable for the medical care provided depends, in part, upon what medical services the client received and the dates when services were provided. Subsection (1) of this section covers liability for medical assistance and subsection (2) covers liability for state-funded long-term care services. An estate can be liable under both subsections.

(1)~~((a))~~ The client's estate is liable for:

(a) All medical assistance services provided ((before July 1,)) from July 26, 1987 through June 30, 1994;

(b) The ~~((estate is liable for the))~~ following medical assistance services provided after June 30, 1994 and before July 1, 1995:

(i) Nursing facility services;

(ii) Home and community-based services; and

(iii) ~~((Related))~~ Hospital ((services)) and prescription drug services provided to a client while receiving nursing facility services at home and community-based services.

(c) The ~~((estate is liable for the))~~ following medical assistance services provided after June 30, 1995:

(i) Nursing facility services;

(ii) Home and community-based services;

(iii) Adult day health;

(iv) Medicaid personal care;

(v) Private duty nursing administered by the aging and adult services administration of the department; and

(vi) ~~((Related))~~ Hospital and prescription ((drugs services)) drug services provided to a client while receiving services described under (c)(i), (ii), (iii), (iv), or (v) of this subsection.

(2) The client's estate is liable for all state-funded long-term care services and related hospital and prescription drug services provided after June 30, 1995.

AMENDATORY SECTION (Amending Orders 3893 and 3893A, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95)

WAC 388-527-2750 Waiver of recovery if undue hardship. ~~((The department shall waive))~~ Recovery is waived under this section when recovery would ((work)) cause an undue hardship, except as provided in subsection (3) of this section. This waiver is limited to the period during which undue hardship exists.

(1) Undue hardship exists when:

(a) The estate subject to adjustment or recovery is the sole income-producing asset of one or more of the heirs and income is limited; or

(b) Recovery would result in the impoverishment of one or more of the heirs; or

(c) Recovery would deprive an heir of shelter and the heir lacks the financial means to obtain and maintain alternative shelter.

(2) Undue hardship does not exist when:

(a) The adjustment or recovery of the client's cost of assistance would merely cause the client's family members inconvenience or restrict the family's lifestyle.

(b) The heir divests assets to qualify under the undue hardship provision.

(3) ~~((The department shall not waive recovery based on undue hardship))~~ When a deceased client's assets were disregarded in connection with a long-term care insurance policy or contract under chapter 48.85 RCW, recovery is not waived.

(4) ~~((A person who requests the department to waive recovery in whole or in part, and who suffers a loss because the request is not granted, may contest the department's decision in an adjudicative proceeding. The department's decision shall))~~ When a waiver is not granted, the department will provide notice to the person who requested the waiver. The denial of a waiver must state;

(a) The requirements ~~((for))~~ of an application for an adjudicative proceeding ~~((and state))~~ to contest the department's decision to deny the waiver; and

(b) Where assistance ~~((might))~~ may be obtained to make ((an)) such application. ((The proceeding shall be governed by chapters 34.05 RCW and 388-08 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-08 WAC, the provision in this section governs.))

(5) A person may contest the department's decision in an adjudicative proceeding when that person requested the department waive recovery, and suffered a loss because that request was not granted.

(6) An application for an adjudicative proceeding under this section must:

(a) Be in writing;

(b) State the basis for contesting the department's denial of the request to waive recovery;

(c) Include a copy of the department's denial of the request to waive recovery;

(d) Be signed by the applicant ~~((and the state))~~ and include the applicant's address and telephone number;

(e) Be served within twenty-eight days of the date the applicant received the department's decision denying the request for a waiver. ~~((An application filed up to thirty days late may be treated as if timely filed))~~ If the applicant shows good cause ((for filing)), the application may be filed up to thirty days late; and

(f) Be served on the office of financial recovery ~~((in a manner which shows proof of receipt, such as personal service or certified mail, return receipt requested. The mailing address of the Office of Financial Recovery is: P.O. Box 9501, Olympia WA 98507-9501. The physical location of the Office of Financial Recovery is Capitol View Building, Second Floor, 712 Pear Street Southeast, Olympia, Washington))~~ (OFR) as described in WAC 388-527-2795.

(7) An adjudicative proceeding held under this section shall be governed by chapters 34.05 RCW and 388-08 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-08 WAC, the provision in this section governs.

AMENDATORY SECTION (Amending Orders 3893 and 3893A, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95)

WAC 388-527-2754 Assets not subject to recovery and other limits on recovery. (1) ~~((If a client died before July 25, 1993 with no surviving spouse or blind or disabled child, but with a surviving child,))~~ Recovery does not apply to the first fifty thousand dollars of the estate value at the time of death and ~~((recovery))~~ is limited to thirty-five percent of the remaining value of the estate for services the client:

(a) Received before July 25, 1993; and

(b) When the client died with:

(i) No surviving spouse;

(ii) No surviving child who is:

(A) Under twenty-one years of age;

(B) Blind; or

(C) Disabled.

(iii) A surviving child who is twenty-one years of age or older.

(2) ~~((H))~~ For services received after July 24, 1993, all services recoverable under WAC 388-527-2742 will be recovered, even from the first fifty thousand dollars of estate value that is exempt above, except as set forth in subsection (3) of this section.

(3 For a client ~~((died))~~ who received services after July 24, 1993 and before July 1, 1994, ~~((the department shall not seek recovery against))~~ the following property, up to a fair market value of two thousand dollars, is not recovered from the estate of the client:

(a) Family heirlooms,

(b) Collectibles,

(c) Antiques,

(d) Papers,

(e) Jewelry,

(f) Photos, and

(g) Other personal effects of the deceased client and to which a surviving child is entitled.

AMENDATORY SECTION (Amending Orders 3893 and 3893A, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95)

WAC 388-527-2790 Filing a lien against real property. (1) ~~((The department shall file liens, seek adjustment, or otherwise effect recovery))~~ Liens are filed, adjustment sought, and other recoveries effected by the department for medical assistance or state-funded long-term care, or both, correctly paid on behalf of a client ~~((as required by))~~ consistent with 42 U.S.C. 1396p and chapters 43.20B RCW and 388-527 WAC.

(2) When the department seeks to recover from a client's estate the cost of medical assistance or state-funded long-term care, or both, provided to the client, prior to filing a lien against the deceased client's real property, ~~((the department shall provide))~~ notice shall be given to:

(a) The probate estate's personal representative, if any; or

(b) ~~((The decedent's surviving spouse, if any; or~~

~~((e)))~~ Any other person ~~((having))~~ know to have title to

the affected property.

(3) Prior to filing a lien against any of the deceased client's real property, ~~((the department shall provide ascertained persons having))~~ a person known to have title to the property ~~((notice))~~ shall be notified and have an opportunity for an adjudicative proceeding ~~((The department shall))~~ as follows:

(a) ~~((Serve upon ascertained persons having))~~ Any person known to have title to the property shall be served with notice of intent to file lien, which shall state:

(i) The deceased client's name, social security number, if known, date of birth, and date of death;

(ii) The amount of medical assistance, or state-funded long-term care, or both, correctly paid on behalf of the deceased client the department seeks to recover;

(iii) The department's intent to file a lien against the deceased client's real property to recover the medical assistance or state-funded long-term care, or both, correctly paid on behalf of the deceased client;

(iv) The county in which the real property is located; and

(v) The right of the ~~((ascertained person having))~~ person known to have title to the property to contest the department's decision to file a lien by ~~((filing an application))~~ applying for an adjudicative proceeding with the office of financial recovery ~~((; and))~~ (OFR).

(b) ~~((Provide))~~ An adjudicative proceeding ~~((to))~~ can determine whether:

(i) The amount of medical assistance or state-funded long-term care, or both, correctly paid on behalf of the deceased client alleged by the department's notice of intent to file lien is correct; and

(ii) The deceased client had ~~((any))~~ legal title to the real property at the time of the client's death.

(4) An application for an adjudicative proceeding must:

(a) Be in writing;

(b) State the basis for contesting the department's notice of intent to file the lien;

(c) Be signed by the applicant and state the applicant's address and telephone number;

(d) Be served on ~~((the office of financial recovery))~~ (OFR) within twenty-eight days of the date the applicant received the department's notice of intent to file the lien. An application filed up to thirty days late may be treated as timely filed if the applicant shows good cause for filing late; and

(e) Be served on ~~((the office of financial recovery in a manner in which shows proof of receipt, such as personal service or certified mail, return receipt requested. The mailing address of the Office of Financial Recovery is P.O. Box 9501, Olympia WA 98507-9501. The physical location of the Office of Financial Recovery is Capitol View Building, Second Floor, 712 Pear Street Southeast, Olympia, Washington))~~ (OFR as described in WAC 388-527-2795.

(5) ~~((Upon receipt of an application for an adjudicative proceeding, the department shall provide notice of the proceeding to all other ascertained))~~ Persons ~~((having))~~ known to have title to the property shall be notified of the time and place of the adjudicative proceeding by the department when it receives an application for the same.

(6) An adjudicative proceeding under this section shall be governed by chapters 34.05 RCW and 388-08 WAC and this section. If a provision in this section conflicts with a pro-

PROPOSED

vision in chapter 388-08 WAC, the provision in this section governs.

(7) If no ~~((ascertained person having title to the property files an application for))~~ known title holder requests an adjudicative proceeding ~~((within))~~, a lien shall be filed by the department twenty-eight days ~~((of))~~ after the date ~~((the department served a))~~ that the notice of intent to file the lien ~~((, the department shall file a lien. The department shall file a lien))~~ letter was mailed. The lien will be filed against the deceased client's real property ~~((for))~~ in the amount of the correctly paid medical assistance or state-funded long-term care, or both ~~((, correctly paid on behalf of the deceased client alleged in the notice of intent to file lien))~~.

(8) If an adjudicative proceeding is conducted in accordance with this regulation, when the final agency decision is issued, the department will file a lien against the deceased client's real property for the amount of the correctly paid medical assistance or state-funded long-term care, or both, as established by that final agency decision.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

NEW SECTION

WAC 388-527-2795 Serving notices on office of financial recovery (OFR). (1) Legal service must be by personal service or certified mail, return receipt requested, to OFR at the address described in this section.

(2) The mailing address of the office of financial recovery is:

Office of Financial Recovery
P.O. Box 9501
Olympia, WA 98507-9501.

(3) The physical location of the office of financial recovery is:

Blake Office Park
4450 10th Avenue Southeast
Olympia, Washington.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-527-2735	Liability for medical care.
WAC 388-527-2752	Deferring recovery.
WAC 388-527-2753	No liability for medical care.

WSR 99-07-043

PROPOSED RULES

SECRETARY OF STATE

[Filed March 15, 1999, 9:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-01-065.

Title of Rule: Certification of election officials and review of county election procedures.

Purpose: To expand the certification of election officials; implement changes in statute and further define the procedure for county election procedure reviews.

Statutory Authority for Adoption: RCW 29.60.020.

Statute Being Implemented: RCW 29.60.070.

Summary: A lower level of certified election administrator is created and requirements for each level is defined. The election review sections are changed to comply with changes in statute as well as changing the report procedure.

Reasons Supporting Proposal: A need has been demonstrated at the counties for a lower level of certification. Changes in election reviews are due to statute changes and a need to further define the report process.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sheryl Moss, P.O. Box 40232, Olympia, WA 98504, (360) 664-3653.

Name of Proponent: Office of the Secretary of State and the Election Administration and Certification Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This chapter created a certification program for those who administer elections at the county and state. Additionally, county election procedures may be reviewed under circumstances outlined in RCW 29.60.070. The purpose of these changes is to create two levels of certified election officials, change the election review sections to reflect a change in statute and to further define the review report process. These changes will allow counties to certify more election staff members and provide clearer certification requirements. The election review process will be changed to allow county auditors input earlier in the process.

Proposal Changes the Following Existing Rules: Sections regarding certification of election administrators are changed to allow for an assistant election administrator level. Class credits are changed to class hours for easier understanding. Sections related to class credits are repealed. A change in statute removes the requirement to review county election procedures every four years. Sections are changed to reflect this statute. The review report process is changed to allow county auditors input earlier in the process.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Does not affect small businesses.

RCW 34.05.328 does not apply to this rule adoption. It only affects governmental agencies.

Hearing Location: 120 East Union, Room 106, Olympia, WA, on May 4, 1999, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Sheryl Moss by April 28, 1999, (360) 664-3653.

Submit Written Comments to: Sheryl Moss, P.O. Box 40232, Olympia, WA 98504-0232, fax (360) 664-3657, by May 3, 1999.

Date of Intended Adoption: May 5, 1999.

March 15, 1999
Donald F. Whiting
Assistant Secretary of State

Chapter 434-260 WAC

ELECTION REVIEW PROCESS AND CERTIFICATION OF ELECTION ADMINISTRATORS

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-010 Intent. It is the intent of this chapter to provide procedures to be followed in the conduct of election reviews and procedures to be followed for the certification and training of election administrators and assistant election administrators, and the training of county canvassing board members, and election observers as required by chapter 29.60 RCW.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-020 Definitions. As used in this chapter:

(1) "Election review" means the process of examining all or a part of a county's election policies and procedures and includes the review of any documentation of those procedures;

(2) "Election review staff" means the person or persons employed by the secretary of state for the purpose of conducting election reviews;

(3) ~~("Scheduled election review" means an election review conducted in each county at least once every four years. A scheduled election review may be held on one or more contiguous dates or may be conducted in phases;~~

(4) ~~"Election review checklists" means a document listing the various activities and tasks required to be completed in order to conduct an election in accordance with state law and administrative rules;~~

(5) ~~"Special election review" means an election review conducted in a county or counties whenever the unofficial returns of a primary or election indicate that a mandatory recount is likely in a race for the state legislature, congress, or state-wide office;~~

~~((6)) (4) "Preliminary ((scheduled)) review report of findings and recommendations" means that draft report made by the election review staff to the county auditor ((and the county canvassing board)) and which contains ((a copy of the election review checklist,)) any recommendations made by the review staff((;)) and a preliminary conclusion((evaluation of)) regarding the county's election procedures;~~

~~((7)) (5) "Draft election review report" means that report made by the election review staff to the county auditor and the designated members of the county canvassing board. The county canvassing board may respond to the draft election review report in writing and/or may appeal the report to the election administration and certification board.~~

(6) "Final ~~((scheduled))~~ election review report" means that report made by the election review staff which contains a

copy of the ~~((election review checklist,))~~ recommendations made by the review staff, any response to those recommendations made by the county auditor or the county canvassing board, and ~~((an evaluation))~~ a conclusion written by the staff;

~~((8)) (7) "Special review recommendations" means recommendations made by the review staff to the county auditor and the county canvassing board following the conduct of any special review;~~

~~((9) "Election certification and training board" means that board created pursuant to the provisions of RCW 29.60.010 which is responsible for hearing and ruling on any appeals made by a county auditor or any member of the county canvassing board following the conduct of an election review;~~

~~((10)) (8) "County auditor designee" is that person designated by the county auditor to participate in the review process, pursuant to the provisions of RCW 29.60.080. Such a designee must be certified ((as qualified)) as required by chapter 29.60 RCW.~~

(9) "Election administrator" means the person or persons appointed by the county auditor to election management positions as required by RCW 36.22.220 and the state director of elections, assistant directors of elections, certification and training program staff members, and any other secretary of state election division employees designated by the director of elections;

(10) "Assistant election administrator" means any person involved in the administration of elections at the state or county level who has been designated as an assistant election administrator by the state director of elections or the county auditor as applicable;

(11) "County canvassing board members" means those officers designated as such pursuant to the provision of RCW 29.62.015;

(12) "Election observers" means those persons designated by the county political party central committee chair person to observe the counting of ballots and related elections procedures;

(13) "Election administration and certification board" means that board created pursuant to the provisions of RCW 29.60.010;

(14) "Creditable training hours" means each creditable training hour contemplated in WAC 434-60-230 and shall consist of a minimum of fifty minutes of instructional activity programmed for the purpose of mastering information beneficial to the performance of the duties of administering elections.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-030 Scheduled reviews—Auditor request. Not later than ~~((March))~~ July 1, any county auditor may request that the secretary of state designate his or her county for ~~((a scheduled))~~ an election review ~~((during that calendar year))~~. The secretary of state shall, whenever practical, honor that request. ~~((In the event the secretary is unable to schedule a county that has requested review, he or she~~

PROPOSED

shall, not later than March 15, notify the county of his or her decision and the reasons for that decision.)

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-040 ((Scheduled)) **Election reviews—Secretary of state to designate.** Not later than ((March 15)) August 1 the secretary of state shall ((designate)) notify, in writing, the counties selected for ((a scheduled)) an election review ((during that calendar year)). The ((designation)) notification may include tentative dates for the conduct of the reviews. Whenever possible, ((scheduled)) election reviews shall be conducted on dates that are mutually agreeable to the secretary and to the county auditor, except that those parts of the review process dealing with the actual conduct and canvassing of the election itself must be conducted between election day and the certification of the election returns. In designating counties to be reviewed, the secretary shall take into consideration any complaints filed with his or her office pursuant to the provisions of RCW 29.60.070 (1)(b).

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-050 **Notice of review.** Whenever any ((scheduled)) election review is to be held in a county, the secretary of state shall provide written notice to the county auditor and to the chairs of the state committees of any major political party of the date and time the review is scheduled to begin. Notice for scheduled reviews shall be provided at least thirty days in advance of the review. Notice of a special review shall be provided to the county auditor and the political party chairs, by telephone or by electronic facsimile transmission, not later than twenty-four hours after the determination has been made to conduct the special review.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-060 **Notification of review process.** At least five days prior to ((a scheduled)) an election review, or as soon as possible prior to a special review, the review staff shall notify the county auditor of the number of persons conducting the review, any policies and procedures of special interest, and of any needs incidental to their review. The county auditor will provide adequate working accommodations, and copies of any county election policies or procedures, at the time scheduled for the review. Review staff will make every effort to minimize any disruption to the normal work of the county during the review process.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-080 **Special review—Legislative district race.** A special review shall be conducted in any legislative district contained entirely within one county whenever the unofficial returns from a legislative race indicate that a mandatory recount is likely. Such a review may be as exten-

sive as ((a scheduled)) an election review or may, at the secretary of state's discretion, concentrate only on those aspects of the election process dealing with ballot accountability, audit trail procedures, and ballot security. In any legislative district encompassing more than one county where the unofficial returns indicate that a mandatory recount is likely for a legislative district race, the secretary of state may direct a partial review in each county or may prioritize the review process. In prioritizing the review process, the secretary shall take into consideration the following factors:

- (1) The date and results of the last ((scheduled)) election review held in each county;
- (2) Any request from a county auditor for a special review;
- (3) Any written complaints filed with the secretary pursuant to the provisions of RCW 29.60.070 (1)(b);
- (4) Any written complaints, from any resident of the county regarding the specific election in question;
- (5) Any media stories or reports alleging election irregularities with respect to the election in question;
- (6) The date on which the determination is made that a special review is required.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-110 **Election review checklist.** The secretary of state shall develop an election review checklist, which shall be the basis for any ((scheduled)) election review and which shall also serve, in whole or in part, as the basis for any special review. The checklist shall be provided to every county auditor and to the chairs of the state central committees of each major political party. The checklist shall be provided to any other person requesting it at actual reproduction cost.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-120 **Adoption of election review checklist.** The election administration and certification ((and training)) board shall approve, by majority vote, the checklist to be used and additionally shall, in conjunction with the office of the secretary of state, adopt rules to cover those checklist activities not currently mandated by either statute or rule.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-130 **Preliminary ((scheduled)) review report of findings and recommendations.** As soon as practical, but in any event not later than ((January 15 of the year)) sixty days following ((a scheduled review)) the certification of the election, the review staff shall issue a preliminary ((scheduled)) review report of a findings and recommendations. The report shall be made to the county auditor ((and the county canvassing board only, and shall include, but not be limited to, the following:

- (1) ~~A copy of the completed election review checklist;~~

(2) A narrative description of recommendations made by the review staff;

(3) Any other information the review staff deems pertinent;

(4) A preliminary conclusion/evaluation of the county's election procedures).

The preliminary ((scheduled)) review report of findings and recommendations is exempt from public inspection and copying, as provided by RCW 42.17.310.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-140 ((Response from county auditor/canvassing board.)) Draft election review report. ((The county auditor or the county canvassing board may respond, in writing, to the preliminary report issued by the review staff. Such a response shall be provided to the review staff not later than thirty days following the issuance of the preliminary report, and may take issue with any aspect of the preliminary report or may detail what action is being taken by the county in response to any recommendations made by the review staff.)) As soon as practicable, but in any event not later than thirty days after the issuance of the preliminary report of findings and recommendations, the review staff shall issue a draft of the election review report to the county auditor and the designated members of the county canvassing board as provided in RCW 29.62.015, and shall include, but not be limited to, the following:

(1) A narrative description of recommendations made by the review staff;

(2) Any other information the review staff deems pertinent;

(3) A preliminary conclusion/evaluation of the county's election procedures.

The draft election review report is exempt from public inspection and copying, as provided by RCW 42.17.310.

NEW SECTION

WAC 434-260-145 Response to draft election review report. The county auditor shall have the right to respond, in writing, to the draft election review report. Such response shall be submitted to the review staff not later than ten days following the issuance of the draft election review report.

Nothing in this section shall prevent the review staff from modifying or amending its recommendations, based on the response received from the county auditor. In the event the review recommendations are modified or amended, only the final recommendations and any response by the county shall be made available for inspection and copying.

Any county auditor or other member of the county canvassing board may appeal the recommendations or the conclusion of any draft election review report to the election administration and certification board. Any appeal must be in writing, must detail specific exceptions made to the draft election review report, and must be filed with the board not later than thirty days following the issuance of the report.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-150 Final ((scheduled)) election review report. As soon as practicable, but in any event not later than ((March 1 of the year following a scheduled review)) forty-five days after the issuance of the draft election review report, the review staff shall issue a final ((scheduled)) election review report. The report shall be made to ((the county auditor and)) the county canvassing board, and shall include, but not be limited to, the following:

(1) ((A copy of the completed review checklist;

(2)) A narrative description of any general observations by the review staff;

((3)) (2) A narrative description of any recommendations made by the review staff;

((4)) (3) A response by the county auditor or the county canvassing board, if any;

((5)) (4) A ((conclusive/evaluation)) conclusion by the review staff. A copy of the final ((scheduled)) review report shall be provided to the chairperson of the election administration and certification ((and training)) board and a copy shall also be kept on file by the secretary of state.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-160 Special review recommendations. After conducting a special review, the review staff shall make any recommendations to the county auditor and the county canvassing board that they deem necessary to minimize the possibilities of any administrative errors being made either prior to or during the conduct of a mandatory recount. Such recommendations ((shall be in writing and)) shall be made orally to the county auditor not later than ((five days following the certification of the election returns or)) twenty-four hours in advance of the conduct of a mandatory recount((; whichever occurs first. The county auditor and/or the canvassing board may respond in writing to any recommendations, and such response shall become part of the official record of the special review)). A draft report of findings and recommendations shall be issued to the county auditor and the other members of the canvassing board not later than ten working days after the completion of the mandatory recount.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-170 Distribution of special review recommendations and response. ((In addition to those persons specified in WAC 434-60-160 as receiving a copy of the special review recommendations,)) The county auditor and the county canvassing board may respond in writing to any recommendations made by the review staff. Such response shall not be made later than fifteen working days after the completion of the mandatory recount. The review staff shall, after the county auditor and county canvassing board ((has)) have had an opportunity to respond, provide a copy of its recommendations and any response to any person requesting them at actual reproduction costs. Nothing in this section shall pre-

vent the review staff from modifying or amending its recommendations, based on the response received from the county auditor or county canvassing board. In the event the special review recommendations are modified or amended, only the final recommendations and any response by the county shall be made available for inspection and copying. In the event that the review staff does not modify or amend the draft recommendations within sixteen working days from the completion of the mandatory recount, the draft recommendations shall be considered to be final recommendations and shall be made available for inspection and copying. A copy of the special review recommendations and any response shall be provided to the chairperson of the election administration and certification ((and training)) board and a copy shall also be kept on file by the secretary of state.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-190 Processing of appeal. Within thirty days of an appeal being filed, the election administration and certification ((and training)) board shall meet to consider the appeal. The board may request that the county auditor, the review staff, or any other persons they deem appropriate, appear before them and assist them in their consideration of the appeal. The board shall have access to all written material prepared by the review staff, including a copy of the preliminary ((scheduled)) election review report and draft review report. The board, by majority vote, may accept the ((final)) draft report, may modify all or part of the ((final)) draft report, or may reject the report in total. In the event the board rejects the report, they shall direct that a new review be conducted and shall detail, in writing, the reasons for rejecting the original report. The board shall issue a written summary of its findings following any consideration of any appeal. The summary shall include the minutes of any meeting of the board to consider the appeal, a summary of the testimony of any witnesses appearing before them, and the reasons for any decision made.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-200 Standards for evaluating appeals. In determining whether or not an appeal filed pursuant to RCW 29.60.070 and WAC 434-60-160 should be upheld and the final scheduled review report either modified or set aside, the election administration and certification ((and training)) board shall consider the following factors:

- (1) Whether or not the course of action or activity recommended by the review staff is required by federal or state law or by administrative rule;
- (2) Whether or not the findings or the course of action or activity recommended by the review staff enhances the standardization and uniformity of election practices and procedures throughout the state;
- (3) Whether or not the findings or the course of action or activity recommended by the review staff enhances the security or integrity of the ballots or the ballot counting process;

- (4) Whether or not the course of action or activity recommended by the review staff would cause unnecessary hardship or expense to the county making the appeal.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-220 Certification of election administrators ~~((and deputy election administrators))~~. Election administrators ~~((and deputy election administrators may not))~~ shall become certified ~~((under this section until they have been involved in the administration of an even year general election and an odd year general election. For initial certification, an accumulation of fifteen credits is required which must include as a minimum))~~ upon completion of the following:

- (1) Completion of the secretary of state's mandatory orientation ((two credits)) course;
- (2) Two years' service ((in)) as an election ((administration (up to five credits))) administrator;
- (3) Taking and passing ((an)) the open book written test ((on Title 29 RCW, Title 434 WAC, and applicable state and federal election laws (two credits))) described in WAC 434-60-260;
 - (4) A minimum of forty hours participation in conferences and workshops involving elections related subjects or subjects approved by the election administration and certification board and sponsored by: ((Five credits minimum including two from (a) and/or (b) of this subsection))
 - (a) Washington Association of County Auditors;
 - (b) Secretary of state;
 - (c) The Elections Center;
 - (d) ~~((The International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT)))~~ Visiting other county election departments for training and/or orientation purposes (maximum four hours);
 - (e) The Federal Election Commission;
 - (f) Other national associations related to elections or government administration, approved by the Election Administration and Certification Board; or
 - (g) Other conferences or courses approved by the Election Administration and Certification Board.
 - (5) ~~((Any combination of the following: (a) Formal education (up to five credits); (b) Participation in other education activities (up to five credits);))~~ A high school diploma or its equivalent.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-240 Mandatory orientation. (1) All election administrators and ~~((deputy))~~ assistant election administrators shall, within eighteen months of undertaking those responsibilities or by July 1, 1994, whichever is later, attend a mandatory orientation workshop sponsored by the secretary of state to be eligible for certification. Mandatory orientation workshops will be offered for new election administrators and deputy election administrators annually.

(2) Mandatory orientation will consist of twelve hours of training in election-related subjects. ~~((The twelve hours will be worth two credits.))~~

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-260 Open book written test. ~~The ((secretary of state elections division))~~ certification and training program will prepare an open book written test on Title 29 RCW, Title 434 WAC, the Washington state Constitution, and other applicable state and federal election laws to be given annually to ~~((election administrators at the completion of the mandatory orientation session. Taking and passing the test will be worth two credits for initial certification))~~ candidates for certification as election administrators or assistant election administrators.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-300 Maintaining certification as an election administrator. After attaining initial certification the election administrator is responsible for ~~((maintenance of))~~ maintaining his or her certification ~~((on an ongoing basis)).~~ Maintenance of certification shall consist of:

(1) ~~((Election administration: The continued conduct of elections as an elections administrator or deputy elections administrator;))~~ Continuous service as an election administrator during the year for which maintenance is required;

(2) ~~((Continuing education: It is the position of the election administration and certification board that attendance at the annual election administrator's conference is of critical importance in maintaining certification as an election administrator. In addition to the annual election conference, continuing education shall consist of training programs which emphasize the duties and functions of administering elections.))~~ Participation in ~~((a))~~ an annual minimum of eighteen hours of continuing education ~~((shall be required each year to maintain certification. These training programs may include the following:~~

- ~~(a) Public administration;~~
- ~~(b) Public and media relations;~~
- ~~(c) Election and voter registration law;~~
- ~~(d) Personnel management;~~
- ~~(e) Organizational management;~~
- ~~(f) Information systems management;~~
- ~~(g) Voting systems and equipment;~~
- ~~(h) Budget or fiscal management;~~
- ~~(i) Stress management;~~
- ~~(j) Visiting other county election departments for training and/or orientation purposes;~~
- ~~(k) Additional professional or academic degrees;~~
- ~~(l) Any election oriented training offered by the organizations listed in WAC 434-60-220 (4)(a) through (g)).~~ This training may be received at any election oriented workshop or conference sponsored by any of the organizations listed in WAC 434-260-220. In addition to receiving credit for participation in election workshops or conferences, election administrators may also receive a maximum of two hours for visit-

ing other county election departments for training purposes and for any other training approved by the elections administration and certification board.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-310 ((Certification of minimum requirements)) Application for initial certification and maintenance of certification. The secretary of state shall ~~((distribute applications for certification annually to the county auditors, or equivalent. The county auditors shall, before December 1 of each year, certify to the election administration and certification board the completion of the requirements for initial certification for members of his or her staff)),~~ not later than July 1 of each year, distribute certification application forms to the county auditors. The county auditor in each county shall, not later than December 1 of each year, submit an application for certification for each employee for whom certification is requested.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-320 Training program for county canvassing board members. The secretary of state ~~((elections division))~~ shall prepare a training program for county canvassing board members ~~((or their designated representatives)).~~ The training ~~((program))~~ shall be made available ~~((to county canvassing board members annually at their respective conferences sponsored by the Washington Association of County Officials. Upon completion of the training program, county canvassing board members shall receive a certificate of completion. The training program for county canvassing board members or their designated representatives may include the following:~~

- ~~(1) Election law (Title 29 RCW; Title 434 WAC);~~
- ~~(2) Voting systems;~~
- ~~(3) Canvassing board policies and procedures))~~ on an annual basis.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-330 Training program for election observers. The secretary of state elections division shall prepare a training program for officially designated political party election observers. The training shall be made available ~~((regionally on an annual basis. Upon completion of the training, election observers shall receive a certificate from the office of the secretary of state. The training for election observers may include the following:~~

- ~~(1) Election law (Title 29 RCW; Title 434 WAC);~~
- ~~(2) Voting systems;~~
- ~~(3) Logic and accuracy test procedures))~~ upon receipt of a request, in writing, from the chair of the state central committee of any major political party. The training offered by this section does not replace the mandatory training for political party observers required by RCW 29.33.340.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-340 Training video tapes available. ~~((An election administrator, canvassing board member, or election observer who is unable to travel to training programs conducted under this chapter may request audio or video recordings of the training programs and shall receive a certificate of completion by the secretary of state, county auditor or equivalent.))~~ The secretary of state shall make copies of any available training videos to any person eligible for certification. Persons requesting videos may request full or partial certification credit from the administration and certification board.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-260-350 Approval of training programs. All training ~~((and orientation))~~ programs referenced in these rules ~~((shall))~~ may be subject to review ~~((and approval of))~~ by the election administration and certification board. Such review shall be only for the purpose of determining whether the training satisfies requirements for certification.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-260-070	Frequency of scheduled reviews.
WAC 434-260-180	Appeal from scheduled review report.
WAC 434-260-210	Intent.
WAC 434-260-215	Definitions.
WAC 434-260-230	Certification credit system.
WAC 434-260-250	Experience as an election administrator, or as a deputy election administrator.
WAC 434-260-270	Participation in conferences and workshops.
WAC 434-260-280	Formal education.
WAC 434-260-290	Participation in other education activities.

NEW SECTION

WAC 434-260-225 Certification of assistant election administrators. Assistant election administrators shall become certified upon completion of the following:

- (1) The secretary of state's mandatory orientation course;
- (2) Two years service in election administration;
- (3) Passing the open book test described in WAC 434-60-260;

(4) A minimum of twenty hours participation in conferences and workshops sponsored by those organizations listed in WAC 434-60-220(4);

(5) A high school diploma or equivalent.

NEW SECTION

WAC 434-260-235 Recertification of assistant election administrators as election administrators. Any person who is certified as an assistant election administrator may become certified as an election administrator upon completion of the following:

(1) Two years service in an election management position, as defined by the county auditor or the state director of elections;

(2) Minimum of forty hours participation in conferences and workshops sponsored by those organizations listed in WAC 434-60-220(4).

NEW SECTION

WAC 434-260-305 Maintaining certification as an assistant election administrator. After attaining initial certification the assistant election administrator is responsible for maintaining his or her certification. Maintenance of certification shall consist of participation in an annual minimum of six hours of continuing education. This training may be received at an election oriented workshop or conference sponsored by any of the organizations listed in WAC 434-60-220. In addition to receiving credit for workshops and conferences, election administrators may also receive credit for visiting other county election departments for training purposes and any other training approved by the elections administration and certification board.

WSR 99-07-049

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed March 15, 1999, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-04-046.

Title of Rule: WAC 180-77A-028 Procedures for initial approval of a vocational-technical teacher preparation program for candidates applying under WAC 180-77-031, 180-77A-029 Procedures for initial approval of a vocational-technical teacher preparation program for candidates applying under WAC 180-77-041, and 180-77A-080 Substitute pay for members of a program advisory committee.

Purpose: These rules recommend that colleges/universities and other agencies establishing vocational-technical teacher preparation programs use the criteria developed by the Vocational-Technical Education Council as guidelines. They also establish an advisory committee for vocational-technical teacher educator programs.

Statutory Authority for Adoption: RCW 28A.410.010 and 28A.305.130 (1) and (2).

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, (360) 753-6715.

Name of Proponent: State Board of Education, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: See above.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Chautauqua Lodge, 304 14th Street North, Longbeach, WA, on May 5, 1999, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Patty Martin by April 20, 1999, TDD (360) 664-3631, or (360) 753-6715.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, fax (360) 586-2357, by April 20, 1999.

Date of Intended Adoption: May 5, 1999.

March 12, 1999

Larry Davis

Executive Director

AMENDATORY SECTION (Amending WSR 97-04-087, filed 2/5/97, effective 3/8/97)

WAC 180-77A-028 Procedures for initial approval of a vocational-technical teacher preparation program for candidates applying under WAC 180-77-031. Using the criteria developed by the vocational-technical professional education council as a guideline, each college or university desiring to establish a vocational-technical teacher preparation program shall comply with the following in addition to all approval standards in chapter 180-78A WAC:

(1) Advise the vocational-technical professional education council of the desire to establish the vocational-technical teacher preparation program.

(2) Establish and maintain a representative program advisory committee including vocational teachers from the discipline, at least one first-year teacher (if applicable) who has completed the respective program, vocational administrators, and industry and/or community representatives.

The purpose of the program advisory committee is to advise, validate, and review the integrity of the respective vocational-technical teacher education program.

(3) Describe the planned process that the approved vocational-technical teacher preparation program will use to assess, in multiple ways, over time, its vocational-technical teacher candidates knowledge and skills as required by WAC 180-77A-165 and relevant subsections of WAC 180-77A-170, including, where appropriate, evidence related to positive impact on student learning.

((3)) (4) Describe the plan for assuring that adequate resources will be provided to support the program and that

faculty will have the appropriate qualifications and work experience for the roles assigned.

((4)) (5) Present the plan to the vocational-technical professional education council which shall review such plan and shall make a recommendation regarding program approval to the state board of education.

AMENDATORY SECTION (Amending WSR 97-04-087, filed 2/5/97, effective 3/8/97)

WAC 180-77A-029 Procedures for initial approval of a vocational-technical teacher preparation program for candidates applying under WAC 180-77-041. Using the criteria developed by the vocational-technical professional education council as a guideline, each program provider, which shall be a college or university, community or technical college, school district, educational service district, or any combination of the above, desiring to establish a vocational-technical teacher preparation program for candidates applying under WAC 180-77-041 shall comply with the following:

(1) Advise the vocational-technical professional education council of the desire to establish the vocational-technical teacher preparation program, identifying the agencies involved and the administrator of the program.

(2) Establish and maintain a representative program advisory committee including vocational teachers from the discipline, at least one first-year teacher (if applicable) who has completed the respective program, vocational administrators, and industry and/or community representatives.

The purpose of the program advisory committee is to advise, validate, and review the integrity of the respective vocational-technical teacher education program.

(3) Describe the planned process that the approved vocational-technical teacher preparation program will use to assess, in multiple ways, over time, its vocational-technical teacher candidates knowledge and skills as required by WAC 180-77A-165, including, where appropriate, evidence related to positive impact on student learning.

((3)) (4) Describe the plan for assuring that adequate resources will be provided to support the program and that faculty will have the appropriate qualifications and work experience for the roles assigned.

((4)) (5) Present the plan to the vocational-technical professional education council which shall review such plan and shall make a recommendation regarding approval to the state board of education.

NEW SECTION

WAC 180-77A-080 Substitute pay for members of program advisory committees. Service on program advisory committees by certificated employees is deemed by the state board of education as a committee formed for the purpose of furthering education within the state; and, the superintendent of public instruction, in conformance with the provisions of RCW 28A.300.035, shall make payments to school districts for needed substitutes.

PROPOSED

WSR 99-07-053
WITHDRAWAL OF PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Filed March 16, 1999, 8:44 a.m.]

Date of Intended Adoption: May 5, 1999.

March 16, 1999
Larry Davis
Executive Director

The Washington Utilities and Transportation Commission hereby withdraws proposed new rules in chapter 480-110 WAC as described in the CR-102 filed with your office on December 2, 1998, as WSR 98-24-123.

The commission intends to file a supplemental CR-102 at a later date.

Terrence Stapleton
for Carole Washburn
Secretary

AMENDATORY SECTION (Amending Order 3-85, filed 1/25/85)

WAC 180-40-215 Student rights. In addition to other rights established by law, each student served by or in behalf of a common school district shall possess the following substantive rights, and no school district shall limit these rights except for good and sufficient cause:

(1) No student shall be unlawfully denied an equal educational opportunity or be unlawfully discriminated against because of national origin, race, religion, economic status, sex, pregnancy, marital status, previous arrest, previous incarceration, or a physical, mental or sensory (~~handicap~~) disability.

(2) All students possess the constitutional right to freedom of speech and press, the constitutional right to peaceably assemble and to petition the government and its representatives for a redress of grievances, the constitutional right to the free exercise of religion and to have their schools free from sectarian control or influence, subject to reasonable limitations upon the time, place, and manner of exercising such right.

(3) All students possess the constitutional right to be secure in their persons, papers, and effects against unreasonable searches and seizures.

(4) All students shall have the right to be free from unlawful interference in their pursuit of an education while in the custody of a common school district.

(5) No student shall be deprived of the right to an equal educational opportunity in whole or in part by a school district without due process of law.

The foregoing enumeration of rights shall not be construed to deny or disparage other rights set forth in the constitution and the laws of the state of Washington or the rights retained by the people.

WSR 99-07-064
PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed March 17, 1999, 10:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-04-084.

Title of Rule: WAC 180-40-215 Student rights.

Purpose: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary working [wording], repeal provisions unsupported by rule-making authority, or provide greater flexibility or discretion to persons or entities subject to the rules.

Statutory Authority for Adoption: RCW 28A.04.132.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, (360) 753-6715.

Name of Proponent: State Board of Education

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 180-40-215(1), provides more appropriate language by deleting (~~handicap~~) and adding disability.

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Chautauqua Lodge, 304 14th Street North, Longbeach, WA, on May 5, 1999, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Carolyn Berger by April 20, 1999, TDD (360) 664-3631, or (360) 753-6715.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, fax (360) 586-2357, by April 20, 1999.

WSR 99-07-065
PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed March 17, 1999, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-04-083.

Title of Rule: WAC 180-22-150 Educational service districts—Criteria for organization.

Purpose: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary working [wording], repeal provisions unsupported by rule-making authority, or provide greater flexibility or discretion to persons or entities subject to the rules.

Statutory Authority for Adoption: RCW 28A.310.020.

PROPOSED

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, (360) 753-6715.

Name of Proponent: State Board of Education

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

Explanation of Rule, its Purpose, and Anticipated Effects: The technical change to WAC 180-22-150(1), provides more appropriate language by removing ~~((the handicapped))~~ and adding students with disabilities and students who are educationally talented ...

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Chautauqua Lodge, 304 14th Street North, Longbeach, WA, on May 5, 1999, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Carolyn Berger by April 20, 1999, TDD (360) 664-3631, or (360) 753-6715.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, fax (360) 586-2357, by April 20, 1999.

Date of Intended Adoption: May 5, 1999.

March 16, 1999

Larry Davis

Executive Director

AMENDATORY SECTION (Amending WSR 98-05-003, filed 2/4/98, effective 3/7/98)

WAC 180-22-150 Educational service districts—Criteria for organization. The establishment of educational service districts shall be in accordance with the criteria hereinafter set forth. In making a determination of the boundaries of an educational service district, reasonable weight shall be given to each criterion individually and to all criteria collectively. Failure to meet any single criterion shall not necessarily prohibit the establishment of an educational service district if in the judgment of the state board of education the establishment of the educational service district is warranted by a collective consideration of all the criteria.

(1) Program and staff. An educational service district shall have the ability to support an administrative unit of sufficient staff to provide a program of educational services including but not limited to leadership and consultant services in administration and finance, in-service education programs for teachers and administrators, special services for ~~((the handicapped))~~ students with disabilities and students who are educationally talented, planning of school facilities, counseling and guidance, instructional materials, and development of projects and proposals under various federal acts.

(2) Size. An educational service district should have no more than a maximum area of 7,500 square miles, nor should an educational district have less than a minimum area of 1,700 square miles.

(3) School enrollment. An educational service district shall have a potential of 15,000 students within the clearly foreseeable future.

(4) Topography and climate. In establishing the boundaries of an educational service district, consideration shall be given to topography and climate as these factors may affect the educational services to be provided and the economic efficiency of the program.

WSR 99-07-066

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed March 17, 1999, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-04-085.

Title of Rule: WAC 180-79A-380 Physical education—Subject area endorsement.

Purpose: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary wording [wording], repeal provisions unsupported by rule-making authority, or provide greater flexibility or discretion to persons or entities subject to the rules.

Statutory Authority for Adoption: RCW 28A.410.010.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, (360) 753-6715.

Name of Proponent: State Board of Education

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 180-79A-380(6), provides more appropriate language by removing ~~((the handicapped))~~ and adding students with disabilities.

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Chautauqua Lodge, 304 14th Street North, Longbeach, WA, on May 5, 1999, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Carolyn Berger by April 20, 1999, TDD (360) 664-3631, or (360) 753-6715.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, fax (360) 586-2357, by April 20, 1999.

Date of Intended Adoption: May 5, 1999.

March 16, 1999

Larry Davis

Executive Director

AMENDATORY SECTION (Amending WSR 97-04-088, filed 2/5/97, effective 3/8/97)

WAC 180-79A-380 Physical education—Subject area endorsement. In order to receive an endorsement in physical education, the candidate shall have completed the minimum course work credit hours in the subject area of physical education, including, but not limited to, credit hours in each of the following essential areas of study:

- (1) Care and prevention of student injury including first aid.
- (2) Kinesiology.
- (3) Exercise physiology.
- (4) School physical education, sports, or athletic law.
- (5) Sociology and/or psychology of sports.
- (6) Instructional methods in physical education for ~~((the handicapped))~~ students with disabilities.
- (7) Instructional methods in physical education.

WSR 99-07-067

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed March 17, 1999, 10:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-04-086.

Title of Rule: WAC 180-29-095 Construction documents—Compliance with public works statutory provisions.

Purpose: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary working [wording], repeal provisions unsupported by rule-making authority, or provide greater flexibility or discretion to persons or entities subject to the rules.

Statutory Authority for Adoption: Chapter 39.25 RCW.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, (360) 753-6715.

Name of Proponent: State Board of Education

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 180-29-095(6), provides more appropriate language by removing ~~((handicapped))~~ and adding disabled.

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Chautauqua Lodge, 304 14th Street North, Longbeach, WA, on May 5, 1999, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Carolyn Berger by April 20, 1999, TDD (360) 664-3631, or (360) 753-6715.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, fax (360) 586-2357, by April 20, 1999.

Date of Intended Adoption: May 5, 1999.

March 16, 1999

Larry Davis

Executive Director

AMENDATORY SECTION (Amending WSR 95-08-031, filed 3/29/95, effective 4/29/95)

WAC 180-29-095 Construction documents—Compliance with public works statutory provisions. The construction documents shall provide for compliance by the contractor with pertinent statutory provisions relating to public works including the following:

- (1) Chapter 39.08 RCW relating to contractor's bond;
- (2) Chapter 39.12 RCW relating to prevailing wages;
- (3) Chapter 18.27 RCW relating to contractor registration;
- (4) Chapter 49.28 RCW relating to hours of labor;
- (5) Chapter 49.60 RCW relating to discrimination; and
- (6) Chapter 70.92 RCW relating to the provisions for the aged and physically ~~((handicapped))~~ disabled.

WSR 99-07-068

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed March 17, 1999, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-04-089.

Title of Rule: WAC 180-55-085 Standards—Elementary and secondary—School health services.

Purpose: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary working [wording], repeal provisions unsupported by rule-making authority, or provide greater flexibility or discretion to persons or entities subject to the rules.

Statutory Authority for Adoption: RCW 28A.305.130(6).

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, (360) 753-6715.

Name of Proponent: State Board of Education

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 180-55-085 (2)(b), provides more appropriate language by deleting ~~((handicaps))~~ and adding disabilities.

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Chautauqua Lodge, 304 14th Street North, Longbeach, WA, on May 5, 1999, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Carolyn Berger by April 20, 1999, TDD (360) 664-3631, or (360) 753-6715.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, fax (360) 586-2357, by April 20, 1999.

Date of Intended Adoption: May 5, 1999.

March 16, 1999

Larry Davis

Executive Director

AMENDATORY SECTION (Amending WSR 91-01-068, filed 12/14/90, effective 1/14/91)

WAC 180-55-085 Standards—Elementary and secondary—School health services. (1) **Recommended physical facilities.** Provide a health service area with adequate space for the following health appraisal and counseling activities:

- (a) Isolating students who are ill.
- (b) Administering vision screening tests.
- (c) Administering hearing tests.
- (d) Providing privacy for conferences with students, parents, teachers and other school personnel.

(2) **Recommended organization and program.**

(a) Provide help to teachers in observation and referral of students whose characteristics show deviations from those of healthy children.

(b) Provide guidance and assistance in the identification of students with unobservable (~~handicaps~~) disabilities who may need special educational opportunities.

(c) Maintain concise and pertinent records containing information that will help to further educational opportunities and potentials of students.

(d) Develop procedures to help prevent and control disease, provide first aid procedures for the injured and emergency care for cases of sudden illness.

(e) Coordinate with the health services of professional and official health agencies in the community.

WSR 99-07-069

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed March 17, 1999, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-04-088.

Title of Rule: WAC 180-16-215 Minimum one hundred eighty school day year.

Purpose: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary wording [wording], repeal provisions unsupported by rule-making authority, or provide

greater flexibility or discretion to persons or entities subject to the rules.

Statutory Authority for Adoption: Chapter 28A.630 RCW.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, (360) 753-6715.

Name of Proponent: State Board of Education

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 180-16-215(3), provides more appropriate language by deleting (~~handicapped~~) and adding with disabilities.

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Chautauqua Lodge, 304 14th Street North, Longbeach, WA, on May 5, 1999, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Carolyn Berger by April 20, 1999, TDD (360) 664-3631, or (360) 753-6715.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, fax (360) 586-2357, by April 20, 1999.

Date of Intended Adoption: May 5, 1999.

March 16, 1999

Larry Davis

Executive Director

AMENDATORY SECTION (Amending WSR 95-20-086, filed 10/4/95, effective 11/4/95)

WAC 180-16-215 Minimum one hundred eighty school day year. (1)(a) **One hundred eighty school day requirement.** Each school district shall conduct no less than a one hundred eighty school day program each school year in such grades as are conducted by such school district, and one hundred eighty half-days of instruction, or the equivalent, in kindergarten. If a school district schedules a kindergarten program other than one hundred eighty half-days, the district shall attach an explanation of its kindergarten schedule when providing compliance documentation to the superintendent of public instruction.

(b) **Waiver option, application and renewal procedures.** See WAC 180-18-050 for waiver process.

(2) **School day defined.** A school day shall mean each day of the school year on which pupils enrolled in the common schools of a school district are engaged in educational activity planned by and under the direction of the school district staff, as directed by the administration and board of directors of the district.

(3) **Accessibility of program.** Each school district's program shall be accessible to all legally eligible students, including (~~handicapped~~) students with disabilities, who are

five years of age and under twenty-one years of age who have not completed high school graduation requirements.

(4) **Five-day flexibility - Students graduating from high school.** A school district may schedule the last five school days of the one hundred eighty day school year for noninstructional purposes in the case of students who are graduating from high school, including, but not limited to, the observance of graduation and early release from school upon the request of a student.

WSR 99-07-070

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed March 17, 1999, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-04-087.

Title of Rule: WAC 180-78-155 Evidence of compliance with adequate resources program standard, 180-78-207 General knowledge required of all teacher, administrator, school counselor, school psychologist, and school social worker, and 180-78-210 Program approval requirement—General skills demonstration by all candidates for certification as teacher, administrator, school counselor, school psychologist, and school social worker.

Purpose: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary wording [wording], repeal provisions unsupported by rule-making authority, or provide greater flexibility or discretion to persons or entities subject to the rules.

Statutory Authority for Adoption: RCW 28A.70.005.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, (360) 753-6715.

Name of Proponent: State Board of Education

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 180-78-155, 180-78-207, and 180-78-210, provides more appropriate language.

Proposal Changes the Following Existing Rules: See sections below.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Chautauqua Lodge, 304 14th Street North, Longbeach, WA, on May 5, 1999, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Carolyn Berger by April 20, 1999, TDD (360) 664-3631, or (360) 753-6715.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, fax (360) 586-2357, by April 20, 1999.

Date of Intended Adoption: May 5, 1999.

March 16, 1999

Larry Davis

Executive Director

AMENDATORY SECTION (Amending Order 7-88, filed 3/3/88)

WAC 180-78-155 Evidence of compliance with adequate resources program standard. The following evidence shall be evaluated to determine whether each professional preparation program is in compliance with the adequate resources program approval standard of WAC 180-78-140(3):

(1) Personnel assigned teaching and administrative responsibilities have masters or doctoral degrees. With the exception of school occupational therapist and school physical therapist programs, teacher, administrator, and ESA programs have at least one FTE faculty member with a doctoral degree whose primary responsibility is to that specific professional preparation program.

(2) The composition of the faculty shall evidence compliance with affirmative action policies or the college or university must allocate sufficient resources to implement an effective affirmative action program.

(3) Written policies respecting faculty loads in the professional preparation department, division, or school have been established and provide recognition for various types of assignments—e.g., teaching undergraduate or graduate classes, advising, directing seminars, supervising clinical experiences, and directing theses and dissertations. Policies shall exist defining workload equivalents for special faculty assignments, including field experiences.

(4) Financial resources are available for faculty members to support their teaching, advising, writing, research, and other responsibilities. Supporting resources shall include, but not be limited to:

(a) Direct financial assistance for research and professional travel.

(b) Allocated annual budgeted funds for library resources to support course offerings.

(c) Secretarial help and resources such as copying machines, computers, etc.

(5) All faculty who are not full time shall meet the college and university requirements for appointment to the full-time faculty and, upon initial appointment, shall be given a specially designed orientation to the professional preparation program.

(6) At least seventy-five percent of the required courses offered annually in each professional preparation program must be taught by full-time faculty or by adjunct faculty who are or will be involved annually in offering specific courses in the professional preparation program and who are invited to participate with the full-time faculty in all regular meetings related to the professional preparation program.

(7) The budget for the college and university professional preparation program's administrative unit is available for review. Information pertinent to each of the professional preparation programs is provided, including:

PROPOSED

(a) Expenditures for administration, faculty, and support services.

(b) Income derived from tuition and fee charges.

(8) For each professional education program offered, all faculty, including adjunct faculty, have assigned space necessary to prepare for classes, conduct research and write, and meet privately with students.

(9) Facilities are accessible (~~or alternative arrangements have been made~~) for individuals with disabilities (~~or handicaps~~).

(10) Centralized curriculum materials and media collections containing current examples of school and/or professional texts and supporting curriculum materials are available for student use.

(11) The library budget contains specific allotments for annual purchases to support the professional preparation program.

(12) Library holdings and those holdings readily accessible from other sources are reviewed at least once every five years using, where available, model listings and guidelines of professional organizations in order to maintain an adequate collection of the scope, breadth, and currency to support each professional preparation program.

AMENDATORY SECTION (Amending WSR 97-04-081, filed 2/5/97, effective 3/8/97)

WAC 180-78-207 General knowledge required of all teacher, administrator, school counselor, school psychologist, and school social worker candidates for certification. General knowledge required of all candidates for certification as teachers, administrators, school counselors, school psychologists, and school social workers includes the following: Provided, That effective August 31, 1997, candidates for certification as principals shall be exempted from this section:

(1) **Schools and society.** Topics to be included consist of the following:

(a) Development of education in public and private schools in the United States.

(b) The nature and foundation of the educational system, including the evolution of school curriculum in grades P-12.

(c) Public policy issues related to the role of schools in a democratic society, with particular emphasis on:

(i) Equity issues related to various populations—e.g., race, sex, (~~handicapping~~) disabling conditions, gifted, migrant, poverty, aliens, etc.

(ii) Study of values in public schools.

(iii) Issues related to the funding of public and private schools.

(iv) Compulsory attendance, compulsory education, and parental rights and responsibilities.

(v) Federal, state, and community control of schools.

(vi) Resource personnel and public and private agencies, including professional associations, which offer services to teachers, children, parents, and schools.

(2) **Human growth, development, and learning.** Topics included consist of the following:

(a) Physical, psychomotor, cognitive, social, and emotional development of the normal and exceptional child,

including those who are victims of abuse, children with (~~handicapping~~) disabling conditions and the highly capable from birth to age twenty-one.

(b) Theories of learning, including:

(i) Behavioralism.

(ii) Social learning.

(iii) Information processing.

(iv) Cognitive development.

(c) Educational processes appropriate to normal and exceptional children, including those with (~~handicapping~~) disabling conditions and the highly capable from birth through age twenty-one as to:

(i) Collection and interpretation of data.

(ii) Identification and assessment of individual students.

(iii) Impact of teaching and learning techniques on behavior.

(3) **American school law.** Topics include legal matters common to all education systems within the United States and consist of the following:

(a) Educational structure and governance, including the role of the courts.

(b) Students and the law, including First Amendment and due process rights, corporal punishment, grading, expulsion, suspension, discipline, and search and seizure and privacy rights.

(c) School professionals and the law, including nonrenewal, discharge, revocation, academic freedom, collective bargaining, professional ethics and legal responsibilities, and child abuse and other reporting requirements.

(d) Professional and school district liability, including negligence and tort liability.

(e) Federal law respecting the rights of the (~~handicapped~~) disabled.

AMENDATORY SECTION (Amending WSR 94-24-041, filed 12/2/94, effective 1/2/95)

WAC 180-78-210 Program approval requirement—General skills demonstration by all candidates for certification as teacher, administrator, school counselor, school psychologist, and school social worker. An approved preparation program shall require all candidates for certification as teacher, administrator, school counselor, school psychologist, and school social worker to demonstrate in their field experience their skills in the following areas: Provided, That effective August 31, 1997, an approved program for principals shall be exempted from this section and shall require candidates for principal certification to demonstrate the performance domains required by WAC 180-78-257:

(1) **Diverse populations.** Candidate must demonstrate their ability to work effectively with students of various backgrounds, including:

(a) Students with exceptional needs, including those with (~~handicapping~~) disabling conditions and the highly capable.

(b) Students from racial and/or ethnic population other than the candidates.

(2) **School, home, and community.** Candidates must demonstrate their ability to integrate education policies with the school, home, and community by:

- (a) Participating in the designing of activities that involve parents in the learning process of their children.
- (b) Using home and community resources to enhance the school program.
- (c) Working cooperatively with students, parents, colleagues, and community members in a professional manner.
- (d) Applying knowledge of school law to practices involving the school, home, and community.

WSR 99-07-071
PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed March 17, 1999, 11:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-04-092.

Title of Rule: WAC 180-56-245 Specialized services.

Purpose: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary working [wording], repeal provisions unsupported by rule-making authority, or provide greater flexibility or discretion to persons or entities subject to the rules.

Statutory Authority for Adoption: RCW 28A.305.130.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, (360) 753-6715.

Name of Proponent: State Board of Education

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 180-56-245, provides more appropriate language by deleting ~~((who are slow learners and those who are physically handicapped))~~ and adds with physical, mental, or sensory disabilities.

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Chautauqua Lodge, 304 14th Street North, Longbeach, WA, on May 5, 1999, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Carolyn Berger by April 20, 1999, TDD (360) 664-3631, or (360) 753-6715.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, fax (360) 586-2357, by April 20, 1999.

Date of Intended Adoption: May 5, 1999.

March 16, 1999
 Larry Davis
 Executive Director

AMENDATORY SECTION (Amending SBE 56-8-533, filed 3/29/65, effective 4/29/65)

WAC 180-56-245 Specialized services. Full-time library and instructional materials services shall be provided by a librarian qualified in accordance with standards adopted by the state board of education.

A minimum of one full-time person, or equivalent, shall be provided for counseling and guidance services. Personnel assigned to part-time or full-time counseling and guidance responsibilities shall have a minimum of one year of training beyond the bachelor's degree including course work in each of the following areas: Principles and practices of guidance; techniques of counseling; occupational and educational information; testing, measurement and evaluation; and foundations of psychology, preferably including developmental psychology and learning theory.

Provision shall be made for exceptional children including those with high ability or special talent, or those ((who are slow learners and those who are physically handicapped)) with physical, mental, or sensory disabilities.

Adequate health services shall be provided by the district or by the district in cooperation with other districts and/or agencies.

WSR 99-07-072
PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed March 17, 1999, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-04-091 [99-04-091].

Title of Rule: WAC 180-51-110 Equivalency credit for alternative learning experiences, nonhigh school courses, work experience, and challenges.

Purpose: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary working [wording], repeal provisions unsupported by rule-making authority, or provide greater flexibility or discretion to persons or entities subject to the rules.

Statutory Authority for Adoption: RCW 28A.05.00 [28A.05.060].

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, (360) 753-6715.

Name of Proponent: State Board of Education

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

Explanation of Rule, its Purpose, and Anticipated Effects: As a result of the state board mandate review, the board proposes the following language amendments: Delete ~~((National University Extension Association))~~ and add National University Continuing Education Association and delete ~~((National Home Study Council))~~ and add Distance Education and Training Council.

PROPOSED

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Chautauqua Lodge, 304 14th Street North, Longbeach, WA, on May 5, 1999, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Carolyn Berger by April 20, 1999, TDD (360) 664-3631, or (360) 753-6715.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, fax (360) 586-2357, by April 20, 1999.

Date of Intended Adoption: May 5, 1999.

March 16, 1999

Larry Davis

Executive Director

AMENDATORY SECTION (Amending Order 12-85, filed 6/5/85)

WAC 180-51-110 Equivalency credit for alternative learning experiences, nonhigh school courses, work experience, and challenges. The board of directors of a district offering a high school diploma shall adopt rules providing for the granting of high school graduation credit for alternative learning experiences, nonhigh school courses, work experience, and challenges. High school credits may be given for, but not limited to, the following:

(1) Planned learning experiences conducted away from the school under the supervision or with the approval of the school;

(2) Work experience on the basis that four hundred five hours of work experience equals one credit;

(3) National guard high school career training;

(4) Postsecondary courses in accredited colleges and universities;

(5) Courses in accredited or approved vocational-technical institutes;

(6) Correspondence courses from accredited colleges and universities or schools approved by the National University (~~(Extension)~~) Continuing Education Association or the (~~(National Home Study)~~) Distance Education and Training Council;

(7) Other courses offered by any school or institution if specifically approved for credit by the district; and

(8) Credit based on competency testing, in lieu of enrollment or taking specific courses, may be granted by the district.

WSR 99-07-073

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed March 17, 1999, 11:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-04-090.

Title of Rule: WAC 180-41-035 Evacuation of buildings in sudden emergency—Emergency exit drills.

Purpose: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary wording [wording], repeal provisions unsupported by rule-making authority, or provide greater flexibility or discretion to persons or entities subject to the rules.

Statutory Authority for Adoption: RCW 28A.600.200.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, (360) 753-6715.

Name of Proponent: State Board of Education

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 180-41-035(2), provides more appropriate language by deleting (~~disabled and physically handicapped~~) to persons with disabilities.

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Chautauqua Lodge, 304 14th Street North, Longbeach, WA, on May 5, 1999, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Carolyn Berger by April 20, 1999, TDD (360) 664-3631, or (360) 753-6715.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, fax (360) 586-2357, by April 20, 1999.

Date of Intended Adoption: May 5, 1999.

March 16, 1999

Larry Davis

Executive Director

AMENDATORY SECTION (Amending Order 10-70, filed 10/22/70)

WAC 180-41-035 Evacuation of buildings in sudden emergency—Emergency exit drills. Alarm for all emergency exit drills shall be by the appropriate school building administrator or his designee without advance announcement to building occupants. Exit drills shall be held as frequently as may be necessary to assure rapid and orderly evacuation of the building in the event of an emergency. Drills should be executed at irregular times of day or evening so as to eliminate any possible distinction between a drill and an actual emergency situation.

Plans and procedures for exit drills shall include but not be limited to the following provisions:

(1) Emergency evacuation directions shall be posted in each room of the building.

(2) Special provision shall be made for removal of (~~disabled and physically handicapped~~) persons with disabilities from the building.

(3) All occupants of the building—pupils, teachers and other school personnel without exception—shall, at the beginning of each school year, be given full and explicit instructions on exit drills in order that they have a clear working knowledge of exit drill directions and rules.

(4) Instruction and practice in ways to meet such emergencies as blocked exits and blocked stairways during exit drills shall be provided teachers and pupils.

Attention is directed to the *Guide for Adoption of Uniform School Exit Drill* prepared and published by the state fire marshal for the assistance of school administrators.

WSR 99-07-085
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed March 18, 1999, 5:12 p.m.]

Supplemental Notice to WSR 98-20-077.

Preproposal statement of inquiry was filed as WSR 97-14-033.

Title of Rule: WAC 314-16-260 Sports/entertainment facility license—Purpose, 314-16-265 Definitions, 314-16-270 Sports/entertainment facility licenses—Operating plans, and 314-16-275 How will the operating plans be enforced?

Purpose: These rules will clarify the conditions under which types and service of liquor may be provided in sports/entertainment facilities. Each facility and event may require different conditions based upon the type of event, traffic patterns in the facility and the age of patrons attending the event.

Statutory Authority for Adoption: RCW 66.08.030 and 66.24.570.

Statute Being Implemented: RCW 66.24.570.

Summary: WAC 314-16-260, states the purpose of the rules regarding sports/entertainment facility licensing; WAC 314-16-265, defines terms as used in the rules; WAC 314-16-270, outlines what must be included in the operating plan that sports/entertainment facilities must submit; and WAC 314-16-275, explains how the operating plans will be enforced.

Name of Agency Personnel Responsible for Drafting: Teresa Berntsen, P.O. Box 43080, Olympia, WA 98504-3080, (360) 586-1641; Implementation: David Goyette, P.O. Box 43098, Olympia, WA 98504-3098, (360) 753-2724; and Enforcement: Gary Gilbert, P.O. Box 43075, Olympia, WA 98504-3075, (360) 753-2710.

Name of Proponent: Washington State Liquor Control Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The 1996 legislature passed RCW 66.24.570, which created a special liquor license designated as a class "R," and renamed "sports/entertainment facility" by SSB 5173 passed by the 1997 legislature. The intent of the legislation was to simplify the alcohol licensing process and to accommodate the size and unique nature of these facilities.

The purpose of the proposed rules is to clarify the conditions under which types and service of liquor may be pro-

vided in sports/entertainment facilities. Each facility and event may require different conditions based upon the type of event, traffic patterns in the facility, and the age of patrons attending the event.

- The first proposed rule, WAC 314-16-260, states the purpose of the rules, which is to provide a framework for the enforcement of liquor laws and regulations, particularly those prohibiting the sale of alcohol to persons under twenty-one years of age or persons who are apparently intoxicated.
- The second proposed rule, WAC 314-16-265, contains a list of defined terms as used in the rules.
- The third proposed rule, WAC 314-16-270, outlines the elements that must be contained in each sports/entertainment facility's operating plan, which must be submitted and approved by the board before licensing.
- The fourth proposed rule, WAC 314-16-275, explains how the board will enforce liquor laws and regulations in sports/entertainment facilities.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No impact to small businesses.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Washington State Liquor Control Board is not a listed agency in section 201.

Hearing Location: Cavanaugh's at Capitol Lake, State Room, 2300 Evergreen Park Drive S.W., Olympia, WA, on April 28, 1999, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Teresa Berntsen by April 27, 1999, TDD (360) 586-4727, or (360) 586-1641.

Submit Written Comments to: Teresa Berntsen, Rules Coordinator, P.O. Box 43080, Olympia, WA 98504-3080, e-mail teb@liq.wa.gov, fax (360) 704-4920, by May 5, 1998 [1999].

Date of Intended Adoption: May 12, 1999.

March 16, 1999

Eugene Prince

Chair

NEW SECTION

WAC 314-16-260 Sports/entertainment facility license—Purpose. (1) **What is the purpose of the rules governing the use of alcohol in sports/entertainment facilities?**

(a) In RCW 66.24.570, the legislature established a spirits, beer, and wine license for arenas, coliseums, stadiums, or other facilities where sporting, entertainment, and special events are presented.

(b) These rules provide a framework for the enforcement of liquor laws and regulations, particularly those prohibiting the sale of alcohol to persons under twenty-one years of age or persons who are apparently intoxicated.

(c) This framework recognizes the unique conditions associated with events attended by large crowds consisting of diverse age groups.

(2) Will the liquor control board recognize the differences between types of sports/entertainment facilities?

Yes. A sports/entertainment facility must submit an operating plan, which must be approved by the board prior to the issuance of a license. All plans will be required to meet the minimum standards outlined in WAC 314-16-270. The board will take into consideration the unique features of each facility when approving an operating plan.

NEW SECTION

WAC 314-16-265 Definitions. (1) **Premises** - Buildings, parking lots, and any open areas that are owned, leased, or managed by the licensee and under the licensee's control.

(2) **Event categories** - Types of events that the licensee expects to hold:

(a) **Professional sporting event** - A contest involving paid athletes and sanctioned by a professional sports organization that regulates the specific sport.

(i) Professional baseball, football, basketball, soccer, tennis, volleyball, and track and field events (relay races, dashes, pole vaulting, etc.). A fixed level of alcohol service may be applied to the specific events.

(ii) For all other professional sporting events, the board will determine the level of alcohol service on a case-by-case basis.

(b) **Amateur sporting event** - A contest or demonstration involving athletes who receive no monetary compensation that is sanctioned by a national or regional amateur athletic regulatory organization.

(c) **Entertainment event** - A concert, comedy act, or similar event intended for the entertainment of the audience.

(d) **Special event** - A convention, trade show, or other public/private event to large too be held in a separate banquet or meeting room within the facility.

(e) **Private event** - An event not open to the public such as a wedding, private party, or business meeting, where the portion of the facility where the event is held is not accessible to the general public during the time of the event. (WAC 314-16-180(1) requires prior board approval for private events where the general public is excluded from the entire premises.)

(f) **Youth event** - An event where the proportion of persons under age twenty-one expected to attend is such that it is reasonable to conclude licensees will not be able to determine whether or not persons under age twenty-one will have access to alcohol.

(3) **Hawking** - The practice of selling alcohol in seating areas by roving servers who carry the beverages with them, as outlined in WAC 314-16-270(4). Because of row seating arrangements, servers normally do not have direct access to customers. Therefore, service usually requires that drinks, money, and identification be passed down rows, involving other spectators.

(4) **Club seats** - A specifically designated and controlled seating area that is distinct from general seating with food and beverage service provided by servers.

NEW SECTION

WAC 314-16-270 Sports/entertainment facility licenses—Operating plans. (1) **What rules govern the submission of operating plans?**

(a) To receive a license, a sports/entertainment facility must submit an operating plan for board approval.

(b) Once approved, the plan remains in effect until the licensee requests a change or the board determines that a change is necessary due to demonstrated problems or conditions not previously considered or adequately addressed in the original plan.

(c) The plan must be submitted in a format designated by the board.

(d) The plan must contain all of the following elements:

(i) How the sports/entertainment facility will prevent the sale and service of alcohol to persons under twenty-one years of age and those who appear to be intoxicated.

(ii) The ratio of alcohol service staff and security staff to the size of the audiences at events where alcohol is being served.

(iii) Training provided to staff who serve, regulate, or supervise the service of alcohol.

(iv) The facility's policy on the number of alcoholic beverages that will be served to an individual patron during one transaction.

(v) A list of event categories (see WAC 314-16-265(2)) to be held in the facility at which alcohol service is planned.

(e) Prior to the first of each month, the licensee must provide a schedule of events for the upcoming month to the facility's local liquor enforcement office. This schedule must show the date and time of each event during which alcohol service is planned. The licensee must notify the local enforcement office of any events where alcohol service is planned that are not included in the monthly schedule as soon as the event is booked.

(2) **May the liquor control board impose any other mandatory standards as a part of an operating plan?** Yes. To prevent persons who are under twenty-one years of age or who appear intoxicated from gaining access to alcohol, the board may impose the following standards as part of an operating plan:

(a) The board may require that an operating plan include additional mandatory requirements if it is judged by the board that the plan does not effectively prevent violations of liquor laws and regulations, particularly those that prevent persons under twenty-one years of age or who are apparently intoxicated from obtaining alcohol.

(b) To permit alcohol servers to establish the age of patrons and to prevent over-service, sports/entertainment facilities must meet minimum lighting requirements established by WAC 314-16-030(3) in any area where alcohol is served or consumed. For the purpose of establishing a permanent technical standard, an operating plan may include a lighting standard measured in foot candles, so long as the candle power of the lighting is, at all times, sufficient to permit alcohol servers to establish the validity of documents printed in eight point type.

(3) **Where will spirits, beer, and wine be allowed in a sports/entertainment facility?** Alcohol will be allowed as

outlined in an approved operating plan. Alcohol service will normally be permitted as follows:

Type of event as defined in WAC 314-16-265(2)	Beer, wine, and spirits may be sold and served in approved restaurants, lounges, private suites, and club rooms	Beer, wine, and spirits may be sold and served in temporary lounges, beer gardens, or other approved service areas	Wine may be served and consumed in club seats during events	Beer and wine may be consumed throughout seating areas during events	Hawking - Beer may be served throughout seating areas, subject to the provisions of WAC 314-17-270(4)
Professional sporting events of baseball, football, basketball, soccer, tennis, volleyball, and track and field events.	x	x	x	x	x
All other professional sporting events	x	x	x	x	
Amateur sporting events	x	x			
Entertainment events	x	x			
Special events	x	x			

(a) For private events, beer, wine, and spirits may be served in the separate banquet or meeting rooms where the event is held.

(b) The board may prohibit or restrict the service of alcohol during youth events.

(4) **Will hawking be allowed at sports/entertainment facilities?** Subject to the provisions of this rule, hawking may be permitted in general seating areas for the sale and service of beer, at the professional sporting events of baseball, football, basketball, soccer, tennis, volleyball, and track and field events only, as defined by WAC 314-16-265(2).

(a) An operating plan must include procedures for hawkers to verify the age of purchasers and to prevent service to apparently intoxicated persons.

(b) During hawking, any patron may decline to handle alcoholic beverages, either on behalf of themselves and for any person under their supervision. When a patron objects to handling alcohol, hawkers must accommodate the objection. The facility operating plan will address how hawking will be managed, including how hawkers will respond to patron objections to handling alcohol.

(c) This hawking authorization will terminate as of May 31, 2001, unless reenacted by the board.

NEW SECTION

WAC 314-16-275 How will the operating plans be enforced? (1) The board will inspect sports/entertainment facilities and issue violation notices for:

(a) Infractions of all liquor laws and rules, particularly with regard to persons who appear intoxicated or who are under twenty-one years of age; and

(b) Any significant deviation from the approved operating plan.

(2) Violations of liquor laws or rules that occur as a result of not following the approved operating plan will be considered aggravating circumstances, which permit the board to impose added penalties.

**WSR 99-07-106
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION**

[Filed March 23, 1999, 2:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-06-050 [98-16-101].

Title of Rule: Registration, competitive classification, and price lists of telecommunications companies, Docket No. UT-980083.

Purpose: To implement the requirements of Executive Order 97-02, revising language to enhance understanding, adding processes for petitions for competitive classification, stating the commission's standards for evaluating applications for registration and competitive classification and price list filings, and adding standards for the denial of applications or revocation of registration.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160.

Reasons Supporting Proposal: See Explanation of Rule below.

PROPOSED

Name of Agency Personnel Responsible for Drafting: Sondra Walsh, Policy Research Specialist, 1300 South Evergreen Park, Drive S.W., Olympia, WA 98504, (360) 664-1286; Implementation and Enforcement: Carole Washburn, Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

Name of Proponent: Washington Utilities and Transportation Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These rules address how the Washington Utilities and Transportation Commission regulates the registration applications, competitive classification petitions, and price list filings of telecommunication companies. This rule making incorporates into rule the commission's streamlined process for registration applications; minimizes the burden of entry; cultivates competition; and establishes the criteria for cancellation of a telecommunications company's registration. This review complies with Executive Order 97-02. The order requires agencies to review their rules for clarity, intent and statutory authority, need, effectiveness and efficiency, coordination, cost, and fairness. This proposal would redraft the rules to promote clarity and reader understanding, and eliminate rules that are no longer needed. Proposed substantive changes to the text include the following: (1) Adds processes for petitions for competitive classification to chapter 480-121 WAC, to clarify the process; (2) lists in rule the commission's standards for registration applications, competitive classification petitions, and price list filings; and (3) add rules to identify what may cause an application to be rejected or a registration to be revoked. The proposed rules should clarify, simplify, and expedite the commission processes.

Proposal Changes the Following Existing Rules: The following summarizes changes other than rephrasing for clarity. WAC 480-121-010, adds applications for competitive classification and price lists to the topics covered in the chapter. Allows simultaneous filing of application, petition, and price list for optimum efficiency. States the commission's authority to waive or modify the application of any rule.

WAC 480-121-020, states the required contents of applications for registration, petitions for competitive classification, and proposed price lists.

WAC 480-121-030, states the commission's authority to require additional information relating to petitions for competitive classification and approval of price lists.

WAC 480-121-040, deletes standards for applications, which are moved to WAC 480-121-020. States specific reasons for which the commission may deny registration.

In addition, WAC 480-121-050 Form, is proposed for repeal and new sections WAC 480-121-060 through 480-121-100 are proposed for adoption.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is minimal fiscal impact to companies.

RCW 34.05.328 does not apply to this rule adoption. The commission is not an agency to which RCW 34.05.328 applies. This is not the sort of rule making to which the statute applies.

Hearing Location: Commission Hearing Room, 2nd Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, on April 28, 1999, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Pat Valentine by April 26, 1999, TDD (360) 586-8203, or (360) 664-1133.

Submit Written Comments to: Re: Docket No. UT-980083, c/o Carole Washburn, Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, fax (360) 586-1150, by April 14, 1999.

Date of Intended Adoption: April 28, 1999.

March 23, 1999

Carole J. Washburn
Secretary

Chapter 480-121 WAC

REGISTRATION, COMPETITIVE CLASSIFICATION AND PRICE LISTS OF TELECOMMUNICATIONS COMPANIES

AMENDATORY SECTION (Amending Order R-237, Cause No. U-85-43, filed 9/19/85)

WAC 480-121-010 Filing of registration application, competitive classification petition and price list. (1) Applications ~~((shall))~~, petitions and price lists must be filed at the office of the commission in Olympia, Washington, by mail or in person, and ~~((shall))~~ must be signed by the applicant or its attorney, dated, and ~~((verified))~~ certified as to its accuracy. Applications, petitions and price lists will be assigned a docket number, and all additional exhibits and data thereafter filed, and correspondence in connection with the ~~((application))~~ filing, should bear that docket number.

Applications ~~((shall))~~ for registration, petitions for competitive classification and price lists must be ~~((in the form prescribed by WAC 480-121-050, and shall in all respects adhere to the rules set out herein. Applications not in substantial compliance with these rules may be rejected by the commission and returned to the applicant))~~ submitted at the same time. Applicant must file with the commission an original application, petition and price list and any additional copies as the commission may require.

(2) The commission may waive or modify the application of any rule to an applicant upon written request, or upon commission motion, except when such provisions are fixed by statute. The waiver or modification must be approved by the commission in writing.

AMENDATORY SECTION (Amending Order R-237, Cause No. U-85-43, filed 9/19/85)

WAC 480-121-020 ((Number of copies.)) Requirements for registration applications, competitive classification petitions and price lists. ~~((Applicant shall file with the commission an original application and such additional copies as the commission may require.))~~ (1) Applications for registration must:

(a) Be in the form prescribed by the commission;

(b) Adhere to the rules set forth in chapter 480-120 WAC;

(c) Be accompanied by the applicant's current balance sheet, latest annual report, if any, and a description of the telecommunications service it intends to offer; and

(d) Be accompanied by declaration of positive regulatory performance on the form prescribed by the commission.

(2) A petition for competitive classification must meet the requirements of WAC 480-120-023.

(3) Price lists must meet the requirements of WAC 480-120-027.

(4) As a condition to registration, with or without hearing, the commission may require an applicant clearly show that the:

(a) Applicant possesses adequate financial resources to provide the proposed service;

(b) Applicant possesses adequate technical competence to provide the proposed service;

(c) Applicant is in compliance with all federal, state and local telecommunications and business regulations; and

(d) Applicant operating in other states as a telecommunications company have a positive regulatory record. Companies that have been registered within another state for less than one year have a positive record since approval. Companies that have been registered for a period greater than one year have a positive record for at least the prior twelve consecutive months.

(5) Applicants that intend to collect customer prepayments must meet the requirements of WAC 480-120-058.

AMENDATORY SECTION (Amending Order R-237, Cause No. U-85-43, filed 9/19/85)

WAC 480-121-030 Additional information. The commission may at its discretion require ~~((the production of data and))~~ additional information to supplement ~~((that contained in))~~ the registration application, competitive classification petition and price list. Unless a different time is specified, such information shall be provided within ten days of the written request.

AMENDATORY SECTION (Amending Order R-332, Docket No. UT-900733, filed 12/5/90, effective 1/5/91)

WAC 480-121-040 Grant or denial of registration. ~~((As a condition to registration, with or without hearing, an applicant must clearly show that:~~

~~(1) Applicant possesses adequate financial resources to provide the proposed service;~~

~~(2) Applicant possesses adequate technical competence to provide the proposed service; and~~

~~(3) Applicant has procured and will maintain:~~

~~(2) A performance bond satisfactory to the commission sufficient to cover any customer advances or deposits; or~~

~~(b) Provision has been made for deposit of customer advances or deposits in a federally insured interest bearing trust account maintained by applicant solely for customer advances or deposits, in a bank, savings and loan association, mutual savings bank, or licensed escrow agent located in~~

~~Washington, with access to such funds only for the purpose of applying an amount to a delinquent bill in accordance with commission deposit rules, or for the purpose of refunding advances or deposits to customers. In any order granting certification, the commission may require either bond or trust account or escrow as a condition.~~

~~Such))~~ (1) Application may be granted without hearing upon a determination by the commission that the application is consistent with the public interest, and that applicant meets ~~((financial and technical requirements,))~~ the requirements of this section and RCW 80.36.350 and has provided adequately for the protection of customer ~~((advances or deposits,))~~ prepayments or the application may be set for hearing in accordance with notice issued by the commission. If, upon hearing, the commission finds that registration is not consistent with the public interest, or that the applicant ~~((is not financially or [technically] [technical] able to provide the contemplated service))~~ does not meet the requirements of RCW 80.36.350, or that customer ~~((advances or deposits))~~ prepayments cannot be adequately protected, it will deny the application.

The commission ~~((may))~~ will deny an application for registration submitted by ~~((a company providing alternate))~~ an operator services provider if, after hearing, the commission finds that the alternate operator services offered by the company or the charges for those services are not for the public convenience and ~~((advantage))~~ necessity.

NEW SECTION

WAC 480-121-060 Adding additional services. A registered telecommunication company that intends to offer additional services must:

(1) Supplement its original application, petition and price list requesting authority to provide the additional services.

(2) Update the original application, petition and price list to reflect the new services and any other changes that have occurred since the original filing.

NEW SECTION

WAC 480-121-070 Rejection of registration application, competitive classification petition, and price list. Registration applications, competitive classification petitions and price lists not insubstantial compliance with these rules and chapter 480-120 WAC may be rejected by the commission and returned to the applicant.

NEW SECTION

WAC 480-121-080 Cancellations. (1) A request to cancel registration as a telecommunications company must be submitted in writing to the commission.

(2) Registered telecommunications companies collecting prepayments must comply with WAC 480-120-058(10).

NEW SECTION

WAC 480-121-090 Revocation of registration. The commission may revoke a registration, after hearing for good cause. Good cause includes, but is not limited to, failure to:

- (1) File an annual report or pay regulatory fees;
- (2) Comply with the requirements of WAC 480-120-058;
- (3) Provide adequate service;
- (4) Maintain correct contact information, including current address and telephone number; or
- (5) Comply with all federal, state and local telecommunications and business regulations.

NEW SECTION

WAC 480-121-100 Petition for competitive classification. (1) In addition to meeting the requirements of WAC 480-120-023, a petition for competitive classification must state an effective date no sooner than thirty days from the filing date.

(2) The petitioner must provide notice in the same manner as provided in WAC 480-80-120.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-121-050 Form.

**WSR 99-07-107
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION**

[Docket No. UT-971514—Filed March 23, 1999, 2:03 p.m.]

Supplemental Notice to WSR 97-23-087 [Original Notice].

Preproposal statement of inquiry was filed as WSR 97-23-087.

Title of Rule: Privacy in commercial telecommunications; regulating telecommunication company use of customer proprietary network information (CPNI).

Purpose: Correct and implement prior revisions and bring this section into consistency with WAC 480-120-144, 480-120-151, 480-120-152, 480-120-153, and 480-120-154.

Other Identifying Information: Amend WAC 480-120-139 by deleting subsection (5).

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160, 81.04.160.

Summary: The proposal would amend the rule to remove reference to CPNI and privacy in WAC 480-120-139(5) to bring Washington state regulation of CPNI and customer privacy into consistency with federal regulations.

Reasons Supporting Proposal: The proposal would provide consistency between WAC 480-120-139 by deleting provisions that have been adopted and expanded upon in

WAC 480-120-144, 480-120-151, 480-120-152, 480-120-153, and 480-120-154.

Name of Agency Personnel Responsible for Drafting: Rebecca Beaton, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1287; Implementation and Enforcement: Carole J. Washburn, Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

Name of Proponent: Washington Utilities and Transportation Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: In an earlier phase of this rule making, the commission adopted provisions relating to privacy that were to replace existing language in WAC 480-120-139(5). This proposal would delete subsection (5) to make the rule consistent with the newly-adopted provisions.

Proposal Changes the Following Existing Rules: Amend WAC 480-120-139 to remove subsection (5), relating to consumer privacy with respect to customer provided network information (CPNI) in the possession of telecommunications companies.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal has no fiscal impact.

RCW 34.05.328 does not apply to this rule adoption. The commission is not an agency to which RCW 34.05.328 applies, and the proposal is not one that would be subject to the statutory requirements.

Hearing Location: Commission Hearing Room, Second Floor, Chandler Plaza, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, on April 28, 1999, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Pat Valentine by April 26, 1999, TDD (360) 586-8203, or (360) 664-1133.

Submit Written Comments to: Carole J. Washburn, Secretary, P.O. Box 47250, Olympia, WA 98504, or e-mail to <records@wutc.wa.gov>, fax (360) 586-1150, by April 14, 1999. Please include Docket No. UT-971514 in your communication.

Date of Intended Adoption: April 28, 1999.

March 23, 1999

Carole J. Washburn
Secretary

AMENDATORY SECTION (Amending Order R-442 and Order R-443, Docket No. UT-960942, filed 8/29/97 and 9/29/97, effective 9/29/97 and 10/30/97)

WAC 480-120-139 Changes in local exchange and intrastate toll services. (1) Verification of orders. A local exchange or intrastate toll carrier to whom service is being changed ("new telecommunications company") may not submit a change order for local exchange or intrastate toll service until the order is confirmed in accordance with one of the following procedures:

(a) The telecommunications company has obtained the customer's written authorization to submit the order which includes the following information from the customer:

PROPOSED

(i) The customer billing name, billing telephone number and billing address and each telephone number to be covered by the change order;

(ii) The decision to change; and

(iii) The customer's understanding of the change fee.

(b) The new telecommunications company has obtained the customer's authorization, as described in (a) of this subsection, electronically.

Telecommunications companies electing to confirm sales electronically shall establish one or more toll free telephone numbers exclusively for that purpose.

Calls to the number(s) shall connect a customer to a voice response unit, or similar, that records the required information regarding the change, including automatically recording the originating automatic number identification (ANI).

(c) An appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the customer's oral authorization to submit the change order that confirms and includes appropriate verification data in (a) of this subsection.

(2) Implementing order changes.

(a) Telemarketing orders. Within three business days of any telemarketing order for a change, the new telecommunications company must send each new customer an information package by first class mail containing at least the following information concerning the requested change:

(i) The information is being sent to confirm a telemarketing order placed by the customer.

(ii) The name of the customer's current telecommunications company.

(iii) A description of any terms, conditions or charges that will be incurred.

(iv) The name of the newly requested telecommunications company.

(v) The name of the person ordering the change.

(vi) The name, address and telephone number of both the customer and the soliciting telecommunications company.

(vii) A postpaid postcard which the customer can use to deny, cancel or confirm a service order.

(viii) A clear statement that if the customer does not return the postcard, the customer's service will be switched fourteen days after the date the information package was mailed. If customers have cancelled their orders during the waiting period, the new telecommunications company cannot submit the customer's order.

(ix) The name, address and telephone number of a contact point at the commission for consumer complaints.

(x) The requirements in (a)(vii) and (viii) of this subsection do not apply if authorization is obtained pursuant to subsection (1) of this section.

(b) The documentation of the order shall be retained by the new telecommunications company, at a minimum, for twelve months to serve as verification of the customer's authorization to change telecommunications company. The documentation will be made available to the customer and to the commission upon request.

(3) Customer initiated orders. The new telecommunications company receiving the customer initiated request for a

change of local exchange and/or intrastate toll shall keep an internal memorandum or record generated at the time of the request. Such internal record shall be maintained by the telecommunications company for a minimum of twelve months to serve as verification of the customer's authorization to change telecommunications company. The internal record will be made available to the customer and to the commission upon request. Within three business days of the order, the telecommunications company must send each new customer an information package by first class mail containing at least the following information concerning the request to change as defined in subsection (2)(a)(ii), (iii), (iv), (v) of this section.

(4) Remedies. In addition to any other penalties provided by law, a telecommunications company initiating an unauthorized change order shall receive no payment for service provided as a result of the unauthorized change and shall promptly refund any amounts collected as a result of the unauthorized change. The subscriber may be charged, after receipt of the refund, for such service at a rate no greater than what would have been charged by its authorized telecommunications company, and any such payment shall be remitted to the customer's authorized telecommunications company.

(5) Use of customer information.

~~((a) A telecommunications company marketing services may not use its customer proprietary network information or the customer proprietary network information of another telecommunications company.~~

~~(b) Except to provide its own billing, collection, network operations, and as authorized by law, a telecommunications company may not disclose customer proprietary network information.~~

~~(c) A telecommunications company may not make telephone solicitation or telemarketing calls using its list of customers with nonpublished or unlisted numbers unless it has notified each such customer at least once in the past year that the company makes such calls to its customers with nonpublished or unlisted numbers and that the customer has a right to request that the company make no such calls.)~~

WSR 99-07-108

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 23, 1999, 3:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-23-087.

Title of Rule: Washington state red raspberry grade, labeling and handling standards.

Purpose: Allow the Red Raspberry Commission to implement rules and regulations for uniform labeling of red raspberries marketed, sold or processed within Washington state.

Statutory Authority for Adoption: RCW 15.65.280, 15.65.380.

Statute Being Implemented: RCW 15.65.330(1).

Summary: The rules will establish standards in packaging and labeling to ensure proper use of product in processing and preparation for marketing.

Reasons Supporting Proposal: The rules are necessary to maintain standards of quality for red raspberries grown in Washington.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Anne Seeger, 1323 Lincoln Street, #204, Bellingham, WA 98226, (360) 671-1437.

Name of Proponent: Washington Red Raspberry Commission, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The adoption of the rules will be in compliance with the provisions of chapters 15.65 and 34.05 RCW.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rules establish uniform handling standards and labeling. In compliance with the marketing order for red raspberries (WAC 16-561-030 Marketing order purposes) these rules are necessary to maintain the quality of processed Washington-grown red raspberries while providing a safe product for the consumer.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not impose more than minor costs on businesses in the raspberry industry. The rule will not increase cost in equipment, supplies, labor or administrative expenses.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency in section 201.

Hearing Location: Whatcom County Courthouse Annex, Hearing Room, 1000 North Forest Street, Bellingham, WA, on April 27, 1999, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Cathy Jensen by April 23, 1999, TDD (360) 902-1996, or (360) 901-1976.

Submit Written Comments to: Walter Swenson, Agricultural Programs Administrator, Washington Department of Agriculture, P.O. Box 42560, Olympia, WA 98504, fax (360) 902-2092, by April 30, 1999.

Date of Intended Adoption: May 14, 1999.

March 22, 1999

Monte Maberry

President, Board of Directors

Chapter 16-561 WAC

Washington Red Raspberry Commission

AMENDATORY SECTION (Amending Order 1888, filed 6/6/86)

WAC 16-561-010 Definition of terms. For the purpose of this marketing order:

(1) "Director" means the director of agriculture of the state of Washington or his duly appointed representative.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Act" means the Washington Agricultural Enabling Act of 1961 or chapter 15.65 RCW.

(4) "Person" means any person, firm, association, or corporation.

(5) "Affected producer" means any person who produces or stores in the state of Washington raspberries in commercial quantities for fresh market, for processing, or for sale to processors.

(6) "Commercial quantity" means any raspberries produced or stored in quantities of three tons (6,000 pounds) or more, in any calendar year.

(7) "Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, storing, freezing, or distributing raspberries not produced by him.

(8) "Red raspberry commodity board," hereinafter referred to as "board," means the commodity board formed under the provisions of WAC 16-561-020.

(9) "Raspberries" means and includes all kinds, varieties, and hybrids of "*rubus idaeus*" of red color.

(10) "Marketing season" or "fiscal year" means the twelve-month period beginning with January 1 of any year and ending with the last day of December following, both dates being inclusive.

(11) "Producer-handler" means any person who acts both as a producer and as a handler with respect to raspberries. A producer-handler shall be deemed to be a producer with respect to the raspberries which he produces and a handler with respect to the raspberries which he handles, including those produced by himself.

(12) "Affected area" means that portion of the state of Washington located west of the summit of the Cascade Mountains.

(13) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade.

(14) "Affected unit" means one pound net of raspberries.

(15) "Fresh market red raspberries" means any red raspberries that are picked, packaged for transportation to the consumer, and consumed, before any additional process is performed on them.

NEW SECTION

WAC 16-561-130 Grade, labeling and handling standards (1) This rule shall apply to all red raspberries marketed, sold or processed within Washington state; except fresh market red raspberries which are exempt from this rule.

(2) All red raspberries will be classified as "juice stock" unless they are harvested and transported in a standard, maximum 25 pound flat, delivered to a Washington State certified processing plant and visually re-inspected on a cleaning-sorting belt.

(3) All juice stock containers must be labeled "[state or province of origin] red raspberry juice stock."

(a) The letters shall not be less than one inch in height.

(b) The label or stencil must be placed in a position on the container so as to be easily seen by the processor and inspector.

(4) Red raspberry juice stock products shall be labeled with lettering consistent in size with product name and must be used only for:

(a) single strength or concentrated filtered, pasteurized juice,

(b) minimum double strength, pasteurized, concentrated puree and shall pass through two, maximum .33 screen finishers,

(i) All product handled this way will be labeled, "Washington state red raspberry juice stock concentrated puree."

(ii) This process must be completed at one site.

(c) single strength pasteurized puree will pass through two, maximum .033 screen finishers.

(i) All product handled this way will be labeled, "Washington state red raspberry juice stock pasteurized puree."

(ii) This provision (4c) will apply only to 1999 harvested crop (after which it will be eliminated).

(5) The Washington Red Raspberry Commission board shall be authorized to cooperate with the Washington State Department of Agriculture for inspection and enforcement of the labeling requirements.

(a) Any person violating these standards shall be subject to a civil penalty of five hundred dollars for each and every violation. The failure to properly label or handle a single container shall be considered a separate violation.

(b) An action to assess a civil penalty for violations of this rule shall be governed by the administrative procedure act, chapter 34.05 RCW.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 99-07-109

PROPOSED RULES

PIERCE COLLEGE

[Filed March 23, 1999, 4:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-04-028.

Title of Rule: Student rights and responsibilities.

Purpose: Address current issues related to student rights and responsibilities/code of conduct. Remove grievance procedure section from policy.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Statute Being Implemented: RCW 28B.50.140(13).

Summary: Language revisions needed to better address current disciplinary issues at the college.

Reasons Supporting Proposal: New sections needed to better address current issues related to a students' rights and responsibilities.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ed Brewster, Pierce College, (FS) 325-M, (253) 964-6584.

Name of Proponent: Pierce College Student Services, public.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The student rights and responsibilities/code of conduct establishes rules and regulations relating to the rights and responsibilities of students at Pierce College.

Proposal does not change existing rules. Language changes only.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Pierce College, Ft. Steilacoom Board Room, 325-H, on April 27, 1999, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Nancy Houck by April 20, 1999, (253) 964-6581.

Submit Written Comments to: Ed Brewster, fax (253) 964-6764, by April 20, 1999.

Date of Intended Adoption: April 30, 1999.

March 10, 1999

Ed Brewster

Executive Dean of Student Services

Chapter 132K-125 WAC

STUDENT RIGHTS AND RESPONSIBILITIES

SECTION I

INTRODUCTION

NEW SECTION

WAC 132K-125-010 Title. This chapter shall be known as the Student Code of Community College District No. 11.

NEW SECTION

WAC 132K-125-020 Preamble. Pierce College, an agency of the state of Washington, exists for the development of students and the general well-being of society. To fulfill this purpose, the college provides a variety of continuing educational opportunities which include programs of general education, including university-parallel transfer courses, developmental-remedial programs, vocational-technical curricula and the opportunities to examine the cultural, social and recreational aspects of society.

Students are encouraged through free inquiry and free expression to develop their capacity for critical judgment and to engage in sustained and independent search for knowledge. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility.

The student is in the unique position of being a member of the community at large, having the rights and responsibilities of any citizen, and of being a member of the college community. Admissions to Pierce carries with it the presumption that students will conduct themselves as responsible members of such community. This includes an expectation that students will obey the law, will comply with rules and regulations of the college; will maintain a high standard

of integrity and honesty; will respect the rights, privileges and property of other members of the college community; and will not interfere with legitimate college affairs.

Pierce College may take appropriate disciplinary action when student conduct unreasonably interferes with the college's educational responsibilities, its subsidiary responsibilities, or to protect the health and safety of persons on or in college facilities, to maintain and protect college property or private property on college facilities, to protect college records, to provide college services, and/or to sponsor nonclassroom activities such as lectures, concerts, athletic events and social functions.

The responsibility and commitment to secure and to respect general conditions conducive to the freedom to learn and self-development is shared by the students, faculty and staff at Pierce College. The purpose of this statement is to enumerate the essential provisions to safeguard this freedom, the violations of which may constitute sufficient cause for disciplinary action as described in and in accordance with the procedures established in WAC 132K-125-170 through 132K-125-390.

NEW SECTION

WAC 132K-125-030 Procedural standards in disciplinary proceedings. (1) In assisting students to develop responsible behavior, the Student Conduct Code has been developed to play a complementary role to counseling, guidance, and other forms of student development actions. At the same time, Pierce College has a duty and the corollary disciplinary powers to protect its educational endeavors through the setting of standards of scholarship and conduct for its students and through the regulations of the use of its facilities.

(2) If these rules are broken, discipline will be administered so as to guarantee procedural fairness to an accused student. The regular disciplinary procedures, rules of conduct, including the student's right to appeal a decision will be clearly formulated and communicated in advance. Disciplinary procedures may vary in formality with the gravity of the offense and the sanctions that may be applied. Some Student Conduct Code violations may be adjudicated informally under prescribed procedures.

(3) Pierce College will adhere to procedural fairness by requiring that in all situations the student be informed of the nature of the charges against him or her, and that he or she be given a fair opportunity to refute them.

(4) If a student is charged with an off-campus violation of the law, the matter shall be of no disciplinary concern to the college unless the student is convicted in a court of law and unable to comply with academic requirements. If the violation of law occurs on campus and is also a violation of a published college regulation, the college may institute its own proceedings against the offender or may refer the violation to the appropriate civilian authorities for disposition. The college shall not proceed with a disciplinary action that duplicates punishment for the same offense unless the interests of the college are distinct and clearly involved by violation of law.

NEW SECTION

WAC 132K-125-040 Definitions. As used in this chapter, the following words and phrases shall be defined as follows:

(1) "Academic dishonesty" means plagiarism, cheating on examinations, fraudulent representation of student work product or other acts of academic dishonesty.

(2) "Alcoholic beverages" means liquor as defined in RCW 66.04.010(15) as now law or hereafter amended.

(3) "Assembly" means any overt activity engaged in by two or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons or group of persons.

(4) "ASPCFS" means the associated students of Pierce College - Ft. Steilacoom as defined in the Constitution of that body.

(5) "ASPCP" means the associated students of Pierce College - Puyallup as defined in the Constitution of that body.

(6) "Board" means the board of trustees of Community College District No. 11, state of Washington.

(7) "President" means the chief executive officer of the college and of Community College District No. 11, state of Washington or in his or her absence, the acting chief executive officer.

(8) "College" means Pierce College and any other community college center or facilities established within Community College District No. 11.

(9) "Member of Pierce College community" includes any person who is a student, faculty member, Pierce College official, trustee, guest on a college owned or controlled facility or any other person employed by Pierce College. A person's status in a particular situation shall be determined by the executive dean of student services or director of human resources.

(10) "College facilities" means and includes any and all personal property and real property owned, rented, leased, or operated by or used on behalf of the college or associated students and the board of trustees of Community College District No. 11 and shall include all buildings and appurtenances affixed thereon or attached thereto.

(11) "College official" includes any person employed by Pierce College performing assigned administrative professional or staff responsibilities.

(12) "Executive dean of student services" means the administrator responsible for student services or designee and that person designated by the college president to be responsible for the administration of this chapter.

(13) "Faculty" means any person hired by Pierce College to conduct one or a combination of instruction, counseling, or library services.

(14) "Student" includes all persons taking courses at Pierce College, both full time and part time. Persons who are not officially enrolled for a particular term, but who have a continuing relationship with Pierce College are considered "students."

(15) "Disciplinary action" means and includes the warning, reprimand, probation, suspension, summary suspension, dismissal or expulsion of any student by the executive dean

of student services or the college disciplinary committee, issued pursuant to this chapter for the violation of any law or designated rule or regulation of college policy or the rules and regulations of conduct for which a student is subject to disciplinary action.

(16) "College disciplinary committee" means the judicial body provided in this chapter.

(17) "Judicial body" means any person or persons authorized by the executive dean of student services to determine whether a student has violated the Student Conduct Code and to recommend imposition of sanctions.

(18) "Judicial advisor" means a Pierce College official authorized by the executive dean of student services to determine whether a student has violated the Student Conduct Code. The executive dean of student services may authorize a judicial advisor to serve simultaneously as a judicial advisor and the sole member or one of the members of a judicial body. The executive dean of student services may authorize the same judicial advisor to impose sanctions in all cases.

(19) "Rules and regulations of conduct" means those rules contained within this chapter as now exist or which may be hereafter amended, the violation of which subjects a student to disciplinary action.

(20) "Drug" means a narcotic drug as defined in RCW 69.50.101, a controlled substance as defined in RCW 69.50.201 through 69.50.212, or a legend drug as defined as RCW 69.41.010.

(21) "Cheating" includes, but is not limited to:

(a) Use of any unauthorized assistance in taking quizzes, tests, or examinations; writing papers, preparing reports, solving problems, or carrying out other assignments; or

(b) The acquisition, without permission, of tests or other academic material belonging to a member of Pierce College faculty or staff.

(22) "Plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(23) "Organization" means any number of persons who have complied with the formal requirements for college or student government recognition.

(24) "Shall" is used in the imperative sense.

(25) "May" is used in the permissive sense.

(26) "Policy" is defined as the written regulations of Pierce College as found in, but not limited to, the student code, the *Student Handbook*, class schedules and college catalogs.

(27) "Hazing" means any method of initiation into a student organization or living group or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause - bodily danger or physical harm - or serious mental or emotional harm - to any student or other person attending any institution of higher education or post secondary institution. Excluded from this definition are "customary athletic events or other similar contests or competitions."

(28) "Trespass" means the definition of trespass as contained in chapter 9A.52 RCW as now law or hereafter amended.

NEW SECTION

WAC 132K-125-050 Jurisdiction. (1) All rules herein adopted shall apply to every student whenever said student is present at or engaged in any college or student organization sponsored program, activity or function which is held on or off college facilities. It shall also mean for enforcement of the rules and regulations of conduct to include facilities in which students are engaged in official college training and/or activities including places of training internships, cooperative education, practicums or supervised work experiences.

(2) Faculty members, other college employees, students, and members of the public who breach or who aid or abet another in the breach of any provision of this chapter shall be subject to:

(a) Possible prosecution under the civil or criminal laws or regulations of Washington;

(b) Appropriate disciplinary action pursuant to the state of Washington higher education personnel board rules or the district's policies and regulations; or

(c) Any sanctions imposed pursuant to this chapter or in other college policies and regulations.

(3) Provisions of the Revised Code of Washington cited in this document are on file and available in the college library.

SECTION II

STUDENT RIGHTS AND RESPONSIBILITIES

NEW SECTION

WAC 132K-125-060 Freedom of access to higher education. Pierce College is an open-door institution that, within the limits of its facilities and subject to the prevailing admissions policy, is open to all students. The facilities and services of the college are open to all of its enrolled students. Provisions allow that the executive dean of student services may deny admission to a prospective student, or continued attendance to an enrolled student, if it reasonably appears that the student would not be competent to profit from the curriculum offerings of the college, or would, by the student's presence or conduct, create a disruptive atmosphere within the college or a substantial risk of actual harm to a member of the campus community.

NEW SECTION

WAC 132K-125-070 Right to demand identification. (1) For the purpose of determining whether probable cause exists for the application of any section of this code to any behavior by any person on a college facility, any college personnel or other authorized personnel may demand that any person on college facilities produce identification and that students produce evidence of enrollment at the college.

(2) Refusal by any individual to produce identification as required shall be cause for disciplinary action.

NEW SECTION

WAC 132K-125-080 Academic freedom. (1) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(2) Students are free to pursue appropriate educational objectives from among the college's curricula, programs and services, subject to the provisions of this chapter and statutory limitations of RCW 28B.50.090 (3)(b).

(3) Students shall be protected against prejudice or arbitrary and capricious academic evaluation. At the same time, they are responsible for maintaining the standards of academic performance established by each of their instructors.

(4) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(5) Students are protected against improper disclosure of information about their views, beliefs, and political associations that instructors acquire in the course of their work as instructors, advisers, and counselors. Such information is considered confidential. Students have the right to privacy of all student records according to the Family Education Rights and Privacy Act of 1974.

NEW SECTION

WAC 132K-125-090 Freedom of expression. Students and student organizations are free to examine and to discuss all questions of interest to them, and to express opinions publicly and privately. They are free to support causes by orderly means that do not disrupt the regular and essential operation of the institution. At the same time, it should be made clear to the campus community and the larger community that in their public expressions or demonstrations, students or student organizations speak only for themselves.

NEW SECTION

WAC 132K-125-100 Freedom of assembly. (1) Students shall have the right of "assembly" as defined in WAC 132K-125-040 upon college facilities that are generally available to the public provided that such assembly shall:

- (a) Be conducted in an orderly manner;
- (b) Not unreasonably interfere with vehicular or pedestrian traffic;
- (c) Not unreasonably interfere with classes, schedules, meetings, or ceremonies, or with educational and administrative functions of the college;
- (d) Not unreasonably interfere with the regular activities of the college; and
- (e) Not cause damage or destruction to college property or private property on college facilities.

(2) A student or student organization who conducts or participates in an assembly violative of any provision of this code shall be subject to disciplinary action.

(3) Nonstudents who participate in or aid or abet any assembly or assemblies in violation of this section shall be subject to possible prosecution under the state criminal tres-

pass law and/or any other possible civil or criminal remedies available to the college.

(4) Assemblies which violate these rules may be ordered to disperse by the college in accordance with Washington state statutes.

NEW SECTION

WAC 132K-125-110 Freedom of association. (1) Students are free to organize and join associations to promote any legal purpose whether it be religious, cultural, political, educational, recreational or social. Student organizations must be granted a charter by the ASPCP or ASPCFS before they may be officially recognized. Procedures for becoming chartered are located in the student programs office.

(2) Campus organizations, including those affiliated with an extramural organization, are open to all students without respect to race, religion, disability, gender, sexual preference, color, age, marital status, veteran status, ancestry or national origin. Affiliation with an extramural organization does not itself disqualify a student organization from institutional recognition provided that other conditions for charter issuance have been met.

NEW SECTION

WAC 132K-125-120 Distribution and posting. Students may distribute or post material subject to official procedures printed and available in the office of student programs. The college may restrict distribution of any publications, where such distribution unreasonably interferes with college operations. Any person desiring to distribute such publications shall first register with the respective office of student programs so that reasonable areas and times can be assured and the activities of the institution will not be unduly interfered with. All handbills, leaflets, newspapers, and similarly related matter must bear identification as to the publishing agency and distributing organization and individual.

NEW SECTION

WAC 132K-125-130 Off-campus speaker policy. (1) Student organizations officially recognized by the college shall have the right to invite outside speakers to speak on campus subject to the availability of campus facilities, funding and in compliance of college procedures available in the respective office of student programs. Speakers are subject to the legal restraints imposed by the laws of the United States and the state of Washington.

(2) The appearance of an invited speaker on college facilities does not represent an endorsement, either implicitly or explicitly, or views or opinions of the speaker by the college, its students, its faculty, its college personnel, its administration or its board.

NEW SECTION

WAC 132K-125-140 Incidental sales. Students have the right to engage in incidental sales of personal property in

a private transaction provided college facilities are not explicitly used for this purpose.

NEW SECTION

WAC 132K-125-150 Commercial activities. (1) College facilities will not be used for commercial solicitation, advertising or promotional activities except when such activities clearly serve Community College District No. 11 educational objectives, including but not limited to display of books of interest to the academic community or the display or demonstration of technical or research equipment, and when such commercial activities relate to educational objectives and are conducted under the sponsorship or the request of a college department or the office of student programs of the college, provided that such solicitation does not interfere with or operate to the detriment of the conduct of college affairs or the free flow of pedestrian or vehicular traffic.

(2) For the purpose of this regulation, the term "commercial activities" does not include handbills, leaflets, newspapers, and similarly related materials as regulated in WAC 132K-125-120.

NEW SECTION

WAC 132K-125-160 Student participation in college governance. As members of the college community, students will be free, individually and collectively, to express their views on college policy, and on matters of general interest to the student body. The ASPCP and ASPCFS constitutions and the college's administrative procedures provide clearly defined means to participate in the formulation and application of institutional policy affecting academic and student affairs.

SECTION III STUDENT CONDUCT CODE

NEW SECTION

WAC 132K-125-170 Rules and regulations. Any student may be subject to disciplinary action as described in this chapter if the student, whether as a principle actor, aider, abettor or accomplice as defined in RCW 9A.08.020 as now law or hereafter amended, interferes with the personal rights or privileges of others or with the college's educational process and violates any provision of this chapter. Grounds for disciplinary action include, but are not limited to, the following:

(1) Acts of dishonesty, including, but not limited to, the following:

(a) Cheating, plagiarism, or other forms of academic dishonesty.

(b) Furnishing false information to any Pierce College official, faculty member, or office.

(c) Forgery, alteration, or misuse of a Pierce College document, record, fund or instrument of identification.

(d) Tampering with the election of any Pierce College recognized student organization.

(2) Assault, reckless endangerment, intimidation or interference upon another person in the manner set forth in RCW 9A.36.010 through 9A.36.050 and RCW 9A.36.070, or in RCW 28B.10.570 through 28B.10.572, as now or hereafter amended.

(3) Disruption or obstruction of teaching, research, administration, disciplinary proceedings, other Pierce College activities, including its public-service functions on or off college facilities, or other authorized non-Pierce College activities, when the act occurs on college facilities.

(4) Any acts of misconduct, substantially disrupting any college class by engaging in conduct that renders it difficult or impossible to maintain the decorum of the class, shall be subject to disciplinary action.

(5) Filing a formal complaint, falsely accusing another student or college employee of violating a provision of this chapter.

(6) Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or the college.

(7) Engaging in unwelcome sexual advances, requests for sexual favors, and other verbal, written or physical conduct of a sexual nature where such behavior offends the recipient, causes discomfort or humiliation, or interferes with job or school performance.

(8) Engaging in racial harassment, which includes ethnic and racial jokes, racial slurs, demeaning comments, looks or gestures or other verbal, written or physical conduct deliberately designed to humiliate and/or cause discomfort to the recipient or which interferes with job or school performance.

(9) Engaging in attempted or actual theft or robbery, which is defined as theft of and/or damage to property of the college, the college community or other personal or public property or of another as set forth in RCW 9A.56.010 through 9A.56.050 and RCW 9A.56.100, as now law or hereafter amended.

(10) Engaging in malicious mischief, which is defined as intentional or negligent damage to or destruction of any college facility or other public or private, real or personal property.

(11) Converting of college or associated students' equipment or supplies or other property for personal gain or use, without proper authority.

(12) Intentionally gaining access, without authorization, to a computer system or electronic data owned or used by the Washington state Community College District No. 11 shall be subject both to disciplinary action pursuant to this chapter and to criminal prosecution pursuant to RCW 9A.52.110 through 9A.52.130, and any or all other statutory laws or regulations pertaining thereto.

(13) Forging or tendering any forged records or instruments as defined in RCW 9A.60.010 through 9A.60.020 as now law or hereafter amended, of any district record or instrument to an employee or agent of the district acting in her/his official capacity.

(14) Unauthorized possession, duplication or use of keys to any Pierce College facilities or entering or using any college administrative or other employee office or any locked or otherwise closed college facility in any manner, at any time,

without permission of the college employee or agent in charge.

(15) Smoking in college facilities is prohibited or any other smoking not in compliance with chapter 70.160 RCW as now law or hereafter amended.

(16) Use, possession or distribution of alcoholic beverages, or intoxication on or at any college sponsored event, on or off campus; or appearance on campus while under the influence of intoxication.

(17) Use, possession, manufacture, distribution, being under the influence of, or selling any narcotic or controlled substance as defined in chapter 69.50 RCW as now law or hereafter amended, except when the use or possession of a drug is specifically prescribed as medication by an authorized medical doctor or dentist. For the purpose of this regulation, "sale" shall include the statutory meaning set forth in RCW 69.50.410 as now law or hereafter amended.

(18) Pierce College has adopted and implemented a policy and program to prevent the unlawful possession, use or distribution of illicit drugs or alcohol by students. The policy and program statement are on file in the office of the executive dean of student services and personnel office and describe criminal and other sanctions which may be imposed against students and employees for the unlawful possession, use or distribution of illicit drugs or alcohol by students and employees at Pierce College.

(19) Possession or use (to include exhibiting, displaying or drawing any weapon) of firearms, explosives, other weapons or instrumentalities or dangerous chemicals or any other device or substance which can be used to inflict bodily harm or damage real or personal property on college facilities, except for authorized college purposes or for law enforcement officers.

(20) Violation of:

(a) Pierce College policies, rules or regulations; and/or

(b) Federal, state or local law on Pierce College facilities at Pierce College sponsored or supervised activities.

(21) Failure to comply with the directions of Pierce College officials or law enforcement officers acting in performance of their duties.

(22) Obstruction of the free flow of pedestrian or vehicular traffic on Pierce College facilities or at Pierce sponsored or supervised activities.

(23) Conduct which is disorderly, lewd, or indecent; breach of peace; or aiding, abetting, or procuring another person to breach the peace on Pierce College facilities or at functions sponsored by, or participated in by, Pierce College.

(24) Engaging in actions or behaviors that result in the damage to property of the college, the college community or other personal or public property.

(25) Theft or other abuse of computer time, including, but not limited to:

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

(b) Unauthorized transfer of a file.

(c) Unauthorized use of another individual's identification and password.

(d) Unauthorized use of phone and electronic devices such as radios, etc.

(e) Use of computing facilities to interfere with the work of another student, faculty member or Pierce College official.

(f) Use of computing facilities to send or receive obscene or abusive messages.

(g) Use of computing facilities to interfere with normal operation of the college computing systems.

(26) Intentionally and repeatedly following another person to that person's home, school, place of employment, business, or any other location, or following the person while in transit between locations may be subject to disciplinary action if the person being followed is intimidated, harassed, or placed in fear that the stalker intends to injure the person or property of the person being followed, or another person. The feeling of fear, intimidation, or harassment must be one that a reasonable person in the same situation would experience under all the circumstances. RCW 9A.46.110 and 10.14.020 shall be guidance for this regulation.

(27) Physical abuse, verbal abuse, threats, intimidation, harassment, coercion, and/or other conduct based on facts, which threatens or endangers the health and safety of any person. This is to include acts or threats to one's personal safety and/or life.

(28) Any student who, by any act of misconduct, substantially disrupts any college function by engaging in conduct that renders it difficult or impossible to continue such a function in an orderly manner shall be subject to disciplinary action.

(29) Abuse of the judicial system, including, but not limited to:

(a) Failure to obey the summons of a judicial body or Pierce College official.

(b) Falsification, distortion, or misrepresentation of information before a judicial body.

(c) Disruption or interference with the orderly conduct of a judicial proceeding.

(d) Institution of a judicial proceeding knowingly without cause.

(e) Attempting to discourage an individual's proper participation in, or use of, the judicial system.

(f) Attempting to influence the impartiality of a member of a judicial body prior to and/or during the course of the judicial proceeding.

(g) Harassment (verbal or physical) and/or intimidation of a member of the judicial system and/or a college disciplinary committee prior to, during, and/or after a judicial proceeding.

(h) Failure to comply with the sanction(s) imposed under the Student Code.

(i) Influencing or attempting to influence another person to commit an abuse of the judicial system.

NEW SECTION

WAC 132K-125-180 Trespass. (1) The executive dean of student services or his/her designee is authorized in the instance of any event deemed to be disruptive of order or deemed to impede the movement of persons or vehicles or which the executive dean of student services deems to disrupt or threatens to disrupt the ingress and/or egress of persons from college facilities. The executive dean of student ser-

vices or such other person designated by the executive dean of student services, shall have the authority and power to:

(a) Prohibit the entry of, or withdraw the license or privilege of a person or persons or any group of persons to enter onto or remain upon any portion of college property or of a college facility; or

(b) To give notice against trespass by any manner provided by law, to any person, persons, or group of persons against whom the license or privilege has been withdrawn or who have been prohibited from, entering onto or remaining upon all or any portion of college property or a college facility; or

(c) To order any person, persons, or group of persons to leave or vacate all of any portion of college property or of a college facility.

(2) Any individual who shall disobey a lawful order given by the executive dean of student services, or his or her designee, shall be subject to disciplinary action and/or charges of criminal trespass.

NEW SECTION

WAC 132K-125-190 Hazing policy. (1) Hazing is prohibited.

(2) Penalties.

(a) Any organization, association or student living group that knowingly permits hazing shall:

(i) Be liable for harm caused to persons or property resulting from hazing; and

(ii) Be denied recognition by Pierce College as an official organization, association or student living group on this campus. If the organization, association or student living group is a corporation, whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) A person who participates or conspires to participate in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships or awards for a period of not less than one quarter and up to permanent forfeiture.

(c) An act of hazing, in addition to violating this policy, may constitute a violation of the student Code of Conduct. WAC 132K-125-170(2) Assault, reckless endangerment, etc. These offenses are subject to disciplinary action.

(d) Hazing violations are also misdemeanors punishable under state criminal law according to RCW 9A.20.021.

(3) Sanctions for impermissible conduct not amounting to hazing.

(a) Impermissible conduct associated with initiation into a student organization or living group or any pastime or amusement engaged in, with respect to the organization or living group, will not be tolerated.

(b) Impermissible conduct which does not amount to hazing may include conduct which causes embarrassment, sleep deprivation or personal humiliation, or may include ridicule or unprotected speech amounting to verbal abuse.

(c) Impermissible conduct not amounting to hazing is subject to any sanction available under the student Code of Conduct, depending upon the seriousness of the violation.

NEW SECTION

WAC 132K-125-200 Judicial authority. (1) All disciplinary action in which there is a recommendation that a student be suspended or expelled from the college shall be acted upon by the president as defined in WAC 132K-125-040(7).

(2) Administration of this chapter is the responsibility of the executive dean of student services.

(3) The instructor is responsible for conduct in the classroom and is authorized to take such steps as are reasonably necessary when behavior of the student interrupts the normal classroom procedure. When such behavior may be as serious as to result in summary suspension from the class, the instructor must report the infraction in writing to the executive dean of student services within twenty-four hours of the infraction.

(4) The student has the right to appeal any disciplinary action of an instructor to the executive dean of students as in accordance with the procedures set forth in WAC 132K-125-230 through 132K-125-280.

NEW SECTION

WAC 132K-125-210 Initiation of proceedings. (1) Any member of the Pierce College community may file charges against any students for violation of provisions of this code. Charges shall be prepared in writing and directed to the judicial advisor responsible for the administration of the Pierce College judicial system. Any charges should be submitted as soon as reasonably possible after the event takes place, preferably within five academic days.

(2) All disciplinary proceedings will be initiated by the executive dean of student services. The student may be placed on suspension pending commencement of disciplinary action, pursuant to the conditions set forth in WAC 132K-125-230.

(3) Any student charged by the judicial advisor with a violation of any provision of this code will be so informed by regular United States mail or by personal service of the charges and of the time, date (not less than five nor more than fifteen business days after the student has been notified), and place of a conference between the judicial advisor and the student. The notice shall be sent to the student's last known address shown on college records.

(4) A student may be advised and represented at the student's own expense by counsel or personal advisor.

(5) After a review of the evidence and interview the student(s) involved in the case, the judicial advisor may take any of the following actions:

(a) Terminate the proceeding exonerating the student or students;

(b) Dismiss the case;

(c) Impose verbal warning to the student directly, not subject to the student's right of appeal as provided in this code;

(d) Impose additional sanctions of reprimand, probation, suspension or expulsion, subject to the student's right of appeal as provided in this code; or

(e) Refer the matter to the college disciplinary committee for a recommendation as to appropriate action.

(6) The student will be notified in writing of the determination made by the judicial advisor within ten business days of the proceeding. The student will also be notified of his or her right to appeal pursuant to WAC 132K-125-220.

NEW SECTION

WAC 132K-125-220 Appeals. (1) Appeals contesting any disciplinary action, except for summary suspension, may be made by the student(s) involved. Such appeals shall be made in the following order:

(a) Disciplinary action taken by the executive dean of student services, or his or her designee(s) may be appealed to the college disciplinary committee, which may at the request of the student(s), hear the case de novo.

(b) Disciplinary action taken by the college disciplinary committee may be appealed to the college president. The president shall review the record of the proceedings which gave rise to the appeal, as well as the recommendations made by the executive dean of student services or his or her designee(s) and the college disciplinary committee. The president's decision shall be final.

(2) Any appeal by a student receiving a disciplinary sanction must meet the following conditions:

(a) The appeal must be in writing and must clearly state errors in fact or matters in extenuation or mitigation which justify the appeal; and

(b) The appeal must be filed within twenty business days from the date on which the student was notified that disciplinary action was being taken.

(3) All appellate decisions shall be sent from the office of the executive dean of student services. Written decisions shall include the signatures of the college disciplinary committee.

NEW SECTION

WAC 132K-125-230 Summary suspension proceedings. Each college employee has the right to suspend, remove or have removed from a college class or college function and/or the college for one class day any student who by an act of misconduct renders it difficult or impossible to maintain the decorum of a class or to continue such function in an orderly manner. The college employee shall notify the executive dean of student services in writing within twenty-four hours of the infraction and the action taken.

(1) Ordinarily, disciplinary sanctions will be imposed only after the appropriate informal or formal hearing has taken place and after the student has, if he/she so chooses, exercised his/her right to appeal. However, if the executive dean of student services or his/her designee(s) has cause to believe that any student:

(a) Has committed a felony; or

(b) Has violated any provision of this chapter; or

(c) Presents an imminent danger either to himself or herself, other persons of the Pierce College community, Pierce College property, or poses a threat of disruption of or interferes with the normal operations of Pierce College; that student shall be summarily suspended and shall be notified by certified and regular mail at the student's last known address,

or shall be personally served. Summary suspension is appropriate only where (c) of this subsection can be shown, either alone or in conjunction with (a) or (b) of this subsection.

(2) The notice shall be entitled "notice of summary suspension proceedings" and shall state:

(a) The charges against the student including reference to the provisions of WAC 132K-125-170 or statutory law involved; and

(b) That the student charged must appear before the executive dean of student services or his or her designee(s) at a time specified in the notice for a hearing. The hearing shall be held as soon as reasonably possible after the summary suspension.

NEW SECTION

WAC 132K-125-240 Procedures of summary suspension hearing. (1) The summary suspension hearing shall be considered an informal hearing. The hearing must be conducted as soon as reasonably possible and the executive dean of student services or his or her designee(s) shall preside.

(2) The executive dean of student services shall decide whether there is probable cause to believe that continued suspension is necessary and/or whether some other disciplinary action is appropriate.

NEW SECTION

WAC 132K-125-250 Decision by the executive dean of student services. If the executive dean of student services, following the summary suspension hearing, finds that there is probable cause to believe that:

(1) The student against whom specific violations are alleged has committed one or more such violations; and

(2) Summary suspension of that student is necessary for the safety and well-being of the student, other members of the Pierce College community on college facilities, the educational process of the institutions or to restore order to the campus; and

(3) Such violation or violations constitute grounds for disciplinary action as provided for in WAC 132K-125-170; the executive dean of student services or his or her designee may continue to enforce the suspension of the student from the college and may also impose any other disciplinary action appropriate.

NEW SECTION

WAC 132K-125-260 Notice of suspension. (1) If a student's summary suspension is upheld or if the student is otherwise disciplined, the student will be provided with a written notice including the findings of fact and conclusions which lead the executive dean of student services to believe that the summary suspension of the student should continue.

(2) The student suspended pursuant to the authority of this rule shall be served a copy of the notice of suspension by personal service or by certified and regular mail at the student's last known address within three business days following the conclusion of the hearing with the executive dean of student services.

(3) The notice of suspension shall state the duration of the suspension or nature of the disciplinary action and conditions under which the suspension may be terminated.

NEW SECTION

WAC 132K-125-270 Suspension for failure to appear. The executive dean of student services is authorized to enforce the suspension of the summarily suspended student in the event the student has been served pursuant to the notice requirement and fails to appear at the time designated for the summary suspension proceeding.

NEW SECTION

WAC 132K-125-280 Appeals from summary suspension hearing. (1) Any student aggrieved by an order issued at the summary suspension proceeding may appeal to the college disciplinary committee. No such appeal shall be entertained, however, unless:

(a) The student has first appeared before the executive dean of student services at the hearing called for in WAC 132K-125-260; and

(b) The student has been officially notified of the outcome of that hearing; and

(c) Summary suspension or another disciplinary sanction has been upheld; and

(d) The appeal conforms to the standards set forth in WAC 132K-125-220.

(2) The college disciplinary committee shall, within five business days, conduct a formal hearing according to the provisions of WAC 132K-125-320. Appeals from summary suspension take precedence over other matters before the college disciplinary committee.

NEW SECTION

WAC 132K-125-290 Final decision. The president or his or her designee(s) shall review the findings and conclusions of the executive dean of student services in conjunction with the recommendations of the college disciplinary committee and will issue a final decision within three business days. The president or his or her designee(s) shall notify the appealing student by certified and regular mail at the student's last known address or by personal service.

NEW SECTION

WAC 132K-125-300 Purpose of disciplinary action. Disciplinary action, up to and including expulsion from the college, may be imposed upon a student or group or organization for violation of the provisions of this chapter. Disciplinary action proceedings shall determine whether and under what conditions the violator may continue as a student at the college.

NEW SECTION

WAC 132K-125-310 Disciplinary sanctions. The following sanctions may be imposed upon any student found to have violated any section of this chapter:

(1) Disciplinary warning. A notice in writing to the student by the executive dean of student services or his or her designee(s) that the student has violated the rules of conduct as outlined in this chapter or has otherwise failed to satisfy the college's expectations regarding conduct. Such warnings imply that continuing or repeating the specific violation or engaging in other misconduct will result in one of the more serious disciplinary sanctions described below. Formal files or records will not be kept on warnings.

(2) Disciplinary reprimand. Formal action censuring a student for violating the rules and regulations of student conduct as outlined in this chapter. Reprimands shall be made in writing to the student by the executive dean of student services or his or her designee(s), with copies placed on file in the office of student services. A reprimand shall indicate to the student that continuing or repeating the specific violation involved will result in one of the more serious disciplinary actions described below.

(3) Disciplinary probation. Formal action by executive dean of student services or designee(s), placing conditions upon the student's continued attendance for violation of rules of student conduct. Notice shall be made in writing and shall specify the period of probation and the conditions, such as limiting the student's participation in extracurricular activities. Disciplinary probation may be for a specific term or for an indefinite period that may extend to graduation or other termination of the student's enrollment in the college.

(4) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement. Failure to make restitution by the time limits established by the executive dean of student services or the college disciplinary committee will result in suspension for an indefinite period of time as set forth in subsection (5) in this section. Student(s) may be reinstated upon payment.

(5) Suspension. Temporary dismissal from the college and termination of the person's student status for violation of rules of student conduct. Notice shall be given in writing and specify the duration of the dismissal and any special conditions that must be met before readmission.

(6) Expulsion. Permanent termination of a student's status for violation of rules of student conduct. Notice must be given in writing. There shall be no refund of fees for the quarter in which the action is taken, but fees paid in advance for a subsequent quarter will be refunded.

(7) Sanctions imposed upon groups or organizations. The following sanctions may be imposed upon groups or organizations:

(a) Those sanctions listed in subsections (1) through (4) of this section; and/or

(b) Deactivation: Loss of privileges including college recognition, for a specified period of time.

NEW SECTION

WAC 132K-125-320 Composition of college disciplinary committee. (1) The college disciplinary committee shall be composed of six members and shall be appointed no later than October 15 of each academic year. Replacements on the committee shall be made from respective panels. The membership will be selected as follows:

(a) One full-time student representative in good academic standing and one alternate chosen by the ASPCP council to serve a one year appointment; or

(b) One full-time student representative in good academic standing and one alternate chosen by the ASPCFS student government to serve a one year appointment;

(c) Two faculty members and an alternate chosen by the faculty association to serve a two-year, nonconcurrent term;

(d) One administrator (excluding the executive dean of student services) chosen by the president to serve a one-year term.

(e) One student services administrator chosen by the executive dean of student services to serve a one-year term.

(2) A quorum of the committee shall consist of four members with at least one student member present. All committee members shall have voting rights. The committee shall select its chair who shall preside at all meetings and hearings. The chair shall not vote except to break a tie vote. The chair shall also not be a student representative.

(3) If any member of the college disciplinary committee is unable to consider a particular disciplinary proceeding for any reason (including, but not limited to, conflict of interest, matters of conscience or related reasons), such members shall abstain from considering the issues. The chair of the college disciplinary committee shall make temporary appointments where members abstain. If the committee chair abstains pursuant to the above procedure, the members of the college disciplinary committee shall elect a temporary chair who will preside over the hearing.

NEW SECTION

WAC 132K-125-330 Hearing procedures before the college disciplinary committee. (1) The college disciplinary committee shall hear, de novo, and make recommendations to the president of the college on all disciplinary cases referred to it by the executive dean of student services or by appeal as specified in WAC 132K-125-220.

(2) A hearing will be conducted within twenty-one business days after disciplinary action has been referred to the committee.

(3) Where a person is charged with an offense punishable by suspension, limited dismissal, or termination of her/his relationship with the college, and where the person:

(a) Waives the opportunity for an informal hearing; or

(b) By a person's conduct (in the judgment of the hearing chair) makes it impossible to conduct an informal hearing; or

(c) Is dissatisfied with the results of the informal hearing; that person is entitled to a formal hearing conducted according to the provisions of RCW 34.05.410 and the guidelines of this chapter. Where an adjudicative proceeding is neither required by law nor requested by the student or the college,

the matter may be resolved informally. Brief adjudicative proceedings before the disciplinary committee shall be conducted in any manner which will bring about a prompt, fair resolution of the matter.

(4) The student has a right to a fair and impartial hearing before the college disciplinary committee on any charge of violating the rules and regulations of conduct. The student's failure to cooperate with the committee's hearing procedures, however, shall not preclude the college committee on student conduct from making its findings of facts, conclusions, and recommendations.

(5) Written notice of the time and place of the hearing before the college disciplinary committee shall be given to the student by personal service or certified mail not less than fourteen business days in advance of the hearing. Such notice shall include:

(a) A statement of the time, place, and nature of the disciplinary proceedings; and

(b) A statement of the specific charges against her/him including reference to the particular sections of the rules of conduct involved; and

(c) To the extent known, a list of witnesses who will appear and a summary description of any documentary or other physical evidence that will be presented by the college at the hearings.

(6) The student shall be entitled to:

(a) Hear and examine the evidence against her or him and be informed to the identity of its source; and

(b) Present evidence in her or his own behalf and to cross-examine witnesses testifying on behalf of the college as to factual matters; and

(c) Take depositions upon oral examination or written interrogatories. Discovery shall be done according to the rules of civil procedure or by a less formal method where all parties agree.

(7) The student has the right to be assisted by any advisor they choose, at their own expense. The advisor cannot be an employee of the college. If the student elects to choose a duly licensed attorney admitted to practice in the state of Washington as counsel, notice thereof must be tendered by the student to the executive dean of student services at least seven business days prior to the hearing. The student is responsible for presenting her or his own case and, therefore, the advisor is not permitted to speak or to participate directly in any hearing before a judicial body.

(8) In all disciplinary proceedings, the college may be represented by a designee appointed by the executive dean of student services; that designee may then present the college's case against the student accused of violating the rules of conduct; provided, that in those cases in which the student elects to be represented by a licensed attorney, the executive dean of student services may elect to have the college represented by an assistant attorney general.

(9) The executive dean of student services shall designate a recorder to take notes during the hearing and to prepare a written summary of all evidence, facts, and testimony presented to the college disciplinary committee during the course of the hearing. The proceedings of the hearing, with the exception of the committee deliberations, shall also be tape recorded, and in some instances may be videotaped.

(10) The record in a formal hearing shall contain:

- (a) All documents, motions, and intermediate rules; and
- (b) Evidence received and considered; and
- (c) A statement of matters officially noticed; and
- (d) Questions and offers of proof, objections, and rulings thereon; and

(e) As specified in RCW 34.05.476 as now law or hereafter amended.

(11) Following final disposition of the case and any appeals therefrom, the president may direct the destruction of any records of any disciplinary proceedings, provided that such destruction is in conformance with the requirements of chapter 40.14 RCW, as now law or hereafter amended.

(12) The time of the hearing may be advanced or continued for good cause by the college disciplinary committee at the request of the student.

NEW SECTION

WAC 132K-125-340 Conduct of hearings. (1) Hearings conducted by the college disciplinary committee will be held in closed session; provided, the accused student may request the hearing to be held in open session.

(2) Admission of any person to the hearing shall be at the discretion of the college disciplinary committee.

(3) If at any time during the conduct of a hearing visitors disrupt the proceedings, the committee chair may exclude such persons from the hearing room.

(4) Any student of the college attending the disciplinary hearing who continues to disrupt the proceedings after the presiding officer has asked her/him to cease or leave the hearing room shall be subject to disciplinary action.

(5) All procedural questions are subject to the final decision of the chairperson of the college disciplinary committee.

NEW SECTION

WAC 132K-125-350 Evidence admissible in hearings. (1) Only those matters presented at the hearing, in the presence of the accused student, except where the student fails to attend after receipt of proper notice, will be considered in determining whether the college disciplinary committee has sufficient cause which is established by the preponderance of the evidence to believe that the accused student has violated the rules he/she is charged with having violated.

(2) In determining whether sufficient cause exists as stated in subsection (1) of this section members of the college disciplinary committee shall admit evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded.

(3) The chair shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state.

(4) Evidence or testimony to be offered by or on behalf of the student in extenuation or mitigation shall not be presented or considered until all substantive evidence or testimony has been presented.

NEW SECTION

WAC 132K-125-360 Decision by the college disciplinary committee. (1) Upon conclusion of the disciplinary hearing, the college disciplinary committee shall consider all the evidence therein presented and decide by majority vote whether to uphold the initial disciplinary action or to recommend institution of any of the following actions:

(a) That the college terminate the proceedings and exonerate the student; or

(b) That the college impose any of the disciplinary actions as provided in this chapter.

(2) The committee's written decision shall include findings of fact, conclusions regarding whether the student(s) violated any provisions of this chapter and recommendations for the final disposition of the matter at issue.

(3) Within seven business days of the conclusion of the hearing, the student will be provided with a copy of the committee's findings of fact and conclusions. The copy shall be dated and contain a statement advising the student of her or his right, to present a written statement to the president of the college appealing the recommendation of the disciplinary committee.

NEW SECTION

WAC 132K-125-370 Final appeal. (1) Any student feeling aggrieved by the findings or conclusions of an appeal pursuant to WAC 132K-125-350 may appeal the same in writing to the president within twenty business days following notification to the student of the action taken by the college disciplinary committee on student conduct. The president has the discretion to suspend any disciplinary action pending determination of the merits of the findings, conclusions and disciplinary actions imposed. In the consideration of such an appeal, the president shall base her or his findings and decision only on the official written record of the case and on any reports or recommendations of the college disciplinary committee and the executive dean of student services.

(2) If the president decides that discipline is to be imposed or altered after the review provided by subsection (1) of this section, the president or the president's designee shall notify the student in writing, within ten business days, by regular or certified mail or personal service of the discipline imposed. The final order will also include a statement of findings of fact and conclusions of law. The decision of the president shall be final and not reviewable.

NEW SECTION

WAC 132K-125-380 Readmission after dismissal. Any student dismissed from the college for disciplinary cases may be readmitted only on written petition to the office of the executive dean of student services. Such petitions must indicate how specified conditions have been met and, if the term of the dismissal has not expired, any reasons which support a reconsideration of the matter. Because the president of the college participates in all disciplinary actions dismissing students from the college, decisions on such petitions of read-

mission must be reviewed and approved by the president before readmission is granted.

NEW SECTION

WAC 132K-125-390 Reporting, recording and maintenance of records. Records of all disciplinary cases shall be kept by the office of the executive dean of student services. Except in proceedings wherein the student is exonerated, all documentary or other physical evidence produced or considered in disciplinary proceedings and all recorded testimony shall be preserved insofar as possible for at least five years. No record of proceedings wherein the student is exonerated, other than the fact of exoneration, shall be maintained in the student's file or other official college repository after the date of the student's graduation.

**SECTION IV
TECHNICAL PROVISIONS**

NEW SECTION

WAC 132K-125-400 Interpretation and revision. (1) Any question of interpretation regarding the Student Code shall be referred to the executive dean of student services or his or her designee for final determination.

(2) The Student Code shall be reviewed every three years under the direction of the executive dean of student services.

NEW SECTION

WAC 132K-125-410 Prior rules. The rules contained within this chapter supersede all former rules relating to student conduct.

NEW SECTION

WAC 132K-125-420 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

NEW SECTION

WAC 132K-125-430 Effective date. WAC 132K-125-010 through 132K-125-430 shall take effect on May 12, 1999, and shall apply to all rule-making actions and proceedings begun on or after that date.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 132K-16-010 Introduction.
- WAC 132K-16-020 Policy and regulations regarding student conduct.
- WAC 132K-16-030 Discipline.

- WAC 132K-16-040 Rights and responsibilities.
- WAC 132K-16-050 Definitions.
- WAC 132K-16-060 Procedures.
- WAC 132K-16-070 Guidelines and safeguards.
- WAC 132K-16-110 Introduction.
- WAC 132K-16-120 Definitions.
- WAC 132K-16-130 Jurisdiction.
- WAC 132K-16-140 Student rights.
- WAC 132K-16-150 Student responsibilities.
- WAC 132K-16-160 Purpose of disciplinary action.
- WAC 132K-16-170 Delegation of disciplinary authority.
- WAC 132K-16-180 Disciplinary action.
- WAC 132K-16-190 Initiation of disciplinary proceedings.
- WAC 132K-16-200 Initial disciplinary proceedings.
- WAC 132K-16-210 Notice to parties.
- WAC 132K-16-220 Appeals.
- WAC 132K-16-230 Failure to appear.
- WAC 132K-16-240 Composition of the college disciplinary committee.
- WAC 132K-16-250 Review by the college disciplinary committee.
- WAC 132K-16-260 Formal hearing procedures before the college disciplinary committee.
- WAC 132K-16-270 Conduct of hearings.
- WAC 132K-16-280 Evidence admissible in hearings.
- WAC 132K-16-290 Decision by the college disciplinary committee.
- WAC 132K-16-300 Final decision regarding disciplinary action.
- WAC 132K-16-310 Readmission after dismissal.
- WAC 132K-16-320 Reporting, recording and maintenance of records.
- WAC 132K-16-330 Summary suspension proceedings.
- WAC 132K-16-340 Notice of summary proceedings.
- WAC 132K-16-350 Procedures of summary suspension hearing.

PROPOSED

WAC 132K-16-360	Suspension for failure to appear.
WAC 132K-16-370	Appeals from summary suspension.
WAC 132K-16-380	Student grievances—Generally.
WAC 132K-16-390	Matters not grievable.
WAC 132K-16-400	Administrative, faculty and student grievances.
WAC 132K-16-410	Types of grievances.
WAC 132K-16-420	Student grievance procedures—Informal.
WAC 132K-16-430	Student grievance procedures—Informal.
WAC 132K-16-440	Composition of grievance review committee.
WAC 132K-16-450	Hearing procedures before the grievance review committee.
WAC 132K-16-460	Review of committee's decision.
WAC 132K-16-470	Prior rules.
WAC 132K-16-480	Severability.

WSR 99-07-110**PROPOSED RULES****DEPARTMENT OF ECOLOGY**

[Order 97-39—Filed March 23, 1999, 4:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 97-21-099.

Title of Rule: Opening burning (all types of outdoor burning except agricultural burning and silvicultural burning).

Purpose: To achieve consistency with, and implement, all related provisions of chapter 70.94 RCW.

Other Identifying Information: Chapter 173-425 WAC (all sections).

Statutory Authority for Adoption: RCW 70.94.700 and [70.94.]755.

Statute Being Implemented: Chapter 70.94 RCW.

Summary: The purpose of the proposed rule is to establish a program to implement the limited burning policy authorized by sections [RCW 70.94.]743 through [70.94.]765 of the Washington Clean Air Act (chapter 70.94 RCW) and other provisions of the act that pertain to outdoor burning (except agricultural and silvicultural burning). The limited burning policy requires ecology and other agencies to prohibit burning in certain areas, require permits for most types of burning (where not prohibited), and foster and encourage reasonable alternatives to burning.

Reasons Supporting Proposal: Chapter 173-425 WAC needs to be amended to make it consistent with chapter 70.94 RCW as changed in 1995, 1997, and 1998 through ESHB 1080, SHB 1726, EHB 2414, and SHB 2523.

Name of Agency Personnel Responsible for Drafting: Bruce Smith, 300 Desmond Drive, Lacey, (360) 407-6889; **Implementation and Enforcement:** Mary Burg, 300 Desmond Drive, Lacey, (360) 407-6800.

Name of Proponent: Washington State Department of Ecology, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule applies to all outdoor burning except agricultural and silvicultural (forest) burning, and burning on Indian reservations. It establishes a program to implement the limited burning policy authorized by sections [RCW 70.94.]743 through [70.94.]765 of the Washington Clean Air Act (chapter 70.94 RCW) and other provisions of the act that pertain to such burning. The limited burning policy requires ecology and other agencies to: (1) Reduce outdoor burning to the greatest extent practical, primarily by prohibiting it in certain areas; (2) control it in other areas by imposing requirements and permits for most types of burning; and (3) foster and encourage reasonable alternatives to burning. The proposed rule revisions are intended to make the WAC consistent with all related provisions of the RCW, some of which have been changed in recent years (1995, 1997, and 1998) through ESHB 1080, SHB 1726, EHB 2414, and SHB 2523. The anticipated effects of the rule include cleaner air and some further restrictions on burning, which may result in higher costs for property owners and land developers or their customers, and agencies involved in implementing the rule. However, when burning is prohibited in areas having reasonable alternatives to burning, these agency costs will be reduced.

Proposal Changes the Following Existing Rules: The proposed revisions only prohibit residential and land clearing burning in areas where outdoor burning is prohibited by statute. They also add a prohibition on land clearing burning in areas with a population density of one thousand people per square mile. They also replace the old process for determining if a reasonable alternative to burning exists for the various types of organic refuse in each area of the state - a determination which can result in that type of burning being prohibited in the area. They also impose some restrictions on burning demolition debris, burning hauled materials, burning when a fire danger burn ban has been declared, burning that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance, and burning in outdoor containers. The revisions also identify all of the types of burning that require a permit, they establish a process for identifying the permitting and enforcing agencies for each type of burning and for determining the type of permit to be used, and they establish a revised general permit for residential burning.

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

Small Business Economic Impact Statement

INTRODUCTION: Chapter 19.85 RCW (the Regulatory Fairness Act) requires that rule-making actions be examined for disproportionate impacts on small versus large business. If such impacts occur, they are to be mitigated to the extent feasible and legal under the stated objectives of the statute upon which the rule is based. An examination of the above referenced rule indicates that no disproportionate impacts occur. The remainder of this document describes the analysis and reasoning leading to that conclusion.

BACKGROUND: Much of this proposed amendatory rule incorporates changes in state statutory or federal regulatory requirements since the previous revision in 1992. In addition, the text of the rule has been reorganized and revised in the interest of greater clarity and usability. This discussion will not consider these changes.

Although firms in many businesses or industries (as well as private individuals) may be affected by the proposed rule revisions from time to time, it appears that the most significant impacts will result from the proposed WAC 173-425-040(5) language relating to areas with alternatives to burning. It is expected that a major portion of those impacts will occur in those sectors of the construction and related industries where land and land use conversion (including land clearing) are a significant part of the cost and revenue structure of typical firms. These include:

SIC 1531 - Operative Builders: Firms primarily engaged in construction of single family dwellings or other buildings for sale on their own account.¹

SIC 6552 - Land Subdividers and Developers (Except Cemeteries): Firms primarily engaged subdividing real property into lots and in developing it for resale on their own account.

Firms in other construction industries (general residential and nonresidential, heavy, and special trade contractors) normally conduct their activities on land or other property owned by others - frequently firms in the sectors listed above. Costs incurred by these contractors for disposal of land clearing debris would generally be passed back to property owners or others, including ultimate purchasers of fully developed property. Hence, these sectors have been excluded from the analysis described here.

ANALYSIS AND RESULTS: The results displayed below are based on 1997 levels and values and use costs per \$100 of operating revenue (sales) as the measure of impact. Where necessary, information from earlier periods was extrapolated to 1997 levels using relationships derived from the information resources described below.

Information and data for this analysis was drawn from the following sources:

1. The 1987 and 1992 editions of the *Census of Construction Industries: Pacific States* and the 1992 edition of the *Census of Financial, Insurance and Real Estate Industries* were used to assign activity levels to small versus large businesses in the sectors listed above and to extrapolate forward to 1997.

2. The same sources and the 1998 edition of the *Almanac of Business and Industrial Financial Ratios* provided information from which the relationship between operating costs

and operating revenues, and the magnitude of land cost in relation to each, for these industries were derived.

3. The Washington Department of Revenue report *Tax Statistics 1997* was used to identify the market values of raw developable land in a state-wide and regional basis and to identify the geographic distribution of activity. This then permitted an estimate of the acres of land utilized by the industries considered here during 1997.²

4. Tons of land clearing residue generated per acre was taken from the small business economic impact statement prepared for the 1992 revision to chapter 173-425 WAC. This was used in conjunction with the above to estimate total land clearing residue generated by each industry.³ Nonburning disposal costs were estimated at the 1997 median county solid waste tipping fee of \$71.93/ton. These costs were then converted to a dollars per \$100 of sales basis, and are presented below.

The following table displays the results of the analysis process described above. Discussion of these results follows:

NONBURNING DISPOSAL OF
LAND CLEARING RESIDUE
COSTS PER \$100 REVENUE -
WEIGHTED STATE-WIDE BASIS

SIC	SMALL BUSINESS	LARGE BUSINESS
1531	\$6.78	\$7.40
6552	\$13.35	\$14.11

DISCUSSION OF RESULTS: As noted in item #2 below, there is a rather pronounced clustering of activity in both industries in nine relatively urbanized counties of the state. There is also a significant difference in developable land values in these counties compared with the rest of the state. Thus, it was judged that the use of simple state-wide averages would present a distorted picture of the true impacts of the proposed rule. Instead, the results shown above are weighted averages, with the geographic distribution of activity providing the weights.

The larger impacts shown above for SIC 6552 than for 1531 are not surprising. The former industry performs the "first stage" part of the overall land development process. Thus, revenues and costs for businesses in this sector are heavily weighted by land values. By contrast, the revenues and costs of firms in SIC 1531 also include the values associated with structures and other improvements - thus resulting in a lower relative impact for land clearing residue disposal costs.

The impact estimates provided above are clearly quite general in that they assume that the state-wide effects shown in the table will prevail everywhere and will be felt by all firms operating in the industries considered here. They are also rather conservative, in that it is implicitly assumed that all firms will incur costs equal to the median county solid waste tipping fee cited above. Neither of these is likely to hold true in all cases. Some of the more significant factors influencing actual impacts in particular cases include:

1. Location with respect to current or future nonburning areas: Land clearing burning is already prohibited in areas of the state that exceed (or have exceeded) federal or state ambi-

PROPOSED

ent air quality standards for pollutants associated with outdoor burning. Further, chapter 70.94 RCW requires that such burning end cities with populations greater than 10,000 and in urban growth areas by the end of the years 2000 or 2006, depending on population.⁴ In some cases, local governments have already implemented burning prohibitions. Thus, businesses operating within such areas either already are - or relatively soon will be - incurring the costs of nonburning disposal of land clearing residue, whatever they may be in each case. The current rule proposal thus does not add to regulatory burdens in such instances.

2. Location with respect to levels of construction/development activity: Over the past several years, nine counties⁵ have rather consistently accounted for approximately 90% of the activity in the industries considered here. Not surprisingly, developable land values are substantially higher in these counties than in the remainder of the state. Thus, the relative cost of nonburning disposal of land clear residue is significantly reduced in such areas. The remaining roughly 10% of construction and development activity occurring in the remainder of the state does not enjoy this relative advantage. However, burning may continue to be allowed in these areas as discussed below.

3. Type of vegetative cover: The assumption of "moderately wooded" land cover used here is a middle case between heavily wooded (forested) cover and brushy (or no) cover. Presence of the former would approximately double the nonburning disposal impacts shown in the table above. However, this type of land cover would usually be expected to yield revenue from merchantable timber to aid in covering the costs of disposal. Disposal costs for clearing brushy land cover would, of course, be substantially lower than presented here.

4. Availability of nonburning alternatives: Land clearing burning (as well as certain other types of outdoor burning) is prohibited by proposed WAC 173-425-040(5) in areas with nonburning alternative means of disposal that meet the following criteria:

- a) Available within fifteen miles of the site at which the waste is generated;
- b) Available at a cost less than or equal to the tipping fee for such material at a facility operated because of a municipally sponsored recycling program, or if no program exists, at a cost less than or equal to the median county tipping fee for solid waste disposal (\$71.93/ton in 1997); and
- c) Is less harmful to the environment than outdoor burning.

An informal survey of municipal solid waste utilities conducted by air quality program staff revealed that municipally sponsored programs were generally available in Washington's more urbanized counties including the nine identified as high construction/development activity areas. These programs (and similar private services) were generally available at less than or the same cost as general solid waste disposal and, in many cases, at less than the median solid waste tipping fee. Thus, in these instances, the costs of nonburning disposal of land clearing debris would be less than that reported here. In other, less urbanized counties nonburning disposal may be available at solid waste disposal tipping fees. Alternatively, if land clearing debris is not accepted by solid

waste utilities or other services/programs are not available, or if tipping fees exceed the median value for the state, burning may continue to be allowed by permit or otherwise unless prohibited by other elements of the proposed rule (as described above) or on account of episodic air quality problems or fire danger conditions.

OTHER ELEMENTS OF THE PROPOSAL: Additional elements of the proposal that may result in new regulatory requirements include generally prohibiting burning of materials hauled from areas where burning is otherwise precluded, and the establishment of requirements to be met if this activity is to occur (WAC 173-425-050(2)), and requiring permits for types of burning not previously covered by such requirements. Available information did not allow analysis of relative impacts of these.

MITIGATION: The results presented here support a conclusion that the identifiable impacts of the proposed rule upon small versus large businesses are not disproportionate. Therefore, mitigation is not required. However, certain features of the proposal may have mitigative effects. These include allowing burning in parts of nonattainment areas under certain conditions (WAC 173-425-040(1)), and a broadening of the types of permits that may be used (WAC 173-425-060 (1)(b)). Further, identification and certification of nonburning alternatives is to occur by December 31, 2000. Thus, continued burning may be allowed (subject to other restrictions) in at least some areas until that time. Finally, WAC 173-425-070 provides for variances from rule requirements.

- 1 Firms engaged in construction (or renovation) of structures for rental or lease to others are classified in SIC 651 - Real Estate. However, available data was not sufficient to allow inclusion of such firms in this analysis.
- 2 Land receipts reported for SICs 1531 and 6552 in the *Census of Construction Industries* are net of the value of improvements to land made prior to sale. This helps to guard against an overestimate of land utilization.
- 3 The "moderately wooded" land cover category was used here at a residue generation rate of 37.5 tons per acre. The implications of other categories are considered in the discussion of results.
- 4 The proposed rule also prohibits land clearing burning in areas with a population density equal to or greater than 1,000 persons per square mile if contiguous to areas where such burning is otherwise prohibited on generally the same time schedule. Available information indicates that such areas are not large. The factors discussed here would have the same effects in such areas.
- 5 These counties include Clark, King, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom and Yakima.

A copy of the statement may be obtained by writing to Bruce Smith, Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, or via: http://www.wa.gov/ecology/leg/wac_173425/zp97-39ac.pdf, phone (360) 407-6889, fax (360) 407-6802.

RCW 34.05.328 applies to this rule adoption. These rules are significant under RCW 34.05.328 because they: (1) Adopt substantive provisions which subject the violator to penalty or sanction; (2) establish, alter or revoke qualification or standard for the issuance, suspension or revocation of a license or permit; and (3) adopt new or make significant amendments to a policy or regulatory program.

Hearing Location: Yakima Valley Regional Library Auditorium, 102 North 3rd Street, Yakima, WA, on April 27,

1999, at 7:00 p.m.; at Cascade Natural Gas, 614 North Mission Street, Wenatchee, WA, on May 5, 1999, at 7:00 p.m.; at the Spokane Regional Health District, 1101 West College Avenue, Suite 104, Spokane, WA, on May 6, 1999, at 7:00 p.m.; at the Benton County PUD, 2721 West 10th Avenue, Kennewick, WA, on May 7, 1999, at 7:00 p.m.; at the Silverdale Community Center, 9729 Silverdale N.W., Silverdale, WA, on May 10, 1999, at 7:00 p.m.; at the Northwest Air Pollution Authority, 1600 South Second Street, Mount Vernon, WA, on May 11, 1999, at 7:00 p.m.; at the Clark County PUD, 8600 Northeast 117th Avenue, Vancouver, WA, on May 12, 1999, at 7:00 p.m.; and at the Department of Ecology, 300 Desmond Drive, Lacey, WA, on May 13, 1999, at 7:00 p.m.

Assistance for Persons with Disabilities: Contact Pat Norman by April 23, 1999, TDD (360) 407-6006, or (360) 407-6841 (voice).

Submit Written Comments to: Bruce Smith, P.O. Box 47600, Olympia, WA 98504-7600, e-mail brsm461@ecy.wa.gov, fax (360) 407-6802, by May 21, 1999.

Date of Intended Adoption: July 21, 1999.

March 23, 1999

Daniel J. Silver

Deputy Director

Chapter 173-425 WAC

~~((OPEN))~~ OUTDOOR BURNING

AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-010 Purpose. ~~((This chapter promulgated under chapter 70.94 RCW, the Washington Clean Air Act, authorizes the department of ecology to implement the provisions of that act. This rule establishes controls for open burning in the state in order to:~~

~~(1) Reduce open burning to the greatest extent practical by eliminating it in:~~

~~(a) Areas that exceed ambient air quality standards for PM-10 and/or carbon monoxide; and~~

~~(b) Urban growth areas or cities with a population of 10,000 or more by December 31, 2000;~~

~~(2) For areas where open burning is allowed, establish a limited burning program, including procedures by which open burning may be conducted;~~

~~(3) Encourage the development and use of alternate methods of debris disposal.))~~ The purpose of this rule is to establish a program to implement the limited burning policy authorized by sections 743 through 765 of the Washington Clean Air Act (chapter 70.94 RCW) and other provisions of the act that pertain to outdoor burning (except any outdoor burning listed in WAC 173-425-020(1)). Statutory authority for particular provisions of the rule is shown in parentheses throughout the rule.

The limited burning policy requires the department and other agencies to:

(1) Reduce outdoor burning to the greatest extent practical, especially by prohibiting it in certain circumstances: (RCW 70.94.743(1))

(2) Establish a permit program for limited burning, one that requires permits for most types of outdoor burning; and (RCW 70.94.745)

(3) Foster and encourage development of reasonable alternatives to burning. (RCW 70.94.745(6))

AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-020 Applicability. ~~((1) No outdoor burning shall occur during a declared period of impaired air quality:~~

~~(2) Except as described in subsection (1) of this section and WAC 173-425-050, this chapter applies to all forms of outdoor burning in the state except:~~

~~(a) Silvicultural burning (governed by chapter 332-24 WAC);~~

~~(b) Agricultural burning (governed by chapter 173-430 WAC);~~

~~(c) Recreational fires as defined in WAC 173-425-030(12);~~

~~(d) Ceremonial fires as defined in WAC 173-425-030(2);~~

~~(e) Burning to improve and maintain fire dependent ecosystems (pursuant to chapter 332-24 WAC);~~

~~(3) A local air authority, fire protection authority, county, or conservation district may enforce its own controls that are stricter than those set forth in this chapter.))~~ (1) This chapter applies to all outdoor burning in the state except:

(a) Agricultural burning (which is governed by chapter 173-430 WAC);

(b) Silvicultural burning (which is governed by chapter 332-24 WAC, the Washington state smoke management plan, and various laws including chapter 70.94 RCW); and

(c) Any outdoor burning on lands within the exterior boundaries of Indian reservations (unless provided for by intergovernmental agreement).

(2) Specifically, this chapter applies to:

(a) Residential burning. (RCW 70.94.745)

(b) Land clearing burning. (RCW 70.94.745)

(c) Storm or flood debris burning. (RCW 70.94.743)

(d) Tumbleweed burning. (RCW 70.94.745)

(e) Weed abatement fires. (RCW 70.94.650)

(f) Fire fighting instruction fires. (RCW 70.94.650)

(g) Rare and endangered plant regeneration fires. (RCW 70.94.651)

(h) Indian ceremonial fires. (RCW 70.94.651)

(i) Recreational fires. (RCW 70.94.765)

(j) Other outdoor burning. (RCW 70.94.765)

AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-030 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter shall have the following meanings:

(1) "Agricultural burning" means burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.650 or other authoritative source on agricultural practices.

(2) "Ceremonial fire" means a fire associated with a Native American ceremony or ritual.

(3)) "Agricultural burning" means outdoor burning regulated under chapter 173-430 WAC, including, but not limited to, any incidental agricultural burning or agricultural burning for pest or disease control.

(2) "Air pollution episode" means a period when a forecast, alert, warning, or emergency air pollution stage is declared, as stated in chapter 173-435 WAC.

(3) "Construction/demolition debris" means all material resulting from the construction, renovation, or demolition of buildings, roads, and other man-made structures.

(4) "Department" means department of ecology.

((4) "Episode" means a period when a forecast, alert, warning, or emergency air pollution stage is declared, as stated in chapter 173-435 WAC.

(5) "Impaired air quality" means a condition declared by the department or a local air authority in accordance with the following criteria:

(a) Meteorological conditions are conducive to an accumulation of air contamination concurrent with:

(i) Particulate that is ten micron and smaller in diameter (PM-10) at or above an ambient level of seventy-five micrograms per cubic meter measured on a twenty-four hour average; or

(ii) Carbon monoxide at an ambient level of eight parts of contaminant per million parts of air by volume (ppm) measured on an eight-hour average.

(b) Air quality that threatens to exceed other limits established by the department or a local air authority.

(6)) (5) "Fire fighting instruction fires" means fires for instruction in methods of fire fighting, including, but not limited to, training to fight structural fires, aircraft crash rescue fires, and forest fires.

(6) "Firewood" means bare untreated wood used as fuel in a solid fuel burning device, Indian ceremonial fire, or recreational fire.

(7) "Impaired air quality" means a first or second stage impaired air quality condition declared by the department or a local air authority in accordance with WAC 173-433-140.

(8) "Indian ceremonial fires" means fires necessary for Native American ceremonies (i.e., conducted by and for Native Americans) if part of a religious ritual.

(9) "Land clearing burning" means outdoor burning of trees, stumps, shrubbery, or other natural vegetation from land clearing projects (i.e., projects that clear the land surface so it can be developed, used for a different purpose, or left unused). (RCW 70.94.750(2))

(10) "Local air authority" means an air pollution control authority activated ((pursuant to)) under chapter 70.94 RCW that has jurisdiction over the subject source.

((7) "Nonattainment area" means a clearly delineated geographic area which has been designated by the Environmental Protection Agency and promulgated as exceeding a national ambient air quality standard or standards for one or more of the criteria pollutants, which includes carbon monoxide, fine particulate matter (PM-10), sulfur dioxide, ozone, and nitrogen dioxide.

(8) "Nuisance" means an emission of smoke or other emissions from any open fire that unreasonably interferes with the use and enjoyment of the property deposited on.

(9) "Open burning" means all forms of outdoor burning except those listed as exempt in WAC 173-425-020.

(10)) (11) "Natural vegetation" means unprocessed plant material from herbs, shrubbery, and trees, including grass, weeds, leaves, clippings, prunings, brush, branches, roots, stumps, and trunk wood.

(12) "Nonattainment area" means a clearly delineated geographic area which has been designated by the Environmental Protection Agency because it does not meet (or it contributes to ambient air quality in a nearby area that does not meet) a national ambient air quality standard or standards for one or more of the criteria pollutants, which include carbon monoxide, particulate matter (PM-10 and PM2.5), sulfur dioxide, nitrogen dioxide, lead, and ozone.

(13) "Nonurban areas" means unincorporated areas within a county that are not designated as an urban growth area. (RCW 70.94.745(8))

(14) "Nuisance" means an emission of smoke or any other air contaminant that unreasonably interferes with the use and enjoyment of the property upon which it is deposited. (RCW 70.94.030(2))

(15) "Other outdoor burning" means any type of outdoor burning not specified in WAC 173-425-020 (1) or (2)(a) through (i), including, but not limited to, any outdoor burning necessary to protect public health and safety. (RCW 70.94.650(7) and 70.94.765)

(16) "Outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion. (RCW 70.94.743(2))

((11) "Reasonable alternatives" means disposal alternatives to open burning that cost less than eight dollars fifty cents per cubic yard. After July 1993, this amount shall be adjusted periodically by department policy.

(12) "Recreational fire" means barbecues and campfires, using charcoal, natural gas, propane, or natural wood which occur in designated areas or on private property. Fires used for debris disposal purposes are not considered recreational fires.

(13) "Silvicultural burning" means burning on any land the department of natural resources protects per RCW 70.94.030(13), 70.94.660, 70.94.690, and pursuant to chapter 76.04 RCW.

(14) "Urban growth area" means an area defined by RCW 36.70A.030.) (17) "Permitting agency" means the agency responsible for issuing permits (including adopting a general permit) for, and/or enforcing all requirements of this chapter that apply to, a particular type of burning in a given area (unless another agency agrees to be responsible for cer-

tain enforcement activities in accordance with WAC 173-425-060 (1)(a) and (6)).

(18) **"Pollutants emitted by outdoor burning"** means carbon monoxide, carbon dioxide, particulate matter, sulfur dioxide, nitrogen oxides, lead, and various volatile organic compounds and toxic substances.

(19) **"Rare and endangered plant regeneration fires"** means fires necessary to promote the regeneration of rare and endangered plants found within natural area preserves as identified in chapter 79.70 RCW.

(20) **"Reasonable alternative"** means a method for disposing of organic refuse (such as natural vegetation) that is available, reasonably economical, and less harmful to the environment than burning.

(21) **"Recreational fire"** means cooking fires, campfires, and bonfires using charcoal or firewood that occur in designated areas or on private property for cooking, pleasure, or ceremonial purposes. Fires used for debris disposal purposes are not considered recreational fires.

(22) **"Residential burning"** means the outdoor burning of leaves, clippings, prunings and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by the property owner or his or her designee. (RCW 70.94.750(1))

(23) **"Silvicultural burning"** means outdoor burning relating to the following activities for the protection of life or property and/or the public health, safety, and welfare:

(a) Abating a forest fire hazard;

(b) Prevention of a forest fire hazard;

(c) Instruction of public officials in methods of forest fire fighting;

(d) Any silvicultural operation to improve the forest lands of the state; and

(e) Silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. (RCW 70.94.660(1))

(24) **"Storm or flood debris burning"** means the outdoor burning of natural vegetation from storms or floods that have occurred in the previous two years and resulted in an emergency being declared or proclaimed in the area by the city, county, or state government.

(25) **"Tumbleweed burning"** means outdoor burning to dispose of dry plants (typically Russian Thistle and Tumbleweed Mustard plants) that have been broken off, and rolled about, by the wind.

(26) **"Urban growth area"** means land, generally including and associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.030.

(27) **"Weed abatement fires"** means any outdoor burning to dispose of weeds that is not regulated under chapter 173-430 WAC, which applies to agricultural burning.

AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-040 (~~Prohibited materials~~) Areas where certain types of outdoor burning are prohibited. ((1) Except as provided in WAC 173-425-020(2), the following materials shall not be burned in any outdoor fire: Garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction debris, metal or any substance (other than natural vegetation) which when burned releases toxic emissions, dense smoke, or odors.

(2) ~~Prohibited materials may be burned in certain circumstances:~~

(a) ~~Diseased animals and infested material. When ordered by a duly authorized health officer and authorized by the department or local air authority, diseased animals and other infested material may be burned, as required, to keep the infestation from spreading.~~

(b) ~~Dangerous material. When ordered by a fire protection authority and when authorized by the department or local air authority, fires to dispose of materials presenting a danger to life, property, or public welfare may be burned, if no approved practical alternate method of disposal is available.)~~

(1) **Nonattainment areas.** Residential burning and land clearing burning may not be allowed in any areas of the state that exceed federal or state ambient air quality standards for pollutants emitted by outdoor burning. These areas are limited to all current and former nonattainment areas for carbon monoxide, particulate matter (PM-10 and PM2.5), sulfur dioxide, nitrogen dioxide, and lead. However, the department may, in cooperation with any local air authority having jurisdiction, authorize the omission of parts of a nonattainment area if ambient air quality standards for the pollutants that caused the area to be designated nonattainment have not been exceeded in those parts, and outdoor burning in those parts has not contributed, and is not expected to contribute, significantly to exceedances of the standards in the nonattainment area. (RCW 70.94.743 (1)(a))

(2) **Urban growth areas.** Residential burning and land clearing burning may not be allowed in any urban growth areas after December 31, 2000, except as follows: Residential burning and land clearing burning may be allowed in the following types of urban growth areas until December 31, 2006: (RCW 70.94.743 (1)(b))

(a) Urban growth areas for incorporated cities having a population of less than five thousand people that are neither within nor contiguous with any area identified in subsection (1) of this section; and

(b) Urban growth areas that do not include an incorporated city.

(3) **Cities over 10,000.** Residential burning and land clearing burning may not be allowed in any cities having a population greater than ten thousand people after December 31, 2000. Cities having this population must be identified by using the most current population estimates available for each city. (RCW 70.94.743 (1)(b))

(4) **High density areas.** Land clearing burning may not be allowed in any area having a general population density of one thousand or more persons per square mile after Decem-

ber 31, 2000, if the area is contiguous with any area where land clearing burning has already been, or must be, prohibited by that date under subsection (1), (2), or (3) of this section, and it may not be allowed in any other areas having this density after December 31, 2006. All areas having this density must be identified by using the most current population data available for each census block group and dividing by the land area of the block group in square miles. (RCW 70.94.750(2))

(5) Areas with a reasonable alternative to burning. Residential burning, land clearing burning, storm or flood debris burning, tumbleweed burning, weed abatement fires, and other outdoor burning of organic refuse may not be allowed in any area of the state (including any areas or parts of areas identified in subsections (1) through (4) of this section) when a reasonable alternative to burning is found to

exist in the area for that type of burning. (RCW 70.94.745(6))

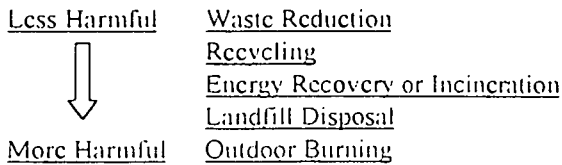
Each local air authority, and the department in cooperation with counties in those areas outside the jurisdictional boundaries of a local air authority, must for each type of burning listed in this subsection (except other outdoor burning of organic refuse) determine by December 31, 2000, and at least every third year after that, whether a reasonable alternative to burning exists in each area within their jurisdiction where that type of burning is allowed. (Whether a reasonable alternative exists for other outdoor burning of organic refuse must be determined on permit-by-permit basis by applying the criteria in (a) through (c) of this subsection.) A reasonable alternative exists in an area if the answers to all three questions below are "Yes" for the specified type of burning in that area:

(a) Available. Are any alternative methods for disposal of the organic refuse (e.g., natural vegetation) available for use within the area, including, but not limited to, recycling (e.g., chipping and/or composting), energy recovery or incineration, or landfill disposal?

Yes No

(b) Reasonably economical. Is a municipally-sponsored recycling program for disposal of the organic refuse available within fifteen miles, or is any other alternative method for disposal of the organic refuse available within fifteen miles at a cost that is less than or equal to the median of all county tipping fees in the state for disposal of solid waste?

(c) Less harmful to the environment. Is any available and reasonably economical alternative method for disposing of the organic refuse less harmful to the environment than outdoor burning according to the following hierarchy?:



~~(3) Smoke visible from all types of outdoor burning, except silvicultural burning, after a time period of three hours has elapsed from the time of declaration of the episode or impaired air quality shall constitute prima facie evidence of unlawful outdoor burning.~~

~~(4) For department of natural resource silvicultural burning, smoke visible from outdoor burning after a time period of ten hours has elapsed from the time of declaration of the episode or impaired air quality shall constitute prima facie evidence of unlawful outdoor burning.)~~ No person may cause or allow an outdoor fire in an area where the type of burning involved is prohibited under WAC 173-425-040, or where it requires a permit under WAC 173-425-060(2), unless a permit has been issued and is in effect. In addition, the following general requirements apply to all outdoor burning regulated by this chapter, including any outdoor burning allowed without a permit under WAC 173-425-060(2), unless a specific exception is stated in this section:

(1) Prohibited materials. The following materials may not be burned in any outdoor fire: Garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction/demolition debris, metal, or any substance (other than natural vegetation) that normally releases toxic emissions, dense smoke, or obnoxious odors when burned, except that: (RCW 70.94.775(1) and Attorney General Opinion 1993 #17)

(a) Fire fighting instruction fires for aircraft crash rescue training fires approved and conducted in compliance with

AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-050 ((Curtailed during episodes or impaired air quality.)) Other prohibitions/requirements that apply to all outdoor burning. ~~((1) No outdoor fire shall be ignited:~~

~~(a) Whenever the department declares an air pollution episode for the geographical area pursuant to chapter 173-435 WAC; or~~

~~(b) Whenever the department or a local air authority declares impaired air quality for the geographical area.~~

~~(2) A person responsible for an outdoor fire at the time an episode or impaired air quality is declared shall extinguish that fire. Outdoor burning conducted under the auspices of the department of natural resources for the purpose of burning forest slash pursuant to RCW 70.94.660 through 70.94.670 shall be extinguished by withholding new fuel and allowing the fire to burn down.~~

PROPOSED

RCW 70.94.650(5) may contain uncontaminated petroleum products. (RCW 70.94.650(6))

(b) The department or a local air authority may allow the limited burning of prohibited materials for other fire fighting instruction fires, including those that are exempt from permits under WAC 173-425-060 (2)(f), and other outdoor burning necessary to protect public health and safety. (RCW 70.94.650(7))

(2) Hauled material. No outdoor fire may contain material (other than firewood) that has been hauled from an area where outdoor burning of the material is prohibited under WAC 173-425-040. Any outdoor burning of material hauled from areas where outdoor burning of the material is allowed requires an appropriate permit under WAC 173-425-060(2), and any use of property for this purpose on an on-going basis, must be limited to the types of burning listed in WAC 173-351-200 (5)(b) (criteria for municipal solid waste landfills) and approved in accordance with other laws, including chapter 173-304 WAC (Minimum functional standards for solid waste handling) and chapter 173-400 WAC (General regulations for air pollution sources). (RCW 70.94.745(6))

(3) Curtailments.

(a) No outdoor fire may be ignited in a geographical area where:

(i) The department has declared an air pollution episode; (RCW 70.94.775(2) and 70.94.780)

(ii) The department or a local air authority has declared impaired air quality; or (RCW 70.94.775(2) and 70.94.780)

(iii) The appropriate fire protection authority has declared a fire danger burn ban, unless that authority grants an exception.

(b) The person responsible for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions for each day.

(c) The person responsible for an outdoor fire must extinguish the fire when an air pollution episode, impaired air quality condition, or fire danger burn ban that applies to the burning, is declared. In this regard:

(i) Smoke visible from all types of outdoor burning, except land clearing burning, after a time period of three hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared, will constitute prima facie evidence of unlawful outdoor burning.

(ii) Smoke visible from land clearing burning after a time period of eight hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared, will constitute prima facie evidence of unlawful outdoor burning.

(4) Unlawful outdoor burning: It is unlawful for any person to cause or allow outdoor burning that causes an emission of smoke or any other air contaminant that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance. (RCW 70.94.040, 70.94.650(1), and 70.94.780)

(a) Any person affected by outdoor burning may file a complaint with the permitting agency or other designated enforcing agency.

(b) Any agency responding to an outdoor burning complaint should attempt to determine if the burning on any particular property is unlawful. This may include, but is not limited to, considering whether the burning has caused an emission of smoke or any other air contaminant in sufficient quantity to be unlawful.

(c) Any person responsible for such unlawful outdoor burning must immediately extinguish the fire.

(5) Burning in outdoor containers. Outdoor containers (such as burn barrels and other incinerators) used for outdoor burning, must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings not larger than one-half inch, and they may only be used in compliance with this chapter.

(6) Other general requirements:

(a) A person capable of extinguishing the fire must attend it at all times, and the fire must be extinguished before leaving it.

(b) No fires are to be within fifty feet of structures.

(c) Permission from a landowner, or owner's designated representative, must be obtained before starting an outdoor fire.

AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-060 (~~(Open burning program for the state.)~~) **Outdoor burning permit program/requirements.** ((1) General requirements:

(a) All burning requires a permit as covered in WAC 173-425-070.

(b) Permits shall not be issued, and thus open burning is not allowed, in areas where reasonable alternatives are available. Within ninety days of the effective date, the department shall develop uniform procedures for determining costs of alternatives to open burning.

(c) A fire protection authority may declare a fire hazard in areas where burning is banned and in areas where burning is allowed. If open burning is determined the most appropriate manner to abate the fire hazard, the request must be reviewed and permitted by the local air authority. Permits issued under this section shall provide that:

(i) Prohibited material shall not be burned in any fire;

(ii) No open burning shall be done during a declared period of impaired air quality;

(iii) No reasonable alternative is available.

(d) No open burning shall be allowed in areas that exceed federal or state ambient air quality standards. Such areas shall be defined as carbon monoxide and/or PM-10 nonattainment area, unless otherwise determined pursuant to subsection (2)(a) of this section.

(2) Additional requirements for nonattainment areas.

(a) Phase-out approach. A local air authority may petition the department to use a phase-out approach in portions of a federally designated nonattainment area for carbon monoxide and/or PM-10. The phase-out approach will focus on how to achieve the Washington Clean Air Act goals and eliminate burning in areas that exceed the standards. The department

will review and determine if the petition should be approved. The department may partially approve petitions or approve petitions with conditions based on consideration of the following factors:

- (i) Population and population density.
- (ii) The ability of the air quality in the region to support open burning based upon geographical and meteorological conditions.
- (iii) The presence of a permitting program.
- (iv) The extent to which reasonable alternatives to open burning are being developed through solid waste management plans and the schedule for the availability of such reasonable alternatives.

(v) Other factors deemed appropriate by the local air authorities.

(b) Petition evaluation. The petition to use a phase out approach is due to the department no later than one month after the effective date of this rule. A ban is not effective in areas identified in the petition until after the department makes a ruling on the petition. Upon receiving the petition, the department shall review and make a determination within thirty days. For all federally designated nonattainment areas, open burning shall be banned by the applicable attainment date.

(c) Permits. The department or local air authority may issue permits in banned areas for the following activities:

(i) Fire fighting instruction. Local air authorities or the department may issue permits for fire training fires, pursuant to guidelines and rules of the department of ecology.

(ii) Specific forms. The department or the local air authorities may permit, with conditions, fires set that are part of a defined research project, weed abatement, and smoke training as part of a military training exercise.

(d) Responding to open burning calls. Each affected county shall identify a fire marshal or other appropriate county official for field response and to document open burning complaints or violations using appropriate field notices. In areas where the county has no jurisdiction, the department or the local air authorities will negotiate with the appropriate local agency on field response.

(3) Additional requirements for urban growth areas and cities with a population of ten thousand or more.

(a) Open burning will be banned when reasonable alternatives are available, no later than the end of the year 2,000.

(b) Until open burning is banned, it is allowed subject to the permitting provisions of this chapter.

(c) When open burning is banned, the provisions in subsection (2) of this section apply.) (1) **Permit program.**

(a) The department or local air authorities may consult with fire protection authorities, conservation districts, or counties to determine if any of these agencies are capable and willing to serve as the permitting agency and/or enforcing agency for particular types of burning in an area of the state. The department or local air authorities may enter into agreements with any capable agencies to identify the permitting agencies and enforcing agencies for each type of burning and determine the type of permit appropriate for each area where a permit is required. (RCW 70.94.654)

(b) Permitting agencies may use, as appropriate, a verbal, electronic, written, or general permit established by rule,

for any type of burning that requires a permit; Provided, That a written permit should be used, where feasible, for land clearing burning, storm or flood debris burning in areas where residential burning and land clearing burning are prohibited under WAC 173-425-040 (1), (2), or (3), and other outdoor burning (except any other outdoor burning necessary to protect public health and safety). (RCW 70.94.745(4))

(c) The rule for a general permit must establish periods of time when any burning under the permit must occur. General permits must also include all appropriate conditions for burning as stated in subsection (4) of this section.

(2) **Types of burning that require a permit.** Except as otherwise stated, a permit is required for the following types of outdoor burning in all areas of the state under the jurisdiction of this chapter:

(a) Residential burning (except in the nonurban areas of any county with an unincorporated population of less than fifty thousand; (RCW 70.94.745(2))

(b) Land clearing burning; (RCW 70.94.745(2))

(c) Storm or flood debris burning; (RCW 70.94.743 (1)(c))

(d) Tumbleweed burning (except in counties with a population of less than two hundred fifty thousand); (RCW 70.94.745(5))

(e) Weed abatement fires; (RCW 70.94.650 (1)(a))

(f) Fire fighting instruction fires for training to fight structural fires in urban growth areas and cities with a population over ten thousand, and all other fire fighting instruction fires, except fire fighting instruction fires for training to fight structural fires as provided in RCW 52.12.150, aircraft crash rescue fires as provided in RCW 70.94.650(5), and forest fires; (RCW 70.94.650 (1)(b))

(g) Rare and endangered plant regeneration fires; (RCW 70.94.651(1))

(h) Indian ceremonial fires (except on lands within the exterior boundaries of Indian reservations unless provided for by intergovernmental agreement); (RCW 70.94.651(2))

(i) Recreational fires with a total fuel area that is greater than three feet in diameter and/or two feet in height (except in the nonurban areas of counties with an unincorporated population of less than fifty thousand; and (RCW 70.94.765)

(j) Other outdoor burning (if specifically authorized by the local air authority or department). (RCW 70.94.765)

(3) **Fees.** Permitting agencies may charge a fee for any permit issued under the authority of this chapter; Provided, That a fee must be charged for all permits issued for weed abatement fires and fire fighting instruction fires. All fees must be set by rule and must not exceed the level necessary to recover the costs of administering and enforcing the permit program. (RCW 70.94.650(2) and 70.94.780)

(4) **Permit decisions.** Permitting agencies must approve with conditions, or deny all outdoor burning permits as needed to achieve compliance with this chapter. All permits must include conditions to satisfy the requirements in WAC 173-425-050, and they may require other conditions, such as restricting the time period for burning, restricting permissible hours of burning, imposing requirements for good combustion practice, and restricting burning to specified weather conditions. Permitting agencies may also include conditions

to comply with other laws pertaining to outdoor burning. (RCW 70.94.745, 70.94.750, and 70.94.780)

(5) Establishment of a general permit and requirements for residential burning.

(a) A general permit for residential burning is hereby adopted for use in any area where the department (or a local air authority that has adopted this general permit by reference) and any designated enforcing agencies have agreed that a general permit is appropriate for residential burning, and have notified the public where the permit applies. All burning under this permit must comply with the conditions in (c) of this subsection, and it must be restricted to the first and second weekends (Saturday and Sunday) in April and the third and fourth weekends in October, unless alternative days are substituted by the enforcing agency and adequate notice of the substitution is provided to the public. Alternative days may only be substituted if conditions on the prescribed days are unsuitable due to such things as poor air quality, high fire danger, unfavorable meteorology, likely interference with a major community event, or difficulties for enforcement. (RCW 70.94.745(4))

(b) Local air authorities may also adopt a general permit for residential burning that prescribes a different set of days, not to exceed eight days per year, when any burning under the permit must occur: Provided, That the public must be given adequate notice regarding where and when the permit will apply. (RCW 70.94.745(4))

(c) The following conditions apply to all residential burning allowed without a permit under WAC 173-425-060 (2)(a) or allowed under a general, verbal, or electronic permit:

(i) The person responsible for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions for each day.

(ii) A fire may not be ignited, and must be extinguished, if an air pollution episode, impaired air quality condition, or fire danger burn ban that applies to the burning, is declared for the area.

(iii) The fire must not include garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction/demolition debris, metal, or any substance (other than natural vegetation) that normally releases toxic emissions, dense smoke, or obnoxious odors when burned.

(iv) The fire must not include materials hauled from another property.

(v) If any emission from the fire is detrimental to the health, safety, or welfare of any person, if it causes damage to property or business, or if it causes a nuisance, the fire must be extinguished immediately.

(vi) A person capable of extinguishing the fire must attend it at all times, and the fire must be extinguished before leaving it.

(vii) No fires are to be within fifty feet of structures.

(viii) Permission from a landowner, or owner's designated representative, must be obtained before starting an outdoor fire.

(ix) Any burn pile must not be larger than four feet by four feet by three feet.

(x) Only one pile at a time may be burned, and each pile must be extinguished before lighting another.

(xi) If an outdoor container is used for burning, it must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings not larger than one-half inch.

(xii) No fire is permitted within five hundred feet of forest slash.

Persons not able to meet these requirements or the requirements in WAC 173-425-050 must apply for and receive a written permit before burning. Failure to comply with all requirements of this subsection voids any applicable permit, and the person responsible for burning may be subject to enforcement action under subsection (6) of this section.

(6) Field response and enforcement. Any agency that issues permits, or adopts a general permit for any type of burning in an area, is responsible for field response to outdoor burning complaints and enforcement of all permit conditions and requirements of this chapter related to that type of burning in the area, unless another agency has agreed under WAC 173-425-060 (1)(a) to be responsible for certain field response or enforcement activities. Except for enforcing WAC 173-425-050 (3)(a)(iii), local air authorities and the department may also perform these activities. Local air authorities or the department will also be responsible for enforcing any requirements that apply to burning that is prohibited or exempt from permits in areas under their jurisdiction, unless another agency agrees to be responsible.

Permitting agencies and enforcing agencies may require that corrective action be taken, and may assess penalties to the extent allowed under their general and specific authorities if they discover noncompliance with this chapter. A fire protection authority called to respond to, control, or extinguish an illegal or out-of-control fire may charge, and recover from the person responsible for the fire, the costs of its response and control action.

AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-070 ((Open burning permit requirements-)) Variations. ((1) Permit program. For areas where burning is allowed, the department, local air authorities, fire protection authorities, conservation districts, or counties may issue permits. Those issuing permits are responsible for field response to open burning complaints. Within ninety days of the effective date, the department shall develop minimum standards for a field response program, which addresses training, staffing, funding, and any other elements deemed appropriate by the department.

(2) Permit program development and assistance.

(a) The department shall provide assistance for implementing a permitting program, including minimum standards which address training, staffing, funding, and any other elements deemed appropriate by the department.

(b) The department shall develop a model permit program and provide guidance on starting and implementing permit programs.

(e) In selecting a permit program, the options range from the minimum—a general rule burn, as described in subsection (5) of this section—to a written permit. A permit program must be in place eight months after the department issues guidelines. If at that time no agreement is reached, the area becomes a no burn area and falls under the restrictions of WAC 173-425-060(2). The department will conduct a joint public hearing with the conservation districts, local air authorities, counties, and fire districts. The purpose of the hearing is to inform the public that no agreement has been reached.

(d) The department or the local air authorities shall coordinate with the agencies listed in subsection (1) of this section to determine the type of permitting program appropriate for the area.

(3) Fees. The department or the local air authority may charge a fee to cover the administrative cost of a permit program. Fire districts, counties, and conservation districts issuing open burning permits may collect a fee to cover administrative costs. (RCW 70.94.780)

(4) Additional restrictions. The local air authorities and the department may restrict conditions for burning under this section. Burning conditions may include, but are not limited to, restricting burning in sensitive areas per chapter 173-440 WAC, restricting the time period for burning, restricting permissible hours of burning, imposing requirements for good combustion practice, and restricting burning to specified weather conditions.

(5) General rule burn permits. For areas of the state where burning is allowed, agencies listed in subsection (1) of this section may use a general permit by rule. This section provides a minimum (general rule burn) permit. Persons not able to meet all of the requirements of (a) through (i) of this subsection must apply for and receive a written permit. General rule burn permits under this section may be used for the following number of days per year: 1992-1995—twenty one days/year; 1995-1998—fourteen days/year; 1998-2000—seven days/year; after 2000—seven days/year. Failure to comply with all the requirements of (a) through (i) of this subsection voids the general rule burn permit and the person burning is subject to the penalty provisions of WAC 173-425-100. A person burning under this section must follow these requirements and any additional restrictions, including those established by cities, counties, or fire protection authorities:

(a) The fire must not include prohibited materials listed in WAC 173-425-040, except what paper is necessary to start the fire.

(b) A person capable of extinguishing the fire must attend it at all times and the fire must be extinguished before leaving it.

(c) No fires are to be within fifty feet of structures.

(d) The pile must not be larger than four feet by four feet by three feet.

(e) Only one pile at a time may be burned, and each pile must be extinguished before lighting another.

(f) No outdoor fire is permitted in or within five hundred feet of forest slash without a written burning permit.

(g) Either the designated permitting authority must be called to confirm burning conditions for each day or current

information on burning conditions must be obtained from another designated source.

(h) If the fire creates a nuisance, it must be extinguished.

(i) Permission from a landowner, or owner's designated representative, must be obtained before starting an open fire.)) Any person who proposes to engage in outdoor burning may apply to the department or a local air authority for a variance from provisions of this chapter governing the quality, nature, duration, or extent of discharges of air contaminants from the proposed burning. All variance applications must be reviewed, and approved or disapproved, in accordance with RCW 70.94.181. (RCW 70.94.181)

AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-080 ((Violations,)) Severability. (((1)) The local air authority or department may issue a notice of violation to the person responsible for the fire under any of the following:

(a) Conditions of a permit issued under this chapter are violated;

(b) Any open fire is ignited where, under this chapter, such fires are prohibited or where a permit is required and has not been obtained;

(c) Prohibited materials are burned in an open fire;

(d) Any open fire is ignited when a condition of impaired air quality or air pollution episode stage is declared;

(e) Any ignited open fire that is not extinguished when a condition of impaired air quality or air pollution episode is declared;

(f) The fire causes emissions detrimental to health;

(g) The fire causes emissions that unreasonably interfere with property use and enjoyment.

(2) A fire protection authority called to respond to, control, or extinguish an illegal or out-of-control fire may charge and recover from the person responsible for the fire the costs of its response and control action.)) The provisions of this regulation are severable. If any provision is held invalid, the application of that provision to other circumstances and the remainder of the regulation will not be affected.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-425-090 Local air authority may issue variance.

WAC 173-425-100 Penalties.

WAC 173-425-110 Severability.

WSR 99-07-116
PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 24, 1999, 9:13 a.m.]

Original Notice.

PROPOSED

Preproposal statement of inquiry was filed as WSR 98-15-067.

Title of Rule: Custom farm slaughterers, custom slaughtering establishments, and custom meat facilities.

Purpose: This rule review amends, consolidates and updates the requirements under four previous rules, chapters 16-20, 16-21, 16-22 and 16-23 WAC.

Statutory Authority for Adoption: RCW 16.49.680.

Statute Being Implemented: Chapter 16.49 RCW, Custom slaughtering.

Summary: Scheduled review of the rules covering custom slaughtering revealed that many of the requirements, references and practices covered were outdated. Review of the rules showed that it would be possible to cover all of the necessary requirements in one comprehensive rule. Requirements in the former rules that were outdated, redundant or unnecessary were removed. General requirements were covered by the uniform good manufacturing practices requirement. Processes and identification of carcasses was reviewed and updated with unnecessary requirements being removed.

Reasons Supporting Proposal: Repeals ninety-two WAC sections [not done by agency at this time] and replaces them with sixteen new WAC sections.

Name of Agency Personnel Responsible for Drafting: Verne E. Hedlund, 1111 Washington Street, P.O. Box 42560, Olympia, WA 98504, (360) 902-1860; **Implementation and Enforcement:** Michael Donovan, 1111 Washington Street, P.O. Box 42560, Olympia, WA 98504, (360) 902-1883.

Name of Proponent: [Department of Agriculture], governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule revision updates four rules covering custom slaughtering into one comprehensive rule that applies uniform requirements under the good manufacturing requirement regulations. It removes outdated, redundant and unnecessary requirements, replacing them with updated requirements and uniform requirements for food processing under the current good manufacturing practices regulations.

Proposal Changes the Following Existing Rules: It repeals ninety-two former WAC sections [not done by agency at this time] and updates the requirements consolidating them into sixteen comprehensive WAC sections. It removes outdated, redundant and unnecessary requirements and replaces them with updated uniform standards for food processing.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rule change will have no measurable economic impact on small business, it does not add requirements for operation of plants and equipment.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Natural Resources Building, Room 259, 1111 Washington Street, P.O. Box 42560, Olympia, WA 98504, on May 3, 1999, at 10:00 a.m.; and at the Shilo Inn, Meeting Room, Interstate 90 and State Route 17, Exit 179, Moses Lake, Washington 98837, on May 4, 1999, at 10:30 a.m.

Assistance for Persons with Disabilities: Contact Linda Condon by May 3, 1999, TDD (360) 902-1996, or (360) 902-1836.

Submit Written Comments to: Verne E. Hedlund, 1111 Washington Street, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2087, by May 4, 1999.

Date of Intended Adoption: May 24, 1999.

March 24, 1999

Candace A. Jacobs, DVM

Assistant Director

Chapter 16-19 WAC

CUSTOM FARM SLAUGHTERERS, CUSTOM SLAUGHTERING ESTABLISHMENTS, AND CUSTOM MEAT FACILITIES

PART 1 GENERAL PROVISIONS

NEW SECTION

WAC 16-19-010 Definitions. Definitions in chapter 16.49 RCW, Custom slaughtering, apply to this chapter.

NEW SECTION

WAC 16-19-015 Further definitions. The following definitions apply in this chapter.

(1) "Carcass" means all or any parts, including viscera, of a slaughtered animal capable of being used for human food.

(2) "Equipment" means all machinery, fixtures, containers, vessels, tools, implements, and apparatus used in and around a custom slaughtering or meat handling establishment, and vehicles used to transport meat.

(3) "Meat" means the carcass, parts of carcass, meat and meat food products derived in whole or in part from meat food animals.

(4) "Meat by-product" means any edible part other than meat that has been derived from one or more meat food animals.

(5) "Meat food bird" for the purposes of processing the carcass shall mean a ratite weighing over one hundred pounds live weight. Ratites weighing less than one hundred pounds live weight may be processed either as poultry under chapter 16.74 RCW or as a "meat food bird."

(6) "Meat handling establishment" means any place of business where uninspected meat is stored, frozen, cut, wrapped, or otherwise prepared.

(7) "Identifying" means marking, stamping or tagging each half, quarter, and edible part of slaughtered food animal carcasses in a manner approved by the director, for the purpose of tracing such part to the person doing the slaughtering.

(8) "Operator" includes any owner, lessee, or manager of a custom slaughtering or meat handling establishment.

(9) "Prepared" means canned, salted, rendered, boned, cut up or otherwise manufactured, or processed.

(10) "Prepackaged inspected meat" means any inspected meat or meat food product prepared from inspected meat processed or prepared by establishments subject to inspection under a federal meat inspection act and packaged and sealed in a container or wrapping bearing the seal of federal inspection.

(11) "Unwholesome" includes meat products that may be diseased, contaminated, putrid, unsound, unhealthful, or otherwise unfit for slaughter for any reason that would make them unfit for human food.

(12) "Sanitize" means use of an effective bactericidal treatment process that provides enough accumulated heat or concentration of chemicals for a period of time sufficient to reduce the bacterial count, including pathogens, to a safe level.

NEW SECTION

WAC 16-19-020 Requirements for sanitary operations. Requirements for sanitary operations of custom farm slaughtering, custom slaughtering establishments, and custom meat facilities are found in Title 21 CFR Part 110-Current good manufacturing practice in manufacturing, packing or holding human food. These rules have been adopted in WAC 16-167-050 (2)(k) and are available from the department on request.

NEW SECTION

WAC 16-19-030 Licensing expiration date-late fee. Licenses for custom farm slaughterers, custom slaughtering establishments, and custom meat facilities issued under RCW 16.49.440 shall expire on June 30 of each year. A late fee will be charged if the application for renewal is not received prior to July 1 of each year.

PART 2 CUSTOM FARM SLAUGHTERING

NEW SECTION

WAC 16-19-100 Additional requirements for sanitary operations of custom farm slaughtering. Mobile custom farm slaughtering units must have:

(1) A van body completely covering the unit, but which may exclude the driver's cab and the hoist. The van body must be made of material that is nonporous and impervious to moisture. Wood may be used only as internal framing or spacing material between double nonwooden walls. The van body must be constructed so that it excludes dust, dirt and insects. The construction must be smooth, durable and easily cleanable inside and out.

(a) All vans must have the joints at junctions of internal facing surfaces and panels sealed and waterproof. Metal joints must be smooth and splatter free. If metal is used, only stainless steel, galvanized steel, aluminum in good condition or other materials approved by the director may be used. Any insulation used must be of a type that does not absorb water.

(b) Minimum interior dimensions of the van, exclusive of room taken up by tanks and other mounted equipment must be:

(i) Height - six feet.

(ii) Length - six feet.

(iii) Width - (when using single center rail for hanging carcass) four feet.

(iv) Width - (when using two rails for hanging carcasses) six feet.

(2) A hoist of 2,000 pound capacity, capable of lifting a beef carcass to a height that enables the carcass to clear the ground for bleeding and evisceration. This hoist must extend outward from the truck body. If a beef spreader is included as part of the equipment it must be of suitable construction.

(3) A sterilizing tank constructed of smooth, cleanable, impervious and durable material, large enough to allow complete sanitizing of tools used in the slaughter operation. This sterilizing unit must be filled during all slaughter operations, with potable water maintained at a temperature of at least 180°F. An approved cold sterilant may be used if sufficient hot water is available for preliminary cleaning of contaminated equipment prior to sterilizing.

(4) A water tank built into the vehicle constructed of smooth, cleanable, impervious and durable material with a minimum capacity of forty gallons. No slaughtering operation may be commenced unless at least twenty gallons is available. Water must be delivered to the outlets at a pressure of at least forty pounds per square inch. One hose connection from tank and hose with nozzle must be provided to wash down carcasses. The water system must be maintained to a sanitary condition and be used only for potable water.

(5) Soap and paper towels must be available for washing hands and equipment.

(6) Outer garments worn by persons handling meat must be clean.

(7) All tools and equipment must be thoroughly washed and sanitized after each day's operation. They must be washed and sanitized if contaminated with viscera contents, abscesses, or foreign material during slaughtering operations.

(8) Meat food animals or meat food bird carcasses must not be transported in the mobile slaughter unit unless each carcass is hung so that it does not touch the floor except for beef carcasses that are dressed with the hide on and are to be delivered to a processing plant within two hours for completion of the dressing procedure. Carcasses with the hide on must be secured and placed in the mobile unit in a manner that prevents contact of hide with bare meat surfaces. Surfaces of the mobile unit that have been contaminated by contact with the hide must be cleaned and sanitized before subsequent carcasses are hauled.

(9) Edible offal must be transported in clean, covered, properly identified containers constructed of approved materials.

(10) No animals other than scalded and dehaired hogs, and defeathered meat food birds, and carcasses exempted under subsection (8) of this section may be dressed and transported with the hide on.

(11) Viscera of all meat food animals and meat food birds must be separated from the carcass at the time of

slaughter on the premises where the animal is slaughtered. Feet must be removed from all meat food animals, except hogs, when scalded, and the head shall be removed from beef on the premises where it is slaughtered. Feet and metatarsus must be removed from meat food birds.

(12) All material produced through the slaughter activity, such as inedible offal and hide that may cause the slaughter area to become insanitary, must immediately upon completion of actual slaughter of the animal, be removed from the slaughtering area and disposed of in a sanitary manner. This is the licensee's responsibility.

(13) Meat food birds may be slaughtered by a custom farm slaughterer or custom slaughter establishment but not by a licensed custom poultry processor without prior approval by the director.

(14) Inedible offal may be only transported by a mobile custom slaughtering establishment under the following conditions:

(a) In a covered, watertight trailer constructed of smooth, cleanable, nonpervious material and maintained in a sanitary condition at all times; or

(b) In approved sanitary containers, in a separate compartment, in the van body. The compartment must be metal lined. There must be no openings from this compartment to the portion of the van used to transport edible products. All inedible offal containers, such as barrels or tubs, must be tightly covered and made of smooth, cleanable and nonpervious materials.

(15) A custom farm slaughterer may slaughter his or her own animal for his or her own consumption on any premises, farm or ranch, owned, rented or in any way controlled by him or her. No other animal may be slaughtered by the licensee on the premises, farm or ranch, owned, rented or in any way controlled by him or her or by members of his or her immediate family. Licensees under this section may slaughter more than one animal only if the animals have been in his or her possession more than sixty days.

(16) Whenever a licensee has reason to believe that a meat food animal or meat food product is unwholesome as defined in these rules, he or she must require an examination and declaration of wholesomeness by a licensed veterinarian before proceeding with slaughter or with processing of the carcass.

(17) Meat food birds must be slaughtered in a custom farm slaughterer mobile unit unless they are delivered to a custom slaughtering establishment.

NEW SECTION

WAC 16-19-110 Custom farm slaughtering—Special slaughter conditions. A custom farm slaughterer may slaughter an animal only on the premises of the present or first preceding owner of such animal, except as follows:

(1) An animal injured to such extent that immediate slaughter at the place of injury is necessary for humane reasons.

(2) Animals purchased for custom slaughter or any 4-H and FFA market stock sales and open class carcass contests where ownership of the carcass is retained by the entrant may be slaughtered by a custom farm slaughterer on any premise,

except the point of sale. The premises must be approved in advance by the local health district/department and the department. The fair representative must request approval for each operator they plan on using by submitting an application for special slaughter conditions to the department at least thirty days before any such slaughter is to be done.

NEW SECTION

WAC 16-19-120 Custom farm slaughtering—Signs.

Each custom farm slaughterer's mobile unit must be conspicuously identified with letters and numbers at least three inches high by the words Washington license or abbreviation Wa. Lic. and bear the license number issued by the department to the licensee.

NEW SECTION

WAC 16-19-130 Custom farm slaughtering—Identification of carcass and parts of carcasses. Carcasses or parts of carcasses processed by a custom farm slaughterer must be identified in the following manner:

(1) Each operator must obtain from the department prior to slaughtering an animal, an approved tagging device for identifying each carcass slaughtered.

(2) Each carcass slaughtered by the licensee must have affixed to each quarter, or side, prior to departure from the slaughtering site, the department approved identifying tag. At the time of tagging the licensee must complete the attached "custom slaughter report certificate of permit," giving the name and address of the owner; the signature of the owner or agent; name of consignee if applicable; the date of slaughter and the slaughterer's license number; the species of animal slaughtered and the brand, if any; and the license number of the custom farm slaughtering unit if the meat is to be delivered for processing. Edible offal delivered to a custom meat facility must be stamped "not for sale" upon arrival.

NEW SECTION

WAC 16-19-140 Custom farm slaughtering—Reporting of activities. (1) Each custom farm slaughterer must send the department a completed custom slaughter certificate of permit report for each animal processed the previous month no later than the 20th of each month.

(2) Custom slaughter certificate of permit reports accumulated between reporting periods must be kept on file at the licensee's principal place of business and be made available to the department on request.

(3) Failure to maintain or submit reports as required, or the making of fraudulent reports, constitutes grounds for suspension or revocation of an establishment's or slaughterer's license.

PROPOSED

PART 3
CUSTOM SLAUGHTERING ESTABLISHMENTS

NEW SECTION

WAC 16-19-200 Additional requirements for sanitary operation of custom slaughtering establishments. Custom slaughtering establishments must have:

(1) Hot water of sufficient temperature in sufficient quantity to thoroughly clean and sanitize all equipment subject to contamination from dressing or handling of diseased carcasses. For the purpose of this section "sufficient temperature" means at least 160°F for cleaning purposes and 180°F for purposes of sanitizing. If an approved chemical sanitizing agent is used in the sanitizing step, a temperature of 160°F is considered adequate.

(2) Properly located sanitizing facilities of approved construction and of sufficient size for complete immersion of butcher tools, and other implements must be provided in the slaughter room and at any other place where the operation is likely to result in the contamination of such equipment and utensils. Such receptacles must have means of heating the water contained therein to 180°F and maintaining it at that temperature during the entire operation. The sanitizers must be designed so that they can be drained after each day's use.

(3) Inedible and condemned storage and handling facilities.

(a) Adequate facilities for sanitary handling and storage of inedible offal and for sterilizing equipment in which inedible materials were transported must be provided, including one or more properly located enclosed rooms. Hot and cold water must be provided at outlets in or adjacent to the inedible handling room. The necessary doors connecting inedible storage rooms with rooms where edible products are handled must be metal clad, self-closing and tight fitting.

(b) A separate refrigerated room capable of maintaining a temperature of 45°F or less must be provided for the storage of inedible material at plants that store such material for a period longer than twenty-four hours. Such rooms must be of sanitary construction and must have impervious floors, walls and ceilings. The floors must be watertight, properly sloped and provided with drains leading to the plant sewage disposal system.

(c) All tanks and equipment used for rendering or preparing inedible meat must be in rooms or compartments separate from those used for rendering or preparing edible products.

(4) The slaughter floor must be kept reasonably free of blood, fat, scraps, etc. Water must not be permitted to splash from the floor upon unprotected carcasses on the bed or on the half hoist. The bed must be reasonably clean before the carcass is lowered. Clean watertight metal containers in good repair and free from objectionable odors must be provided at convenient locations for the reception of feet, tails, ears, pizles, or other inedible material. Evisceration must be performed so as to avoid contamination of the carcass with ingesta or fecal material.

(5) Carcasses must be washed with water under pressure from a spray nozzle. Towels, rags, cloths, brushes of any kind, or water dipped out of a drum or containers must not be

used. Metal drums or containers of water must not be used for washing hands, tools, or parts of carcasses, or for flushing the floor. A carcass that has been contaminated by manure or by pus must have the contaminated portion removed by trimming before being washed.

(6) Inedible material must not be placed on the slaughter room floor and must be kept in suitable watertight containers or vehicles until removed from the slaughter room.

(7) Skinned beef, calf and vealer heads must not be permitted to come in contact with the floor. The horns, horn-butts, muzzles, and all pieces of hide must be removed before the head is washed. If the meat from the head is to be saved, the head must be thoroughly washed individually, and flushed in a head flushing cabinet. This must include a thorough flushing of the mouth, nostrils, and pharynx while the head is hanging in an inverted position.

(8) In removing the front feet of cattle and calves, care should be taken to expose as little of the flesh of the fore-shank as possible.

(9) Calves of such size that there is not a clearance of at least eight inches above the floor, or whose viscera cannot be transported manually and unaided to the inedible room, must be skinned and eviscerated as cattle.

(10) Calves dressed hide-on must be thoroughly washed and cleaned prior to making any incision into the carcass other than the sticking wound, except the heads of calves and vealers slaughtered in the "Kosher" method should be skinned prior to washing the carcasses.

(11) In slaughtering lambs and sheep, the pelt must be removed and the carcass thoroughly washed and cleaned before any incision is made for evisceration. Adequate care must be taken to prevent soilage of the carcass when removing the pelt.

(12) Hog carcasses must be thoroughly washed, cleaned, and singed (when necessary) to remove all hair, scale, scurf, dirt and toenails on the slaughtering floor before any incision is made other than the sticking wound. The forefeet need not be cleaned if discarded in the slaughtering room. Hog heads left on the carcass or saved intact must be thoroughly washed and flushed (nostrils, mouth and pharynx) and have ear tubes and eyelids removed.

(13) Paunches must not be opened in the slaughtering room, except when a power operated paunch lift table is provided for this purpose.

(14) Carcasses must be removed from the slaughter room to the chill cooler immediately after dressing and washing is completed. Improperly washed or unclean carcasses must not be brought into the coolers.

NEW SECTION

WAC 16-19-210 Requirements for assignment, stamping, recordkeeping and condemnation of meat. The operator of any custom slaughtering establishment must have in his or her possession certificates of permit or other satisfactory proof of ownership of carcasses or parts thereof in his establishment. Such proof of ownership must be kept on file for a period of six months after receipt of the carcass or part of the carcass.

**PART 4
CUSTOM MEAT FACILITIES**

NEW SECTION

WAC 16-19-300 Additional requirements for sanitary operations of custom meat facilities. (1) **Refrigerated facilities.**

(a) Adequate refrigerated facilities must be provided for the chilling and storage of products. Carcass chill coolers and holding coolers must have mechanical refrigeration capable of maintaining a temperature of 35°F or lower, when loaded to capacity. When overhead refrigerating facilities are provided, insulated drip pans must be installed beneath them and the pans properly connected to the drainage system or to other suitable facilities. If wall coils are installed, a drip gutter of impervious material and connected with the drainage system must be installed beneath the coils. The clearance between a hanging carcass and the floor must be sufficient to avoid contact with or contamination from the floor.

(b) Meat food product storage and display facilities must not be loaded to exceed their intended capacity and must maintain fresh and cured products stored in them below 45°F internal temperature and frozen meat food products below 0°F internal temperature.

(i) Such refrigeration facilities must be equipped with a visible, accurate thermometer located in the warmest part of the refrigerated area.

(ii) Uninspected meat food products must not be stored in display cases used for displaying inspected meat held for sale.

(2) **Clean and sanitary operations and procedures.** Operations and procedures involving the preparation, storing or handling of any meat must be strictly in accord with clean and sanitary methods.

(a) Receptacles used for inedible meat in rooms where edible products are handled must be in good repair and be properly sanitized before usage.

(b) Carcasses or parts of carcasses of uninspected meat not returned to their owner must be properly denatured and properly disposed of. Inspected carcasses or parts of carcasses not intended for human consumption shall be denatured before disposal.

(c) Coolers must not be loaded beyond their capacity to properly chill the carcasses and edible offal. Maximum cooler capacity for carcass chilling and holding purposes is based on available rail space in the coolers. Sufficient space must be provided so that carcasses do not touch.

(3) **Employee health.** Every person employed in a custom meat facility who may contribute to the transmission of infectious disease through the nature of the employee's contact with meat or equipment and facilities is encouraged to obtain and place on file with the operator, a food and beverage service worker's permit as prescribed by chapter 69.06 RCW.

NEW SECTION

WAC 16-19-310 Proof of ownership of uninspected carcasses or parts of carcasses. (1) The operator of any custom meat facility must have in his or her possession certificates of permit as provided by chapter 16-620 WAC (Brand Inspection) or other satisfactory proof of ownership of all uninspected carcasses or parts of carcasses received in his or her establishment. Such proof of ownership must be kept on file for six months after receipt of such carcass or part of carcass.

(2) While in possession of the operator all uninspected cattle carcasses or parts of carcasses must be identified by a department-approved tagging device describing the name and address of the owner, name and address of the slaughterer, if not the owner, the slaughter date and brand, if the animal was branded, while in the possession of the operator. Such identification must conform to the requirements of chapter 16.57 RCW (Livestock identification).

(3) All uninspected meat food animal carcasses or parts of carcasses other than cattle must be identified on a tag available from the department as to name and address of owner, name and address of the slaughterer if different from the owner, and the slaughter date while in possession of the operator.

(4) The operator must give each owner of uninspected carcasses, parts of carcasses, or meat food products delivered to a custom meat facility for preparation a written record stating the gross weight received for preparation. The operator must maintain a duplicate copy of this record at his or her principal place of business for six months.

(5) Operators making sales of prepackaged inspected meat to other than household users must maintain written records of all such transactions, including the buyer, type of product sold and total net weight of each exchange.

NEW SECTION

WAC 16-19-320 Labeling and packaging requirements. (1) All inspected meat and meat food products stored or prepared for the owner thereof, including packages or containers containing any uninspected meat food products, must be marked "NOT FOR SALE" in letters three-eighths of an inch in height immediately upon receipt and immediately after preparing.

(2) All meat food product labels and meat food product packaging must conform to requirements of chapter 19.94 RCW, the Weights and Measures Act and chapter 69.04 RCW, Intrastate Commerce in Food, Drugs, and Cosmetics, now in effect or as amended, and rules adopted under those chapters.

NEW SECTION

WAC 16-19-330 Requirements for preparation and storage of meat and meat food products. (1) Inspected meat and uninspected meat must be stored and prepared separately at all times. Separate meat storage areas must be designated for inspected and uninspected meat and meat food

PROPOSED

products. There must be no physical contact between inspected and uninspected meat.

(2) There must be a complete equipment cleanup after preparation of uninspected meat.

(3) Meat food products offered for sale as fully cooked must be heated in all parts to the following minimum temperatures before delivery to a household user:

(a) Beef 145°F for three minutes or, comminuted (ground) beef products 155°F for fifteen seconds.

(b) Pork 145°F for three minutes or 150°F for one minute.

(c) Any products containing poultry or meat food birds must be cooked to an internal temperature of at least 165°F for fifteen seconds.

(4) Any cooked or partially cooked meat food product not delivered to a household user within two hours of heating must be placed in a cooler allowing adequate air circulation that is maintained at an ambient temperature of 45°F or less within two hours after removal from the heating source (smoker).

(5) Any processing of food other than meat must be done at different times from processing of meat. Any common equipment, utensils, or food contact surfaces used in the preparation of meat, meat food products, and other food products must be sanitized between periods of processing. Processing food, other than meat food animals or meat food birds, whether for the owner or for wholesale distribution, requires obtaining a food processing license from the department. Specific requirements and information on food processing plant licensing may be obtained from the department.

WSR 99-07-117

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 24, 1999, 9:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-21-012.

Title of Rule: Intrastate commerce in foods. Adopts federal regulations under Title 21 CFR and Title 40 CFR covering food production, labeling, processing, standards, pesticide tolerances, food additives, colors and policy guidelines.

Purpose: To update adoption of most current (1998) federal regulations adopted under these titles to ensure that we are uniform with the federal food requirements including the new warning label requirement for fresh fruit and vegetable juice products that are sold in containers.

Statutory Authority for Adoption: RCW 69.04.392, 69.04.394, 69.04.396, 69.04.398, 69.07.020, and 69.10.055.

Statute Being Implemented: Chapter 69.04 RCW, Intrastate commerce in foods.

Summary: Adopts the most current federal regulations published covering food production, processing, standards, food additives, colors, labeling, pesticide tolerances, good manufacturing practices, low acid foods, acidified foods, sea-

food HACCP, policy guidelines and warning labeling for fresh fruit and vegetable juice products in containers.

Reasons Supporting Proposal: To adopt the current editions of the federal regulations to ensure uniformity with the federal requirements and to protect the consumers of fresh fruit and vegetable juice by warning them of potential hazards.

Name of Agency Personnel Responsible for Drafting: Verne E. Hedlund, 1111 Washington Street, P.O. Box 42560, Olympia, WA, (360) 902-1860; Implementation and Enforcement: Michael Donovan, 1111 Washington Street, P.O. Box 42560, Olympia, WA, (360) 902-1883.

Name of Proponent: Washington State Department of Agriculture, Food Safety Advisory Committee, governmental. The Food Safety Advisory Committee met on March 4, 1999, with twenty-one of twenty-eight members present (75%). Adoption of this rule was discussed at this meeting, some members expressed opinions that options other than warning labels for raw juices as prescribed in the federal regulations would be better, however, the consensus of the members present was for the department to go forward with the adoption of the federal requirement for warning labels on raw fruit and vegetable juice sold in containers.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule adopts the federal regulations covering food regulation including labeling, good manufacturing practices, low acid canned foods, food standards, food additives, colors, pesticide tolerances in foods and animal foods and compliance policy guidelines and warning labels for fresh fruit and vegetable juices sold in containers. This will help to ensure uniformity between WSDA requirements and the federal requirements to help ensure that products processed and produced in Washington state are in compliance with national requirements.

Proposal Changes the Following Existing Rules: It updates this rule which adopts the federal regulations covering processing and sale of food products from the 1997 edition to the 1998 edition.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business impact statement necessary for verbatim adoption of federal regulations.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Natural Resources Building, Room 259, 1111 Washington Street, P.O. Box 42560, Olympia, WA 98504, on May 3, 1999, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Julie Carlson by April 28, 1999, TDD (360) 902-1996, or (360) 902-1836.

Submit Written Comments to: Verne E. Hedlund, 1111 Washington Street, P.O. Box 42560, Olympia, WA 98504, phone (360) 902-1860, fax (360) 902-2087.

Date of Intended Adoption: May 24, 1999.

March 24, 1999

Candace A. Jacobs, DVM
Assistant Director

PROPOSED

AMENDATORY SECTION (Amending WSR 98-09-048, filed 4/15/98, effective 5/16/98)

WAC 16-167-010 Purpose and authority. (1) Consistent with the concept of uniformity where possible with the federal regulations adopted under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq. the following federal regulations are specifically made applicable to all persons subject to chapters 69.04 and 69.07 RCW by virtue of RCW 69.04.392, 69.04.394, 69.04.396 and 69.04.398. Although those regulations are automatically applicable to all persons subject to chapters 69.04 and 69.07 RCW, the department is nevertheless adopting as its own rules the following existing regulations of the federal government published in the Code of Federal Regulations revised as of ((April 1, 1997)) the dates stated in the rule.

(2) The purpose of this rule is to adopt the following portion of the federal regulations promulgated under Title 21 CFR, Title 40 CFR and FDA Compliance Policy Guidelines as Washington standards for food safety to ensure uniformity with United States standards and to protect the consuming public from possible harm due to the purchase or consumption of adulterated or misbranded food.

(3) These rules are promulgated under authority of RCW 69.04.392, 69.04.394, 69.04.396, 69.04.398 and 69.07.020.

AMENDATORY SECTION (Amending WSR 98-09-048, filed 4/15/98, effective 5/16/98)

WAC 16-167-020 Pesticide chemicals. The following federal regulations are adopted as Washington tolerances for pesticide chemicals: 40 CFR Revised as of July 1, ((1997)) 1998.

(1) Parts 180 - Tolerances and Exemptions from Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities.

(a) Subpart A - Definitions and Interpretative Regulations.

(b) Subpart C - Specific Tolerances.

(2) Part 185 - Tolerances for Pesticides in Food.

(3) Part 186 - Tolerances for Pesticides in Animal Feeds.

AMENDATORY SECTION (Amending WSR 98-09-048, filed 4/15/98, effective 5/16/98)

WAC 16-167-030 Food additives. The following federal regulations prescribing the conditions under which such food additives may safely be used are adopted as Washington food additive regulations. 21 CFR Chapter 1 Revised as of April 1, ((1997)) 1998.

(1) Part 170 - Food Additives.

(2) Part 172 - Food Additives Permitted for Direct Addition to Food for Human Consumption.

(3) Part 173 - Secondary Direct Food Additives Permitted in Food for Human Consumption.

(4) Part 174 - Indirect Food Additives: General.

(5) Part 175 - Indirect Food Additives: Adhesives and Components of Coatings.

(6) Part 176 - Indirect Food Additives: Paper and Paperboard Components.

(7) Part 177 - Indirect Food Additives: Polymers.

(8) Part 178 - Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers.

(9) Part 179 - Irradiation in the Production, Processing and Handling of Food.

(10) Part 180 - Food Additives Permitted in Food on an Interim Basis or in Contact with Food Pending Additional Study.

(11) Part 181 - Prior-Sanctioned Food Ingredients.

(12) Part 182 - Substances Generally Recognized as Safe.

(13) Part 184 - Direct Food Substances Affirmed as Generally Recognized as Safe.

(14) Part 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe.

(15) Part 189 - Substances Prohibited From Use in Human Food.

AMENDATORY SECTION (Amending WSR 98-09-048, filed 4/15/98, effective 5/16/98)

WAC 16-167-040 Color additives. The following federal regulations prescribing the use or limited use of such color additives are adopted as Washington color additive regulations. 21 CFR Chapter 1 Subchapter A-General Revised as of April 1, ((1997)) 1998.

(1) Part 70 - Color Additives.

(2) Part 73 - Listing of Color Additives Exempt From Certification.

(3) Part 74 - Listing of Color Additives Subject to Certification.

(4) Part 81 - General Specifications and General Restrictions for Provisional Color Additives for Use in Foods, Drugs and Cosmetics.

(5) Part 82 - Listing of Provisionally Listed Colors and Specifications.

AMENDATORY SECTION (Amending WSR 98-09-048, filed 4/15/98, effective 5/16/98)

WAC 16-167-050 General requirements. The following federal regulations concerning food are adopted as Washington requirements for regulating food in intrastate commerce.

(1) 21 CFR Chapter 1 Subchapter A-General Revised as of April 1, ((1997)) 1998.

(a) Part 1 - General Enforcement Regulations.

(i) Subpart A General Provisions.

(ii) Subpart B General Labeling Requirements.

(b) Part 2 - General Administrative Rulings and Decisions.

(i) Subpart A General Provisions.

(ii) Subpart B Human and Animal Foods.

(c) Part 7 - Enforcement Policy.

(2) 21 CFR Chapter 1 Subchapter B-Food for Human Consumption, Revised as of Federal Register: July 8, 1998, (Volume 63, Number 130) Page 37029-37056.

(a) Part 100 - General.

(b) Part 101 - Food Labeling.

(c) Part 102 - Common or Usual Name for Nonstandardized Foods.

PROPOSED

- (d) Part 104 - Nutritional Quality Guidelines for Foods.
 (e) Part 105 - Foods for Special Dietary Use.
 (f) Part 106 - Infant Formal Quality Control Procedures.
 (g) Part 107 - Infant Formula.
 (h) Part 108 - Emergency Permit Control.
 (i) Part 109 - Unavoidable Contaminants in Food for Human Consumption and Food Packaging Material.
 (j) Part 110 - Current Good Manufacturing Practice in Manufacturing, Packing and Holding Human Food.
 (k) Part 111 - Current Good Manufacturing Practices for Dietary Supplements.
 (l) Part 113 - Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.
 (m) Part 114 - Acidified Foods.
 (n) Part 123 - Fish and Fishery Products.
 (o) Part 129 - Processing and Bottling Bottled Drinking Water.
 (p) Part 130 - Food Standards: General.
 (q) Part 131 - Milk and Cream.
 (r) Part 133 - Cheeses and Related Cheese Products.
 (s) Part 135 - Frozen Desserts.
 (t) Part 136 - Bakery Products.
 (u) Part 137 - Cereal Flours and Related Products.
 (v) Part 139 - Macaroni and Noodle Products.
 (w) Part 145 - Canned Fruits.
 (x) Part 146 - Canned Fruit Juices.
 (y) Part 150 - Fruit Butters, Jellies, Preserves and Related Products.
 (z) Part 152 - Fruit Pies.
 (aa) Part 155 - Canned Vegetables.
 (bb) Part 156 - Vegetable Juices.
 (cc) Part 158 - Frozen Vegetables.
 (dd) Part 160 - Eggs and Egg Products.
 (ee) Part 161 - Fish and Shellfish.
 (ff) Part 163 - Cacao Products.
 (gg) Part 164 - Tree Nut and Peanut Products.
 (hh) Part 165 - Beverages.
 (ii) Part 166 - Margarine.
 (jj) Part 168 - Sweeteners and Table Syrups.
 (kk) Part 169 - Food Dressings and Flavorings.

WSR 99-07-118**PROPOSED RULES****DEPARTMENT OF AGRICULTURE**

[Filed March 24, 1999, 9:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-03-045.

Title of Rule: Chapter 16-108 WAC, Washington state egg seals and assessments.

Purpose: To raise the assessment on shell eggs sold in intrastate commerce to provide a more adequate level of funding to operate the egg inspection program.

Other Identifying Information: Level of assessment to increase from \$0.0025 cents per dozen eggs to \$0.0026 cents effective June 30, 1999; \$0.00268 cents effective July 1, 1999, sold in intrastate commerce.

Statutory Authority for Adoption: Chapter 69.25 RCW, Washington Wholesome Egg and Egg Products Act.

Statute Being Implemented: Partial implementation of RCW 69.25.250, remaining within the fiscal growth limits for FY 1999 and for FY 2000.

Summary: A rules review of this section was conducted in accordance with the Governor's Executive Order 97-02. The Department of Agriculture made the decision to retain the rule(s) and additionally to propose fee increases within the fiscal growth factor limits for FY 1999 and for FY 2000.

Reasons Supporting Proposal: This proposal is necessary to attempt to alleviate a deficit egg inspection fund balance so as to continue to provide the means under which adulterated or unwholesome eggs or egg products are discouraged from being sold in the marketplace, and the egg industry's reputation is protected.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Andy Scarborough, 1111 Washington Street, Olympia, WA 98504, (360) 902-1830.

Name of Proponent: Washington State Department of Agriculture, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule would raise the shell egg assessment for graded eggs sold in intrastate commerce exclusive of the exemptions found under RCW 69.25.170 and in 69.25.290 from \$0.0025 cents per dozen eggs to \$0.0026 cents per dozen eggs effective June 30, 1999; \$0.00268 cents per dozen eggs effective July 1, 1999.

The purpose of these rules are to set the level of assessment per dozen eggs sold in intrastate commerce at a level sufficient to carry out the inspection program, and to attempt to alleviate a minus \$7,543.29 deficit egg inspection program fund balance as of January 31, 1999. The additional assessment dollars, estimated to be approximately \$13,000 per fiscal year for the entire shell egg industry representing some seventy plus million dollars of total annual sales for shell eggs, will have minor impact to the overall industry.

Proposal Changes the Following Existing Rules: This proposal changes only a small section of these rules, WAC 16-108-010. This section was last amended January 29, 1986, and the assessment fee has remained at that level since that time. Changes the rate of shell egg assessment from the current rate of \$0.0025 cents per dozen eggs to \$0.0026 cents per dozen eggs effective June 30, 1999; \$0.00268 cents per dozen eggs effective July 1, 1999.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule will have a minor or negligible economic impact to small business. Most of the small businesses being mostly hobby businesses sell the eggs from their place of production to individual consumers, and are therefore exempt from assessments and regulation under WSDA and federal laws. Scenario: If eggs sold at .75 cents per dozen, and 133 dozen were sold; the total cost for the eggs would be 99 dollars and seventy-five cents. 133 dozen times the proposed higher fee increase of \$0.00268 = .3564 cents per 100 dollars of sale. At the current rate of \$0.0025 cents assessment rate per 100 dollars of sale the amount would = .3325 cents per 100 dollars of sale. The

increased cost at the higher rate is insignificant, representing mere fractions of a cent per dozen eggs sold. The egg industry affected by this proposed fee increase in Washington state are mainly companies with 100,000 bird flock or larger. Some companies have more than one million bird flocks. These companies will pay the majority of the estimated \$13,000 annual increase in revenue due to the volume they sell.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Natural Resources Building, 2nd Floor, Room 259, 1111 Washington Street, Olympia, WA 98504, on April 28, 1999, at 10 a.m.

Assistance for Persons with Disabilities: Contact Julie Carlson, (360) 902-1880, by April 14, 1999, TDD (360) 902-1996, or (360) 902-1836.

Submit Written Comments to: Andy Scarborough, P.O. Box 42560, Olympia, WA 98504, fax (360) 902-2087, by April 27, 1999.

Date of Intended Adoption: May 28, 1999.

March 24, 1999

Candace A. Jacobs, DVM
Assistant Director

Food Safety and Animal Health Division

AMENDATORY SECTION (Amending Order 1878, filed 1/29/86)

WAC 16-108-010 Rate. A fee of (~~two and one-half mills~~) \$0.0026 cents effective June 30, 1999; \$0.00268 cents effective July 1, 1999, per dozen eggs is hereby established for every egg handler or dealer who pays assessments monthly in lieu of seals and for Washington state egg seals and facsimile type Washington state egg seals imprinted on egg containers.

WSR 99-07-120

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed March 24, 1999, 9:36 a.m.]

Original Notice.

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

Title of Rule: Environmental health program fees, WAC 246-290-990 Water system evaluation and project review and approval fees, 246-282-990 Shellfish program certification fees, 246-292-160 Water works certification fees, 246-254-070, 246-254-080, 246-254-090, 246-254-100 Fees for specialized radioactive material licenses, and 246-205-990 Fees for decontamination of illegal drug sites.

Purpose: Increase fees to the fiscal growth factor of 4.18%.

Statutory Authority for Adoption: RCW 43.70.250.

Summary: Fees support public health activities in the drinking water, shellfish, toxics, and radiation protection programs and need to be adjusted to compensate for inflation and

guaranteeing sufficient revenue to fulfill public health protection obligation.

Reasons Supporting Proposal: Fees are necessary to continue program activities at their current level.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jan Haywood, Tumwater, (360) 236-3011.

Name of Proponent: Department of Health, Environmental Health Programs, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The purposes of these rules are to guarantee that programs have sufficient revenue to fulfill the obligation to protect public health, in order to do this; fees must be increased to support services the Department of Health provides. With the revenue increased, programs will be able to maintain the current level of public health activities.

Proposal Changes the Following Existing Rules: The change to the existing rule is a proposed fee increase only.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules that set or adjust fees pursuant to legislative standards are exempt from the Regulatory Fairness Act.

RCW 34.05.328 does not apply to this rule adoption. Rules that set or adjust fees pursuant to legislative standards are exempt from the requirements of RCW 34.05.328.

Hearing Location: 7171 Cleanwater Lane, Building 1, Olympia, WA 98504, on April 28, 1999, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Jan Haywood, (360) 236-3011, by April 21, 1999, TDD (800) 833-6388.

Submit Written Comments to: Jan Haywood, fax (360) 236-2250, by April 28, 1999.

Date of Intended Adoption: May 15, 1999.

March 22, 1999

Kris Van Gorkom
Deputy Secretary

AMENDATORY SECTION (Amending Order 125SB, filed 1/24/91, effective 4/1/91)

WAC 246-205-990 Fees. (1) The department shall charge fees for issuance and renewal of certificates. The department shall set the fees by rule.

(2) The fees shall cover the cost of issuing certificates, filing papers and notices, and administering this chapter. The costs shall include reproduction, travel, per diem, and administrative and legal support costs.

(3) Fees are nonrefundable and shall be in the form of check or money order made payable to the department.

(4) The department shall require payment of the following fees upon receipt of application:

(a) (~~Twenty-five~~) Twenty-six dollars shall be assessed for each initial, renewal, or reciprocal worker certificate application.

(b) (~~Twenty-five~~) Twenty-six dollars shall be assessed for each initial, renewal, or reciprocal supervisor certificate application.

(c) Five hundred twenty dollars shall be assessed for each initial, renewal, or reciprocal authorized contractor certificate application. The applicant's certificate shall expire annually on the expiration date of the contractor's license issued under the provisions of chapter 18.27 RCW.

(d) Two hundred five dollars shall be assessed for each initial application and fifty dollars shall be assessed for each renewal application for illegal drug manufacturing or storage site decontamination training course approval.

AMENDATORY SECTION (Amending WSR 98-11-068, filed 5/19/98, effective 6/19/98)

WAC 246-290-990 Water system evaluation and project review and approval fees. (1) The fees for the review and approval of water system plans, project reports, construction documents, existing systems, and related evaluations required under chapters 246-290, 246-291, 246-293, and 246-295 WAC shall be as follows:

(a) Water system plans required under WAC 246-290-100, 246-290-105, 246-291-140, 246-293-220, ~~((and))~~ 246-293-230, and 246-294-060.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Water system plan (New and Updated)	((<u>\$113.00</u>)) <u>\$117</u>	<u>\$396.00</u>	<u>\$966.00</u>	<u>\$1,825.00</u>	<u>\$2,966.00</u>	<u>\$4,389.00</u>
Minor water system plan alteration	((<u>\$28.00</u>)) <u>\$29</u>	<u>\$95.00</u>	<u>\$238.00</u>	<u>\$455.00</u>	<u>\$738.00</u>	<u>\$1,081.00</u>
		<u>\$98</u>	<u>\$247</u>	<u>\$474</u>	<u>\$768</u>	<u>\$1,126</u>

(b) Satellite management agency (SMA) plans for Group A and Group B water systems required under WAC 246-295-040.

Project Type	Total Active or Approved Services					
	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services	
SMA plan for ownership (New and Updated)	((<u>\$396.00</u>)) <u>\$412</u>	<u>\$966.00</u>	<u>\$1,825.00</u>	<u>\$2,966.00</u>	<u>\$4,389.00</u>	
SMA approval amendment	((<u>\$84.00</u>)) <u>\$87</u> per hour or appropriate fee from category above, whichever is less					
SMA plan for operation only (New and Updated)	((<u>\$966.00</u>)) <u>\$1,006</u>	<u>\$966.00</u>	<u>\$966.00</u>	<u>\$966.00</u>	<u>\$966.00</u>	<u>\$966.00</u>

Note: SMAs owning water systems and submitting planning documents to the department for review shall be charged only the SMA fee.

(c) New plan elements required under WAC 246-290-100, 246-290-105, 246-290-125, 246-290-132, 246-290-135, 246-290-691, and 246-291-140 including:

- (i) Conservation; and
- (ii) Wellhead protection, shall be reviewed separately by the department and the fee assessed shall reflect the time spent for this review and shall be calculated based on

~~((eighty-four))~~ eighty-seven dollars per hour. After the initial submittal, updated information shall be reviewed as part of the updated water system plan and the review fee shall be included in the applicable updated plan review fee listed under (a) or (b) of this subsection.

(d) Project reports required under WAC 246-290-110 and design reports required under WAC 246-291-120.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
All types of filtration or other complex treatment processes	((<u>\$281.00</u>)) <u>\$292</u>	<u>\$570.00</u>	<u>\$885.00</u>	<u>\$1,281.00</u>	<u>\$1,765.00</u>	<u>\$2,341.00</u>
		<u>\$593</u>	<u>\$921</u>	<u>\$1,334</u>	<u>\$1,838</u>	<u>\$2,438</u>

PROPOSED

Project Type	Group B	Group A				
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Chemical addition only, such as ion exchange, hypochlorination, or fluoridation	(\$84.00) \$87	\$167.00 \$173	\$281.00 \$292	\$423.00 \$440	\$597.00 \$621	\$798.00) \$831
Complete water system (an additional fee shall be assessed for review of treatment facility, if any)	(\$167.00) \$173	\$396.00 \$412	\$624.00 \$650	\$912.00 \$950	\$1,254.00 \$1,306	\$1,651.00) \$1,720
System modifications requiring a detailed evaluation to determine whether the system, as modified, will comply with regulations (an additional fee shall be assessed for review of treatment facility, if any)	(\$113.00) \$117	\$281.00 \$292	\$455.00 \$474	\$684.00 \$712	\$966.00 \$1,006	\$1,303.00) \$1,357

(e) Special reports or plans required under WAC ((246-290-115;)) 246-290-230, ((246-291-230)) 246-290-235, 246-290-250, 246-290-470, 246-290-636, 246-290-640, 246-290-654, ((and)) 246-290-676, 246-291-230 including:
 (i) Corrosion control recommendation report;
 (ii) Corrosion control study;
 (iii) Plan to cover uncovered reservoirs;
 (iv) Predesign study;
 (v) Uncovered reservoir plan of operation;
 (vi) Tracer study plan;

(vii) Surface water or GWI treatment facility operations plan; ((or))
 (viii) Filtration pilot study; or
 (ix) GWI determination reports, shall be reviewed by the department and the fee assessed shall reflect the time spent for this review and shall be calculated based on ((eighty-four)) eighty-seven dollars per hour.
 (f) Construction documents required under WAC 246-290-120 and design reports required under WAC 246-291-120.

Project Type	Group B	Group A				
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
All types of filtration or other complex treatment processes	(\$281.00) \$292	\$570.00 \$593	\$885.00 \$921	\$1,281.00 \$1,334	\$1,765.00 \$1,838	\$2,341.00) \$2,438
Chemical addition only, such as ion exchange, hypochlorination, or fluoridation	(\$84.00) \$87	\$167.00 \$173	\$281.00 \$292	\$423.00 \$440	\$597.00 \$621	\$798.00) \$831
Complete new water system except treatment (an additional fee shall be assessed for review of treatment facility, if any)	(\$227.00) \$236	\$509.00 \$530	\$738.00 \$768	\$1,026.00 \$1,068	\$1,369.00 \$1,426	\$1,765.00) \$1,838

PROPOSED

Project Type	Group B	Group A					10,000 or more Services
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services		
New source only (an additional fee shall be assessed for review of treatment facility, if any)	(\$167.00) <u>\$173</u>	\$309.00 <u>\$321</u>	\$423.00 <u>\$440</u>	\$570.00 <u>\$593</u>	\$738.00 <u>\$768</u>	\$939.00 <u>\$978</u>	
One or more of the following submitted as a package and not requiring a detailed evaluation as determined by the department: Water line installation, booster pump station, modifications to source pumping, piping-valving, controls or storage reservoir (an additional fee shall be assessed for review of treatment facility, if any)	(\$113.00) <u>\$117</u>	\$195.00 <u>\$203</u>	\$309.00 <u>\$321</u>	\$455.00 <u>\$474</u>	\$624.00 <u>\$650</u>	\$825.00 <u>\$859</u>	
Documents submitted for projects such as water line installation, booster pump stations, modifications to source pumping, piping/valving, controls or storage reservoirs as determined by the department where such projects:							
Comply with design standards established by the department;							
Are prepared by a professional engineer in accordance with WAC 246-290-040; and							
Do not require a detailed evaluation by the department.	(\$54.00) <u>\$56</u>	\$97.00 <u>\$101</u>	\$162.00 <u>\$168</u>	\$227.00 <u>\$236</u>	\$314.00 <u>\$327</u>	\$412.00 <u>\$429</u>	

(g) Existing system approval required under WAC 246-290-140 and 246-291-130. For the purpose of this subsection the department shall determine whether a system is expanding or nonexpanding.

Project Type	Group B	Group A					10,000 or more Services
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services		
NONEXPANDING system not requiring a detailed evaluation by the department	(\$216.00) <u>\$225</u>	\$433.00 <u>\$451</u>	\$651.00 <u>\$678</u>	\$868.00 <u>\$904</u>	\$1,086.00 <u>\$1,131</u>	\$1,303.00 <u>\$1,357</u>	

PROPOSED

Project Type	Group B	Group A				
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
NONEXPANDING system requiring a detailed evaluation as determined by the department	(\$325.00) <u>\$338</u>	\$651.00 <u>\$678</u>	\$978.00 <u>\$1,018</u>	\$1,303.00 <u>\$1,357</u>	\$1,629.00 <u>\$1,697</u>	\$1,956.00) <u>\$2,037</u>
EXPANDING system not requiring a detailed evaluation by the department	(\$433.00) <u>\$451</u>	\$868.00 <u>\$904</u>	\$1,303.00 <u>\$1,357</u>	\$1,738.00 <u>\$1,810</u>	\$2,173.00 <u>\$2,263</u>	\$2,607.00) <u>\$2,715</u>
EXPANDING system requiring a detailed evaluation as determined by the department	(\$543.00) <u>\$565</u>	\$1,086.00 <u>\$1,131</u>	\$1,629.00 <u>\$1,697</u>	\$2,173.00 <u>\$2,263</u>	\$2,716.00 <u>\$2,829</u>	\$3,259.00) <u>\$3,395</u>

(h) Monitoring waivers requested under WAC 246-290-300.

Project Type	Group B	Group A				
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Inorganic chemical monitoring waiver	Not applicable	(\$75.00) <u>\$78 per source</u>	(\$103.00) <u>\$107 per source</u>	(\$130.00) <u>\$135 per source</u>	(\$157.00) <u>\$163 per source</u>	(\$184.00) <u>\$191 per source</u>
Organic chemical monitoring waiver	Not applicable	(\$135.00) <u>\$140 per source</u>	(\$189.00) <u>\$196 per source</u>	(\$244.00) <u>\$254 per source</u>	(\$298.00) <u>\$310 per source</u>	(\$352.00) <u>\$366 per source</u>
Use waiver	Not applicable	(\$162.00) <u>\$168 per source</u>	(\$216.00) <u>\$225 per source</u>	(\$276.00) <u>\$287 per source</u>	(\$325.00) <u>\$338 per source</u>	(\$379.00) <u>\$394 per source</u>
Area wide waiver renewal	Not applicable	(\$216.00) <u>\$168 per source</u>	(\$298.00) <u>\$208 per source</u>	(\$379.00) <u>\$247 per source</u>	(\$460.00) <u>\$287 per source</u>	(\$543.00) <u>\$316 per source</u>
Inorganic chemical monitoring waiver renewal	Not applicable	(\$42.00) <u>\$43 per source</u>	(\$54.00) <u>\$56 per source</u>	(\$64.00) <u>\$66 per source</u>	(\$75.00) <u>\$78 per source</u>	(\$86.00) <u>\$89 per source</u>
Organic chemical monitoring waiver renewal	Not applicable	(\$81.00) <u>\$84 per source</u>	(\$113.00) <u>\$117 per source</u>	(\$146.00) <u>\$152 per source</u>	(\$178.00) <u>\$185 per source</u>	(\$211.00) <u>\$219 per source</u>
Use waiver renewal	Not applicable	(\$113.00) <u>\$117 per source</u>	(\$151.00) <u>\$157 per source</u>	(\$189.00) <u>\$196 per source</u>	(\$227.00) <u>\$236 per source</u>	(\$265.00) <u>\$276 per source</u>
Coliform monitoring waiver including departmental inspection requested by purveyor	Not applicable	(\$342.00) <u>\$356</u>	\$423.00 <u>\$440</u>	\$537.00 <u>\$559</u>	\$684.00) <u>\$712</u>	Not applicable
Coliform monitoring waiver with third-party inspection report	Not applicable	(\$108.00) <u>\$112</u>	\$108.00 <u>\$112</u>	\$108.00 <u>\$112</u>	\$108.00) <u>\$112</u>	Not applicable

(i) Other evaluations and approvals. As applicable, these fees will be charged in addition to the basic fees assessed under (a) through (h) of this subsection.

PROPOSED

Project Type	Group B	Group A				
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Well-site evaluation and approval including the site inspection and hydrogeologic information review.	(\$167.00) \$173	\$249.00 \$259	\$293.00 \$305	\$363.00 \$378	\$455.00 \$474	\$570.00 \$593
Regulatory monitoring plan ¹	No plan required	(\$162.00) \$168	\$216.00 \$225	\$271.00 \$282	\$325.00 \$338	\$379.00 \$394
Unfiltered system annual comprehensive report	Not applicable	(\$325.00) \$338	\$543.00 \$565	\$760.00 \$791	\$978.00 \$1,018	\$1,194.00 \$1,243
1A comprehensive document containing coliform, inorganic chemical and organic chemical monitoring plans in accordance with WAC 246-290-300 ((2)(b), (3)(f), and (7)(e)) .						
Water system compliance report	(\$95.00) \$98	\$95.00 \$98	\$95.00 \$98	\$95.00 \$98	\$95.00 \$98	\$95.00 \$98

PROPOSED

(2) To determine the appropriate fee for a noncommunity system, calculate the service equivalent by taking the average population served each day of operation and dividing by twenty-five for a transient noncommunity (TNC) system and two and one-half for nontransient noncommunity (NTNC) system. Use the number of service equivalents to find out what Group A size category to look under and submit the appropriate fee. (All noncommunity systems are Group A systems as described in WAC 246-290-020.)

(3) Additional review and approval fees may be assessed as follows:

(a) The basic fee covers an evaluation, or the review of an initial submittal and one resubmittal if required. If additional resubmittals are required, an additional twenty-five percent of the original fee will be assessed for each additional resubmittal. For water system plan and SMA plan preparation the basic fee also covers a preplanning conference. When the department is asked to participate in other meetings involving the plan such as community meetings, public hearings, or meetings with elected officials, the department is authorized to charge additional fees at the rate of ~~((eighty-four))~~ eighty-seven dollars per hour;

(b) Fees for department project approval based on local technical review will be determined on a case-by-case basis as outlined in the applicable memorandum of understanding between the department and the respective local agency;

(c) Fees for services which the department determines are not described under subsection (1) of this section, will be calculated based on a rate of ~~((eighty-four))~~ eighty-seven dollars per hour.

Examples of these services include, but are not limited to:

- (i) Review and inspection of water reuse projects;
- (ii) Collection of water quality samples requested by purveyor;

(iii) Review of alternate technologies requested by purveyor, manufacturer or authorized representative; ~~((øø))~~

(iv) Sanitary surveys, including the annual on-site inspections required for systems under WAC 246-290-690(3) to assess watershed control and disinfection treatment;

(v) Well field designations; or

(vi) Transfers of ownership under WAC 246-290-035 or 246-294-060.

(d) Additional fees assessed by the department shall be billed to the purveyor using an itemized invoice.

(4) If the legislature revises the water system operating permit fee under RCW 70.119A.110 to incorporate into it one or more fees for service currently assessed separately under this section, and the purveyor has paid that consolidated fee, the department shall not assess or collect a separate fee under this section for any such service.

(5) All fees required under this section except as noted in subsection (3) of this section, shall be submitted prior to the department's approval. Payment of fees shall be in the form of a check or money order made payable to: The Department of Health. Payment of a fee shall not guarantee approval of the submitted document or evaluation request.

(6) Purveyors unable to determine the appropriate fee payment to submit should contact the department.

AMENDATORY SECTION (Amending WSR 98-12-015, filed 5/22/98, effective 6/22/98)

WAC 246-292-160 Water works certification fees. (1) Operator fees:

- (a) Applicable fees shall be as indicated in Table 2;

Table 2
WATER WORKS OPERATOR FEES

OPERATOR CLASSIFICATION	APPLICATION FEE	REAPPLICATION FEE	ANNUAL RENEWAL FEE	LATE FEE
WTPO	((\$ 52.00)) \$ 54.00	((\$ 26.00)) \$ 27.00	((\$ 26.00*)) \$ 27.00*	((\$ 26.00*)) \$ 27.00*
WDM	((\$ 52.00)) \$ 54.00	((\$ 26.00)) \$ 27.00	((\$ 26.00*)) \$ 27.00*	((\$ 26.00*)) \$ 27.00*
WDS	((\$ 52.00)) \$ 54.00	((\$ 26.00)) \$ 27.00	((\$ 26.00*)) \$ 27.00*	((\$ 26.00*)) \$ 27.00*
CCS	((\$ 31.00)) \$ 32.00	((\$ 26.00)) \$ 27.00	((\$ 26.00*)) \$ 27.00*	((\$ 26.00*)) \$ 27.00*
BAT	((\$ 31.00)) \$ 32.00	((\$ 26.00)) \$ 27.00	((\$ 26.00)) \$ 27.00	((\$ 26.00)) \$ 27.00
BTO	((\$ 31.00)) \$ 32.00	((\$ 26.00)) \$ 27.00	((\$ 26.00)) \$ 27.00	((\$ 26.00)) \$ 27.00

* The annual renewal fee and late fee for a WTPO, WDM, WDS and CCS certification shall be ~~((twenty-six))~~ twenty-seven dollars regardless of the number of classifications held.

(b) A late fee shall be assessed to operators failing to submit the required fee within the time period specified on the renewal form; and

(c) The fee for application for reciprocity shall be one hundred ~~((four))~~ eight dollars per classification.

(2) Group A system fees:

(a) Applicable fees shall be as indicated in Table 3.

Table 3

ANNUAL SYSTEM CERTIFICATION FEES

SYSTEM SIZE* (Number of Equivalent Services)	SYSTEM FEE
Less than 601 Services	((\$ 78.00)) \$ 81.00
601 through 6,000 Services	((\$ 234.00)) \$ 243.00
6,001 through 20,000 Services	((\$ 312.00)) \$ 325.00
More than 20,000 Services	((\$ 468.00)) \$ 487.00

* Systems designated by the department as approved satellite management agencies (SMAs) shall pay a fee based on total services in all systems owned by the SMA.

(b) Group A system fees shall be paid in conjunction with the system's annual operating permit fee required in chapter 246-294 WAC.

(c) A late fee shall be assessed against any system not submitting the applicable fee to the department within the designated time period. The late fee shall be based on the water system's classification and shall be an additional ten percent of the applicable system fee or ~~((twenty-six))~~ twenty-seven dollars, whichever is greater.

(d) The system fee for issuance of a temporary certificate shall be ~~((fifty-two))~~ fifty-four dollars for each temporary position.

(3) Fees shall be nonrefundable and transfers of fees shall not be allowed.

(4) Payment of fees required under this chapter shall be in the form of a check or money order made payable to the department of health and shall be mailed to Department of Health, P.O. Box 1099, Olympia, Washington 98507-1099, or such successor organization or address as designated by the department.

AMENDATORY SECTION (Amending WSR 98-12-068, filed 6/1/98, effective 7/2/98)

WAC 246-282-990 Shellfish program certification fees. (1) Annual certificate fees are:

Type of Operation	Annual Fee
Harvester	\$250.
Shellstock Shipper	
0 - 49 Acres	((\$ 260.)) \$ 270.
50 or greater Acres	((\$ 415.)) \$ 430.
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	((\$ 470.)) \$ 485.
Plants with floor space > 2000 sq. ft. and < 5000 sq. ft.	((\$ 570.)) \$ 590.
Plants with floor space > 5000 sq. ft.	((\$ 1,040.)) \$ 1,080.

(2) Type of operations are defined as follows:

(a) "Shellstock shipper" ~~((shall))~~ means shippers growing, harvesting, buying, or selling shellstock. Shellstock shippers are not authorized to shuck shellfish or to repack shucked shellfish.

(b) "Shucker-packer" ~~((shall))~~ means shippers shucking and packing shellfish. A shucker-packer may act as a shellstock dealer.

(c) "Harvester" means a commercial shellfish operation with activities limited to harvesting shellstock, and shipping and selling it within Washington state to shellfish dealers licensed by the department. Harvesters do not shuck shellfish; repack shucked shellfish; repack shellstock; or store shellstock in any location other than the approved growing area where the shellstock was harvested.

(3) "Export certificate" means a certificate issued by the department to a licensed shucker-packer or shellstock shipper for use in the foreign export of a lot or shipment of shellfish. The fee for each export certificate shall be \$10.

AMENDATORY SECTION (Amending WSR 98-11-067, filed 5/19/98, effective 6/19/98)

WAC 246-254-070 Fees for specialized radioactive material licenses. (1) Persons licensed or authorized to possess or use radioactive material in the following special categories shall forward annual fees to the department as follows:

(a) Four thousand ~~((five hundred forty-five))~~ six hundred ninety dollars for operation of a single nuclear pharmacy.

(b) ~~((Seven))~~ Eight thousand ~~((seven hundred fifty-five))~~ dollars for operation of a single nuclear laundry.

(c) ~~((Seven))~~ Eight thousand ~~((seven hundred fifty-five))~~ dollars for a license authorizing a single facility to use more than one curie of unsealed radioactive material in the manufacture and distribution of radioactive products or devices containing radioactive material.

PROPOSED

(d) Two thousand (~~seven~~) eight hundred (~~twenty-five~~) ten dollars for a license authorizing a single facility to use less than or equal to one curie of unsealed radioactive material or any quantity of previously sealed sources in the manufacture and distribution of products or devices containing radioactive material.

(e) Seven hundred (~~five~~) thirty dollars for a license authorizing the receipt and redistribution from a single facility of manufactured products or devices containing radioactive material.

(f) Five thousand (~~two~~) three hundred seventy dollars for a license authorizing decontamination services operating from a single facility.

(g) Two thousand (~~four~~) five hundred (~~sixty-five~~) forty-five dollars for a license authorizing waste brokerage including the possession, temporary storage at a single facility, and over-packing only of radioactive waste.

(h) One thousand one hundred thirty-five dollars for a license authorizing equipment servicing involving:

(i) Incidental use of calibration sources;

(ii) Maintenance of equipment containing radioactive material; or

(iii) Possession of sealed sources for purpose of sales demonstration only.

(i) Two thousand (~~fifty-five~~) one hundred twenty dollars for a license authorizing health physics services, leak testing, or calibration services.

(j) One thousand (~~two~~) three hundred (~~ninety~~) thirty dollars for a civil defense license.

(k) (~~Three~~) Four hundred (~~eighty-five~~) dollars for a license authorizing possession of special nuclear material as pacemakers or depleted uranium as shielding.

(2) Persons licensed or authorized to possess and use radioactive material in the following broad scope categories shall forward annual fees to the department as follows:

(a) Fifteen thousand (~~three~~) eight hundred (~~ninety~~) eighty dollars for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession of any single isotope greater than one curie.

(b) Seven thousand (~~one~~) three hundred (~~ten~~) forty dollars for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession of any single isotope greater than 0.1 curie but less than or equal to one curie.

(c) Five thousand (~~seven~~) nine hundred (~~twenty~~) dollars for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession less than or equal to 0.1 curie.

(3) Persons licensed or authorized to possess or use radioactive material which are not covered by any of the annual license fees described in WAC 246-254-070 through 246-254-100, shall pay fees as follows:

(a) An initial application fee of one thousand dollars;

(b) Billing at the rate of ninety dollars for each hour of direct staff time associated with issuing and maintaining the license and for the inspection of the license; and

(c) Any fees for additional services as described in WAC 246-254-120.

(d) The initial application fee will be considered a credit against billings for direct staff charges but is otherwise non-refundable.

(4) Persons licensed or authorized to possess or use radioactive material in a facility for radioactive waste processing, including resource recovery, volume reduction, decontamination activities, or other waste treatment, but not permitting commercial on-site disposal, shall pay fees as follows:

(a) A nonrefundable initial application fee for a new license of sixteen thousand dollars which shall be credited to the applicant's quarterly billing described in (b) of this subsection; and

(b) Quarterly billings for actual direct and indirect costs incurred by the department including, but not limited to, license renewal, license amendments, compliance inspections, a resident inspector for time spent on the licensee's premises as deemed necessary by the department, laboratory and other support services, and travel costs associated with staff involved in the foregoing.

AMENDATORY SECTION (Amending WSR 98-11-067, filed 5/19/98, effective 6/19/98)

WAC 246-254-080 Fees for medical and veterinary radioactive material licenses. (1) Persons licensed or authorized to possess or use radioactive material in the following medical or veterinary categories shall forward annual fees to the department as follows:

(a) Three thousand (~~eight~~) nine hundred (~~forty-five~~) seventy dollars for operation of a mobile nuclear medicine program from a single base of operation.

(b) Two thousand eight hundred (~~five~~) ninety-five dollars for a license authorizing groups II and III of WAC 246-235-120 for diagnostic nuclear medicine at a single facility.

(c) Two thousand (~~four~~) five hundred (~~thirty~~) forty dollars for a license authorizing groups IV and V of WAC 246-235-120 for medical therapy at a single facility.

(d) Three thousand (~~eight~~) nine hundred (~~sixty-five~~) ninety dollars for a license authorizing groups II or III and groups IV or V of WAC 246-235-120 for full diagnostic and therapy services at a single facility.

(e) Two thousand (~~eighty~~) one hundred forty-five dollars for a license authorizing group VI of WAC 246-235-120 for brachytherapy at a single facility.

(f) One thousand (~~two~~) three hundred (~~ninety~~) thirty dollars for a license authorizing brachytherapy or gamma stereotactic therapy or teletherapy at a single facility.

(g) (~~One~~) Two thousand (~~nine hundred fifty-five~~) twenty dollars for a license authorizing medical or veterinary possession of greater than two hundred millicuries total possession of radioactive material at a single facility.

(h) One thousand (~~five~~) six hundred (~~sixty~~) ten dollars for a license authorizing medical or veterinary possession of greater than thirty millicuries but less than or equal to two hundred millicuries total possession of radioactive material at a single facility.

(i) One thousand one hundred (~~fifty~~) eighty-five dollars for a license authorizing medical or veterinary possession of

less than or equal to thirty millicuries total possession of radioactive material at a single facility.

(j) One thousand (~~fifteen~~) forty-five dollars for a license authorizing group I as defined in WAC 246-235-120 or in vitro uses of radioactive material at a single facility.

(k) Six hundred (~~thirty~~) fifty dollars for a license authorizing medical or veterinary possession of a sealed source for diagnostic use at a single facility.

(2) Persons with licenses authorizing multiple locations of use shall increase the annual fee by fifty percent for each additional location or base of operation.

AMENDATORY SECTION (Amending WSR 98-11-067, filed 5/19/98, effective 6/19/98)

WAC 246-254-090 Fees for industrial radioactive material licenses. (1) Persons licensed or authorized to possess or use radioactive material in the following industrial categories shall forward annual fees to the department as follows:

(a) Four thousand (~~five~~) six hundred (~~thirty~~) seventy-five dollars for a license authorizing the use of radiographic exposure devices in one or more permanent radiographic vaults in a single facility.

(b) Six thousand (~~seventy~~) two hundred sixty-five dollars for a license authorizing the use of radiographic exposure devices at temporary job sites but operating from a single storage facility.

(c) (~~Two~~) Three thousand (~~nine hundred seventy-five~~) seventy dollars for a license authorizing well-logging activities including the use of radioactive tracers operating from a single storage facility.

(d) Six hundred (~~forty-five~~) sixty-five dollars for a license authorizing possession of portable sealed sources including moisture/density gauges and excluding radiographic exposure devices operating from a single storage facility.

(e) Seven hundred (~~five~~) thirty dollars for a license authorizing possession of any nonportable sealed source, including special nuclear material and excluding radioactive material used in a gas chromatograph at a single facility.

(f) Four hundred (~~forty-five~~) sixty dollars for a license authorizing possession of gas chromatograph units containing radioactive material at a single facility.

(g) One thousand two hundred (~~twenty-five~~) sixty-five dollars for a license authorizing possession of any self-shielded or pool type irradiator with sealed source total quantity greater than one hundred curies at a single facility.

(h) Six thousand (~~four~~) seven hundred (~~ninety~~) dollars for a license authorizing possession of sealed sources for a walk-in type irradiator at a single facility.

(i) Five thousand (~~six~~) eight hundred (~~fifty-five~~) thirty-five dollars for a license authorizing possession of greater than one gram of unsealed special nuclear material or greater than five hundred kilograms of source material at a single facility.

(j) One thousand eight hundred (~~ten~~) seventy dollars for a license authorizing possession of less than or equal to one gram of unsealed special nuclear material or five hundred kilograms of source material at a single facility.

(k) (~~Two~~) Three hundred (~~ninety~~) dollars for a license authorizing possession of static elimination devices not covered by a general license.

(2) Persons with licenses authorizing multiple locations of permanent storage shall increase the annual fee by fifty percent for each additional location.

(3) Depleted uranium registrants required to file Form RHF-20 shall forward an annual fee of sixty dollars to the department.

AMENDATORY SECTION (Amending WSR 98-11-067, filed 5/19/98, effective 6/19/98)

WAC 246-254-100 Fees for laboratory radioactive material licenses. (1) Persons licensed or authorized to possess or use unsealed radioactive material in the following laboratory categories shall forward annual fees to the department as follows:

(a) Three thousand one hundred ninety-five dollars for a license authorizing possession at a single facility of unsealed sources in amounts greater than:

(i) One millicurie of I-125 or I-131; or

(ii) One hundred millicuries of H-3 or C-14; or

(iii) Ten millicuries of any single isotope.

(b) One thousand five hundred (~~thirty-five~~) eighty-five dollars for a license authorizing possession at a single facility of unsealed sources in amounts:

(i) Greater than 0.1 millicurie and less than or equal to one millicurie of I-125 or I-131; or

(ii) Greater than ten millicuries and less than or equal to one hundred millicuries of H-3 or C-14; or

(iii) Greater than one millicurie and less than or equal to ten millicuries of any single isotope.

(c) One thousand (~~two~~) three hundred (~~ninety~~) thirty dollars for a license authorizing possession at a single facility of unsealed sources in amounts:

(i) Greater than 0.01 millicurie and less than or equal to 0.1 millicurie of I-125 or I-131; or

(ii) Greater than one millicurie and less than or equal to ten millicuries of H-3 or C-14; or

(iii) Greater than 0.1 millicurie and less than or equal to one millicurie of any other single isotope.

(d) Four hundred (~~forty-five~~) sixty dollars for a license authorizing possession at a single facility of unsealed or sealed sources in amounts:

(i) Less than or equal to 0.01 millicurie of I-125 or I-131; or

(ii) Less than or equal to one millicurie of H-3 or C-14; or

(iii) Less than or equal to 0.1 millicurie of any other single isotope.

(e) (~~Five~~) Six hundred (~~ninety-five~~) fifteen dollars for a license authorizing possession at a single facility of large quantities of naturally occurring radioactive material in total concentration not exceeding 0.002 microcurie per gram.

(2) Persons with licenses authorizing multiple locations of use shall increase the annual fee by fifty percent for each additional location.

(3) Persons registered to perform in vitro testing pursuant to Form RHF-15 shall forward an annual fee of sixty dollars to the department.

WSR 99-07-121
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed March 24, 1999, 9:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-14-120.

Title of Rule: Sexual misconduct and patient abuse.

Purpose: Sexual contact with patients and patient abuse are violations of the Uniform Disciplinary Act (RCW 18.130.180(24)). These proposed rules would create language that establishes those acts constituting sexual misconduct and patient abuse. In addition, these rules would establish minimum enforcement standards for physicians and physician assistants.

Other Identifying Information: WAC 246-918-115, 246-918-116, 246-919-630, and 246-919-640.

Statutory Authority for Adoption: RCW 18.71.017.

Statute Being Implemented: RCW 18.130.180(24).

Summary: While RCW 18.130.180(24) has determined sexual contact with patients and patient abuse are considered unprofessional conduct, these terms are very broad. These rules would establish definitions of behavior that would clarify what acts constitute a violation.

Reasons Supporting Proposal: These rules are needed to ensure protection of the public.

Name of Agency Personnel Responsible for Drafting: Susan Anthony, Licensing Program Manager, 1300 S.E. Quince Street, Olympia, (360) 236-4787; Implementation: Beverly A. Teeter, Administrator, 1300 S.E. Quince Street, Olympia, (360) 236-4788; and Enforcement: Bonnie King, Executive Director, 1300 S.E. Quince Street, Olympia, (360) 236-4789.

Name of Proponent: Medical Quality Assurance Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Behavior that is found to violate the Uniform Disciplinary Act is currently actionable by regulated professions. These rules establish definitions of those acts constituting sexual misconduct and patient abuse.

These rules establish minimum enforceable standards of conduct in these areas for licensed physicians and physician assistants. In all likelihood, these rules will not reduce or eliminate complaints of sexual misconduct or patient abuse, however it establishes basic conduct criterion consistent for use by both the practitioners and the commission.

Proposal does not change existing rules.

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

Small Business Economic Impact Statement
and
Economic Impact Analysis

I. Background: Sexual contact with patients and patient abuse are violations of the Uniform Disciplinary Act (RCW 18.130.180(24)). "Abuse of a client or patient" and "sexual contact with a client or patient" are very broad terms and do not specify what behavior or conduct constitutes sexual misconduct or patient abuse. These proposed rules would create language that would establish the specifics of [that] constitute sexual misconduct and patient abuse.

II. Financial Impact on Regulated Parties:

Recordkeeping and Reporting: There are no record-keeping requirements as a result of this rule. Reporting requirements regarding unprofessional conduct by physician and/or physician assistant would remain the same.

Training and Education: The conduct indicated in the proposed new rules currently constitutes violation of the Uniform Disciplinary Act. The behavior described in these rules would at any time be reasonably interpreted as unprofessional conduct. There are no training or education requirements as a result of this rule.

New Equipment Requirements: There are no new equipment requirements as a result of this rule.

Inspections - Audits: Behavior reported in these areas are currently being investigated as violations of the Uniform Disciplinary Act. Beyond the established, routine investigatory steps, there are no inspection or audit requirements as a result of this rule.

New Licenses/Fees: There are no fee requirements as a result of this rule.

Administration Expenses and Professional Services: Beyond the current case development costs, there are no additional administration expenses, nor an additional need for professional services as a result of this rule.

Reduced Production: There would be no reduced production as a result of this rule.

Summary: Behavior that is found to violate the Uniform Disciplinary Act is currently actionable by regulated professions. These rules establish definitions of those acts constituting sexual misconduct and patient abuse. These rules establish enforceable minimum standards of conduct in these areas for physicians and physician assistants.

III. Cost to DOH: Aside from the initial rule processing costs, such as conducting the public rule-writing workshops, formal rules hearing and updating forms and notices, there will be no additional cost to the Department of Health, as reports of behavior as described in these rules are currently investigated as violations of the Uniform Disciplinary Act.

Small Business Economic Impact Statement: Individual providers qualify as small businesses since less than fifty people are employed. Since most providers qualify as small businesses, there is no disproportionate impact to small businesses. When there is no disproportionate impact, mitigation is not necessary.

All licensed practitioners are governed under RCW 18.130.180.

Public involvement has been solicited from interested parties lists and from licensees via an article in the Medical

Quality Assurance Commission UPDATE! publication. In addition, two public rule-writing workshops were held, one on April 15, 1998, in Spokane and one on April 16, 1998, in SeaTac.

Opportunity for written and oral comments will also be provided during the formal public rules hearing to be held May 27, 1999.

A copy of the statement may be obtained by writing to Susan Anthony, Licensing Program Manager, Department of Health, Medical Quality Assurance Commission, P.O. Box 47866, Olympia, WA 98504-7866, fax (360) 586-4787.

RCW 34.05.328 applies to this rule adoption.

Hearing Location: Seattle Airport Hilton, 17620 Pacific Highway South, Seattle, WA 98188, on May 27, 1999, at 11:00 a.m.

Assistance for Persons with Disabilities: TDD (800) 833-6388 or fax (360) 586-4573.

Submit Written Comments to: Susan Anthony, P.O. Box 47866, Olympia, WA 98504-7866, fax (360) 586-4573, by May 21, 1999.

Date of Intended Adoption: May 28, 1999.

March 12, 1999

Bonnie L. King

Executive Director

NEW SECTION

WAC 246-918-115 Sexual misconduct. (1) A licensee shall not engage in sexual misconduct. A licensee engages in sexual misconduct when he or she recklessly or intentionally:

(a) Engages in intimate physical contact with a patient, by direct skin contact or through clothing, that has no legitimate medical purpose;

(b) Engages in conduct which may reasonably be interpreted by the patient as romantic involvement with the patient;

(c) Engages in behavior which may reasonably be interpreted by the patient as being of a sexual nature or be interpreted as intended for the sexual arousal or gratification of the licensee, the patient, or a third person;

(d) Engages in behavior that suggests that the licensee has a romantic interest in the patient;

(e) Engages in communications with a patient that could be reasonably interpreted as flirtatious, or which employs sexual innuendo, sexual jokes, or offensive language;

(f) Discusses aspects of his or her intimate life with a patient;

(g) Solicits or engages in a romantic relationship with a family member of a patient who may be vulnerable to being induced into such a relationship due to the condition or treatment of the patient; or

(2) A licensee may not engage in any of the behaviors described in subsection (1) of this section with a former patient if the licensee:

(a) Uses or exploits the trust, knowledge, influence or emotions derived from the professional relationship;

(b) Uses privileged information or access to privileged information to meet the licensee's personal or sexual needs; or

(c) Abuses his or her power or authority.

(3) This section does not prohibit behavior that is required for medically recognized diagnostic or treatment purposes if the behavior meets the standard of care appropriate to the diagnostic or treatment situation.

(4) If the department presents evidence of the existence of a licensee-patient relationship, the commission will presume the relationship existed unless the licensee shows the licensee-patient relationship did not exist at the time of the alleged behavior.

(5) A violation of any provision of this rule shall constitute grounds for disciplinary action under RCW 18.130-180(7).

(6) It is not a defense that the patient, family member or former patient, consented to the behavior, that the contact was initiated by the patient, or that the behavior occurred outside the professional setting.

NEW SECTION

WAC 246-918-116 Abuse. (1) A licensee commits unprofessional conduct under RCW 18.130.180(24) if the licensee abuses a patient. A licensee abuses a patient when the licensee recklessly or intentionally:

(a) Makes unconsented and unnecessary physical contact with a patient;

(b) Makes unnecessary comments about the patient's body, clothing, sexual history, or sexual orientation that has no legitimate medical purpose;

(c) Yells or uses insulting or profane language toward a patient;

(d) Fails to respect a patient's dignity or privacy by failing to provide appropriate gowns and private facilities for dressing, undressing and examination;

(e) Causes unnecessary pain or discomfort to a patient;

(f) Removes a patient's clothing or gown without the patient's consent;

(g) Fails to treat an unconscious patient's body or property respectfully; or

(h) Engages in any other behavior which demeans, humiliates, embarrasses, threatens or harms the patient, whether done physically, verbally or by gestures.

(2) A violation of any provision of this rule shall constitute grounds for disciplinary action under RCW 18.130.180(7).

NEW SECTION

WAC 246-919-630 Sexual misconduct. (1) A licensee shall not engage in sexual misconduct. A licensee engages in sexual misconduct when he or she recklessly or intentionally:

(a) Engages in intimate physical contact with a patient, by direct skin contact or through clothing, that has no legitimate medical purpose;

(b) Engages in conduct which may reasonably be interpreted by the patient as romantic involvement with the patient;

(c) Engages in behavior which may reasonably be interpreted by the patient as being of a sexual nature or be interpreted as intended for the sexual arousal or gratification of the licensee, the patient, or a third person;

(d) Engages in behavior that suggests that the licensee has a romantic interest in the patient;

(e) Engages in communications with a patient that could be reasonably interpreted as flirtatious, or which employs sexual innuendo, sexual jokes, or offensive language;

(f) Discusses aspects of his or her intimate life with a patient;

(g) Solicits or engages in a romantic relationship with a family member of a patient who may be vulnerable to being induced into such a relationship due to the condition or treatment of the patient; or

(2) A licensee may not engage in any of the behaviors described in subsection (1) of this section with a former patient if the licensee:

(a) Uses or exploits the trust, knowledge, influence or emotions derived from the professional relationship;

(b) Uses privileged information or access to privileged information to meet the licensee's personal or sexual needs; or

(c) Abuses his or her power or authority.

(3) This section does not prohibit behavior that is required for medically recognized diagnostic or treatment purposes if the behavior meets the standard of care appropriate to the diagnostic or treatment situation.

(4) If the department presents evidence of the existence of a licensee-patient relationship, the commission will presume the relationship existed unless the licensee shows the licensee-patient relationship did not exist at the time of the alleged behavior.

(5) A violation of any provision of this rule shall constitute grounds for disciplinary action under RCW 18.130-180(7).

(6) It is not a defense that the patient, family member or former patient, consented to the behavior, that the contact was initiated by the patient, or that the behavior occurred outside the professional setting.

NEW SECTION

WAC 246-919-640 Abuse. (1) A licensee commits unprofessional conduct under RCW 18.130.180(24) if the licensee abuses a patient. A licensee abuses a patient when the licensee recklessly or intentionally:

(a) Makes unconsented and unnecessary physical contact with a patient;

(b) Makes unnecessary comments about the patient's body, clothing, sexual history, or sexual orientation that has no legitimate medical purpose;

(c) Yells or uses insulting or profane language toward a patient;

(d) Fails to respect a patient's dignity or privacy by failing to provide appropriate gowns and private facilities for dressing, undressing and examination;

(e) Causes unnecessary pain or discomfort to a patient;

(f) Removes a patient's clothing or gown without the patient's consent;

(g) Fails to treat an unconscious patient's body or property respectfully; or

(h) Engages in any other behavior which demeans, humiliates, embarrasses, threatens or harms the patient, whether done physically, verbally or by gestures.

(2) A violation of any provision of this rule shall constitute grounds for disciplinary action under RCW 18.130-180(7).

WSR 99-07-125

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 24, 1999, 9:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-03-096.

Title of Rule: WAC 16-470-900 through 16-470-920, plant pest detection, testing, and inspection fees and documentation.

Purpose: Current plant pest detection, testing and inspection fee income is not adequate to cover costs of these activities. It is necessary to raise fees within the fiscal growth factors for both fiscal year 1999 and 2000.

Statutory Authority for Adoption: Chapter 17.24 RCW.

Statute Being Implemented: Chapter 17.24 RCW.

Summary: Current plant pest detection, testing and inspection fee income is not adequate to cover costs of these activities. It is necessary to raise fees within the fiscal growth factors for both fiscal year 1999 and 2000.

Reasons Supporting Proposal: Current fee income is not adequate to cover costs to render service by the plant services and pest programs. It is necessary to raise fees within the fiscal growth factors for both fiscal year 1999 and 2000. Changes in language are also necessary to clarify program practices and to put the text into clear and readable format.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984.

Name of Proponent: Washington State Department of Agriculture, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule establishes the fees charged for plant pest detection, testing, inspection and documentation by the pest and plant services programs. The current plant pest detection testing and inspection fee income is not adequate to cover costs of these activities. This makes it necessary to raise fees within the fiscal growth factors for both fiscal year 1999 and 2000. Changes mandated in the regulatory reform statutes (i.e. clear and readable format) have also made modification necessary. We anticipate that the fee-supported program activities will be self-supporting (as required by statute) and will continue to be available to users, and that the rules will be easier for the public to understand.

Proposal Changes the Following Existing Rules: The proposal increases the schedule of fees and charges for activ-

ities authorized in chapter 17.24 RCW within the fiscal growth factors for both fiscal year 1999 and 2000. These activities include inspection, testing, plant disease identification, and documentation services offered to the agricultural and nursery industries and others through the plant services and pest program staffs. The proposal also clarifies that the Washington State Department of Agriculture may negotiate fees for large projects and converts the rule to clear and readable format.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The cost analysis, prepared by the Washington State Department of Agriculture and placed in the official rule file, shows that the proposed rule change would result in a minor impact on businesses.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency in section 201.

Hearing Location: Washington State Department of Agriculture, 1111 Washington Street, 2nd Floor, Conference Room 259, Olympia, WA, on May 17, 1999, at 2:30 p.m.

Assistance for Persons with Disabilities: Contact Cathy Jensen by May 10, 1999, TDD (360) 902-1996, or (360) 902-1976.

Submit Written Comments to: Mary Toohey, Assistant Director, Washington State Department of Agriculture, Lab Services Division, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2094, by May 18, 1999, 5:00 p.m.

Date of Intended Adoption: May 26, 1999.

March 24, 1999

Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 92-07-023, filed 3/10/92, effective 4/10/92)

WAC 16-470-900 Schedule of fees and charges—Billing policies and procedures. (1) All billable services provided under chapter 17.24 RCW are due and payable upon billing by the department. For the convenience of established accounts and in accord with good business practices, the department provides a monthly billing. Accounts not paid in full within thirty days of billing (~~shall be~~) are considered delinquent.

(2) All delinquent accounts (~~shall be~~) are assessed a late charge equal to one percent per month, or portion of a month, on the unpaid balance.

(3) Except for established accounts where there is a reasonable expectation of additional charges during a calendar month, the minimum billable amount through the monthly billing system (~~shall be~~) is twenty dollars. All billable services of less than twenty dollars (~~shall be~~) are due and payable on the date that service is rendered.

(4) No person with an account ninety days or more in arrears (~~shall~~) will receive service except on the basis of payment in full at the time service is rendered. Such accounts (~~shall~~) are not (~~be~~) restored to monthly billing status until all past due amounts are paid-in-full. Such accounts may be subject to legal action for collection.

(5) Accounts that become ninety days or more in arrears twice within a five-year period may be subject to a permanent

requirement for payment in full at the time service is provided.

AMENDATORY SECTION (Amending WSR 92-07-023, filed 3/10/92, effective 4/10/92)

WAC 16-470-905 Schedule of fees and charges—Establishing hourly rates. (1) Requested services (~~shall be~~) are provided at (~~an~~) the applicable hourly rate (~~and an overtime rate~~) except as provided in WAC 16-470-905(5). The (~~overtime~~) hourly rate (~~shall apply~~) for nonbusiness hours applies for service provided before 8:00 a.m. or after 5:00 p.m. during the work day and for all services provided on Saturday, Sunday, or on a holiday listed in subsection (2) of this section.

(2) Holidays shall mean New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day immediately following Thanksgiving Day, Veteran's Day, Christmas Day, President's Day, and Martin Luther King's Birthday.

(3) (~~The minimum hourly~~) Charges are assessed (~~shall be one hour. Additional charges shall be~~) in one-half hour increments (~~prospectively~~).

(4) Persons requesting service with less than twenty-four hours notice (~~on a weekend or holiday, or before 8:00 a.m. or after 5:00 p.m.~~) during nonbusiness hours, may be subject to a (~~call-back~~) charge of two additional hours at the (~~overtime~~) nonbusiness hourly rate (~~in addition to all other charges~~) if the department is (~~actually~~) required to pay call back to the employee(s) providing the requested service.

(5) For (~~larger~~) large projects, the department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated (~~hourly~~) rate.

AMENDATORY SECTION (Amending WSR 92-07-023, filed 3/10/92, effective 4/10/92)

WAC 16-470-910 Schedule of fees and charges—Applicable fees and charges—Effective June 30, 1999.

- (1) Hourly rate(.....)\$25.00
- (2) Overtime rate.....\$32.00
- (3)) (a) Business hours\$26.05
- (b) Nonbusiness hours (see WAC 16-407-905) . . \$33.34

(2) Laboratory diagnostic services, except as provided in subsection (3) or (4) of this section, (~~shall be~~) are charged at the applicable hourly rate plus materials.

(~~(4)~~) (3) Plant pathology laboratory diagnostic fees (~~shall be~~) are as follows:

(Identity Determination	1-sample	5-samples	10-samples	50-samples	100+samples
virus	\$75.00 ea	\$55.00 ea	\$42.00 ea	\$16.00 ea	\$2.50 ea
bacteria	35.00 ea	32.00 ea	30.00 ea	29.00 ea	29.00 ea
fungus	35.00 ea	30.00 ea	28.00 ea	29.00 ea	26.00 ea
nematode	26.00 ea	24.00 ea	22.00 ea	22.00 ea	20.00 ea)

PROPOSED

<u>Identity Determination</u>	<u>1 sample</u>	<u>5 samples</u>	<u>10 samples</u>	<u>50 samples</u>	<u>100+samples</u>
<u>virus</u>	<u>\$78.14 ea</u>	<u>\$57.30 ea</u>	<u>\$43.76 ea</u>	<u>\$16.67 ea</u>	<u>\$ 2.60 ea</u>
<u>bacteria</u>	<u>34.46 ea</u>	<u>33.38 ea</u>	<u>31.25 ea</u>	<u>30.21 ea</u>	<u>30.21 ea</u>
<u>fungus</u>	<u>36.46 ea</u>	<u>31.25 ea</u>	<u>30.21 ea</u>	<u>29.17 ea</u>	<u>27.09 ea</u>
<u>nematode</u>	<u>27.09 ea</u>	<u>25.00 ea</u>	<u>22.92 ea</u>	<u>22.92 ea</u>	<u>20.84 ea</u>

Note: To receive volume rates, samples must be submitted as a unit and identification request must be for one specific virus, bacterium, fungus, or nematode.

(4) For large projects, the department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated rate.

NEW SECTION

WAC 16-470-911 Schedule of fees and charges—Applicable fees and charges—Effective July 1, 1999.

- (1) Hourly rate
 - (a) Business hours \$26.90
 - (b) Nonbusiness hours (see WAC 16-407-905) . \$34.40
- (2) Laboratory diagnostic services, except as provided in subsection (3) or (4) of this section, are charged at the applicable hourly rate plus materials.
- (3) Plant pathology laboratory diagnostic fees are as follows:

<u>Identity Determination</u>	<u>1 sample</u>	<u>5 samples</u>	<u>10 samples</u>	<u>50 samples</u>	<u>100+samples</u>
<u>virus</u>	<u>\$80.70 ea</u>	<u>\$59.20 ea</u>	<u>\$45.20 ea</u>	<u>\$17.20 ea</u>	<u>\$ 2.65 ea</u>
<u>bacteria</u>	<u>37.65 ea</u>	<u>34.40 ea</u>	<u>32.25 ea</u>	<u>31.20 ea</u>	<u>31.20 ea</u>
<u>fungus</u>	<u>37.65 ea</u>	<u>32.25 ea</u>	<u>31.20 ea</u>	<u>30.10 ea</u>	<u>27.90 ea</u>
<u>nematode</u>	<u>27.90 ea</u>	<u>25.80 ea</u>	<u>23.65 ea</u>	<u>23.65 ea</u>	<u>21.50 ea</u>

Note: To receive volume rates, samples must be submitted as a unit and identification request must be for one specific virus, bacterium, fungus, or nematode.

(4) For large projects, the department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated rate.

AMENDATORY SECTION (Amending WSR 92-07-023, filed 3/10/92, effective 4/10/92)

WAC 16-470-915 Schedule of fees and charges—Fees for post entry inspection services—Effective June 30, 1999.

- (1) Site inspection and/or permit review and approval ~~\$(50.00)~~ \$52.09
- (2) Subsequent inspections of post entry plant materials ~~((shall be))~~ are provided at the applicable hourly rate.
- (3) Post entry inspection fees may be waived for state universities, United States Department of Agriculture researchers, and other public entities.
- ~~((4) Fees for post entry inspection services shall be effective May 1, 1992.))~~

NEW SECTION

WAC 16-470-916 Schedule of fees and charges—Fees for post entry inspection services—Effective July 1, 1999.

- (1) Site inspection and/or permit review and approval \$53.80
- (2) Subsequent inspections of post entry plant materials are provided at the applicable hourly rate.
- (3) Post entry inspection fees may be waived for state universities, United States Department of Agriculture researchers, and other public entities.

AMENDATORY SECTION (Amending WSR 92-07-023, filed 3/10/92, effective 4/10/92)

WAC 16-470-920 Schedule of fees and charges—Miscellaneous fees—Effective June 30, 1999.

- (1) Mileage at the established office of financial management rate (schedule A), per diem at actual cost, and travel time at the applicable hourly rate ~~((may be))~~ are assessed for requested inspections or post entry inspections that are not a part of a regular work schedule. Such charges may be prorated among applicants if more than one applicant is provided service during a work day or trip when per diem is applicable.
- (2) Postage, special handling services and other miscellaneous costs ~~((shall be))~~ exceeding five dollars are charged back at the actual cost.
- (3) Certificates of inspection, phytosanitary certificates, and other official documents ~~((shall be))~~ are provided subject to the charges and conditions established in WAC 16-401-025.
- ~~((4) Fee for special handling service (i.e., Federal Express, Air Parcel Post, or Air Freight) \$3.50~~
- ~~((5) Fee for facsimile transmission of documents, per document \$3.50))~~

NEW SECTION

WAC 16-470-921 Schedule of fees and charges—Miscellaneous fees—Effective July 1, 1999.

- (1) Mileage at the established office of financial management rate (schedule A), per diem at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections or post entry inspections that are not a part of a regular work schedule. Such charges may be prorated among applicants if more than one applicant is provided service during a workday or trip when per diem is applicable.
- (2) Postage, special handling services and other miscellaneous costs exceeding five dollars are charged back at the actual cost.
- (3) Certificates of inspection, phytosanitary certificates, and other official documents are provided subject to the charges and conditions established in WAC 16.401.026.

PROPOSED

WSR 99-07-126
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed March 24, 1999, 9:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-03-095.

Title of Rule: Chapter 16-401 WAC, Nursery inspection fees.

Purpose: Increase nursery inspection fees within the fiscal growth factors for both fiscal year 1999 and 2000.

Statutory Authority for Adoption: Chapters 15.13, 15.14 RCW.

Statute Being Implemented: Chapters 15.13, 15.14 RCW.

Summary: Increase fees charged by the plant services program for services authorized in chapters 15.13 and 15.14 RCW, such as nursery inspection, crop certification, and phytosanitary certification, within the fiscal growth factors for both fiscal year 1999 and 2000, and update obsolete language.

Reasons Supporting Proposal: Current fee income is not adequate to cover costs to render service by the plant services program, which is mandated in statute to be supported by fees for service. It is necessary to raise fees within the fiscal growth factors for both fiscal year 1999 and 2000. Changes in language are also necessary to clarify program practices and to put the text into clear and readable format.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984.

Name of Proponent: Nursery Advisory Committee and Washington State Department of Agriculture, private and governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule establishes the fees charged by the plant services program for activities authorized in chapter 15.13 RCW and sets forth related billing and licensing information. The current inspection fee income is not adequate to cover program costs. This has made it necessary to raise fees within the fiscal growth factors for both fiscal year 1999 and 2000. Changes mandated in the regulatory reform statutes (i.e. clear and readable format) have also made modification necessary. We anticipate that the program will be better able to remain financially solvent (as required by statute) and that the rules will be easier for the public to understand.

Proposal Changes the Following Existing Rules: The proposal increases the schedule of fees and charges for activities authorized in chapters 15.13 and 15.14 RCW within the fiscal growth factors for both fiscal year 1999 and 2000. These activities include inspection and certification services offered to the plant nursery industry and others through the plant services program staff. The proposal also corrects an obsolete statutory citation, clarifies that the Washington State Department of Agriculture may negotiate fees to deliver ser-

vices to universities and public agencies, and converts the rule to clear and readable format.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The cost analysis, prepared by the Washington State Department of Agriculture and placed in the official rule file, shows that the proposed rule change would result in a minor impact on businesses.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency in section 201.

Hearing Location: Washington State Department of Agriculture, 1111 Washington Street, 2nd Floor, Conference Room 259, Olympia, WA, on May 17, 1999, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Cathy Jensen by May 10, 1999, TDD (360) 902-1996, or (360) 902-1976.

Submit Written Comments to: Mary Toohey, Assistant Director, Washington State Department of Agriculture, Lab Services Division, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2094, by May 18, 1999, 5:00 p.m.

Date of Intended Adoption: May 26, 1999.

March 24, 1999

Mary A. Martin Toohey

Assistant Director

AMENDATORY SECTION (Amending Order 4016, filed 12/1/92, effective 1/1/93)

WAC 16-401-019 Schedule of fees and charges—Billing policies and procedures. (1) All billable services provided under chapter 15.13 RCW are due and payable upon billing by the department. For the convenience of established accounts and in accord with good business practices, the department provides a monthly billing service for established accounts. Accounts not paid-in-full within thirty days of billing (~~(shall be)~~) are considered delinquent.

(2) All delinquent accounts (~~(shall be)~~) are assessed a late charge equal to one and one-half percent per month, or portion of a month, on the unpaid balance.

(3) Except for established accounts where there is a reasonable expectation of additional charges during a calendar month, the minimum billable amount through the monthly billing system (~~(shall be)~~) is twenty dollars. All billable services of less than twenty dollars (~~(shall be)~~) are due and payable-in-full at the time that service is rendered.

(4) No person with an account ninety days or more in arrears (~~(shall)~~) will receive service except on the basis of payment in full at the time service is rendered. Such accounts (~~(shall)~~) will not be restored to monthly billing status until all past due accounts are paid-in-full. Such accounts may be subject to legal action for collection.

(5) Accounts that become ninety days or more in arrears twice within a five-year period may be subject to a permanent requirement (~~(to payment in full)~~) for payment in full at the time service is provided.

AMENDATORY SECTION (Amending Order 4016, filed 12/1/92, effective 1/1/93)

WAC 16-401-020 Schedule of fees and charges—Facility inspection—Effective June 30, 1999.

(1) Any plant material at a location licensed as a nursery dealer under chapter 15.13 RCW ~~((shall be))~~ is subject to regulatory inspections. A nursery inspection ~~((certificate shall))~~ report will be issued, without additional charge except as provided in subsection (2) of this section, stating the results of the inspection.

(2) A fee may be charged for repeated, subsequent inspections of license locations where plant material does not meet the requirements set forth in chapter 15.13 RCW: Provided, That the license location ~~((shall be))~~ is subject to no more than two paid inspections each license period. Fees ~~((shall be))~~ are assessed on the basis of the time required for the inspection at the applicable hourly rate provided in WAC 16-401-025.

NEW SECTION

WAC 16-401-021 Schedule of fees and charges—Facility inspection—Effective July 1, 1999.

(1) Any plant material at a location licensed as a nursery dealer under chapter 15.13 RCW is subject to regulatory inspections. A nursery inspection report will be issued, without additional charge except as provided in subsection (2) of this section, stating the results of the inspection.

(2) A fee may be charged for repeated, subsequent inspections of license locations where plant material does not meet the requirements set forth in chapter 15.13 RCW: Provided, That the license location is subject to no more than two paid inspections each license period. Fees are assessed on the basis of the time required for the inspection at the applicable hourly rate provided in WAC 16-401-026.

AMENDATORY SECTION (Amending Order 4016, filed 12/1/92, effective 1/1/93)

WAC 16-401-023 Schedule of fees and charges—Establishing hourly rates.

(1) Requested services ~~((shall be))~~ are provided at ~~((an))~~ the applicable hourly rate ~~((and an overtime rate))~~. The ~~((overtime))~~ nonbusiness hourly rate ~~((shall apply))~~ applies for service provided before 8:00 a.m. or after 5:00 p.m. during the work day and for all services provided on Saturday, Sunday, or a holiday listed in subsection (2) of this section.

(2) Holidays ~~((shall))~~ mean New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day immediately following Thanksgiving Day, Veteran's Day, Christmas Day, President's Day, and Martin Luther King's Birthday.

(3) The ~~((minimum))~~ hourly charge is assessed ~~((shall be one hour. Additional charges shall be))~~ in one-half hour increments ~~((prospectively))~~.

(4) Persons requesting service with less than twenty-four hours notice ~~((on a weekend or holiday, or before 8:00 a.m. or after 5:00 p.m.))~~ during nonbusiness hours may be subject to a ~~((call-back))~~ charge of two additional hours at the ~~((over-time))~~ nonbusiness hourly rate, ~~((in addition to all other~~

~~charges;))~~ if the department is ~~((actually))~~ required to pay call back to the employee(s) providing the requested service.

AMENDATORY SECTION (Amending Order 4016, filed 12/1/92, effective 1/1/93)

WAC 16-401-025 Schedule of fees and charges—Applicable rates and charges—Effective June 30, 1999.

The following rates for requested inspection services shall apply:

- (1) Hourly rate ~~((per hour))~~ \$ 25.00
- (2) Overtime rate, per hour \$ 32.00
- ~~((3))~~ (a) Business hours \$ 26.05
- (b) Nonbusiness hours (see WAC 16-401-023) . . . \$ 33.34

(2) Mileage at the established office of financial management rate (schedule A), per diem at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections that are not a part of a regular work schedule. Such charge may be pro-rated among applicants if more than one applicant is provided service during a work day or trip when mileage and/or per diem are applicable.

~~((4))~~ (3) Inspections for phytosanitary certification, including growing season field inspections, ~~((shall be))~~ are provided at the applicable hourly rate provided in subsection (1) of this section except where an alternate certification inspection fee is provided in statute, in rule, or by a written agreement between the department and an industry ~~((organization))~~ entity, university, or public agency. When growing season field inspections for phytosanitary certification and regulatory inspections are performed simultaneously, the first two hours of inspection each calendar year for nurseries licensed under WAC 16-401-040 (1)(b) or (2)(a); and the first four hours of inspection per calendar year for nurseries licensed under WAC 16-401-040 (1)(c) or (2)(b), ~~((shall be))~~ are without charge.

(a) There ~~((shall be))~~ is no additional charge for the first phytosanitary certificate issued at the time of the inspection.

(b) Phytosanitary certificates issued more than twenty-four hours from the time of the inspection, first certificate

..... \$ ~~((12.00))~~ 12.50

(c) Additional phytosanitary certificates

..... \$ ~~((4.00))~~ 4.10 ea.

~~((5))~~ (4) Inspection and certification of nonplant material or equipment for sanitation (freedom from soil or pests) by visual examination or through witnessing a prescribed treatment (steam cleaning, hydro-washing, etc.) ~~((shall be performed))~~ is charged at the applicable hourly rate.

(a) ~~((All certificates must be issued at the time of inspection:))~~

(b) For the first certificate,) There is no additional charge for the first certificate.

~~((e))~~ (b) Additional certificates

..... \$ ~~((4.00))~~ 4.10 ea.

~~((6))~~ (5) Inspections for garden brown snail certification or other miscellaneous inspection certification ~~((shall be))~~ are charged at the applicable hourly rate.

(a) For the first certificate no additional charge

(b) For additional certificates \$ ~~((4.00))~~ 4.10 ea.

PROPOSED

~~((7))~~ (6) Witnessing and certification of fumigation ~~((shall be))~~ is charged at the applicable hourly rate, plus a per lot or container fee of \$ ~~((10.00))~~ 10.42

~~((8))~~ (7) For a certificate of plant health for noncommercial movement of plant materials between states by unlicensed persons, up to a maximum of five plants, and provided that the plants are brought to a plant services office for inspection \$ ~~((5.00))~~ 5.21

Note: When two or more types of inspection, provided in this section, are performed simultaneously, only one hourly rate, per WAC 16-401-025 ~~((shall be applied))~~ applies. One certificate for one service ~~((shall be))~~ is issued at no charge. Additional certificates ~~((will be))~~ are issued at the \$ ~~((4.00))~~ 4.10 rate.

(6) Witnessing and certification of fumigation is charged at the applicable hourly rate, plus a per lot or container fee of \$ 10.75

(7) For a certificate of plant health for noncommercial movement of plant materials between states by unlicensed persons, up to a maximum of five plants, and provided that the plants are brought to a plant services office for inspection. \$ 5.35

Note: When two or more types of inspection, provided in this section, are performed simultaneously, only one hourly rate, per WAC 16-401-026, applies. One certificate for one service is issued at no charge. Additional certificates are issued at the \$4.20 rate.

NEW SECTION

WAC 16-401-026 Schedule of fees and charges—Applicable rates and charges—Effective July 1, 1999. The following rates apply for requested inspection services:

- (1) Hourly rate
 - (a) Business hours \$ 26.90
 - (b) Nonbusiness hours (see WAC 16-401-023) . \$ 34.40
- (2) Mileage at the established office of financial management rate (schedule A), per diem at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections that are not a part of a regular work schedule. Such charge may be prorated among applicants if more than one applicant is provided service during a work day or trip when mileage and/or per diem are applicable.
- (3) Inspections for phytosanitary certification, including growing season field inspections, are provided at the applicable hourly rate provided in subsection (1) of this section except where an alternate certification inspection fee is provided in statute, in rule, or by a written agreement between the department and an industry entity, university, or public agency. When growing season field inspections for phytosanitary certification and regulatory inspections are performed simultaneously, the first two hours of inspection each calendar year for nurseries licensed under WAC 16-401-041 (1)(b) or (2)(a); and the first four hours of inspection per calendar year for nurseries licensed under WAC 16-401-041 (1)(c) or (2)(b), are without charge.

- (a) There is no additional charge for the first phytosanitary certificate issued at the time of the inspection.
- (b) Phytosanitary certificates issued more than twenty-four hours from the time of the inspection, first certificate \$ 12.90
- (c) Additional phytosanitary certificates. . . . \$ 4.20 ea.
- (4) Inspection and certification of nonplant material or equipment for sanitation (freedom from soil or pests) by visual examination or through witnessing a prescribed treatment (steam cleaning, hydro-washing, etc.) is charged at the applicable hourly rate.
 - (a) There is no additional charge for the first certificate.
 - (b) Additional certificates \$ 4.20 ea.
- (5) Inspections for garden brown snail certification or other miscellaneous inspection certification are charged at the applicable hourly rate.
 - (a) For the first certificate no charge
 - (b) For additional certificates \$ 4.20 ea.

AMENDATORY SECTION (Amending Order 4016, filed 12/1/92, effective 1/1/93)

WAC 16-401-030 Schedule of fees and charges—Miscellaneous charges—Effective June 30, 1999. The following rates for miscellaneous charges on requested inspections ~~((shall))~~ apply.

- (1) Postage, special handling services and other miscellaneous costs ~~((shall be))~~ exceeding five dollars charged ~~((back))~~ at the actual cost.
- (2) ~~((Fee for special handling service (i.e., federal express, air parcel post or air freight) \$3.50~~
- (3) ~~Fee for facsimile transmission of documents, per document \$3.50~~
- (4) ~~Additional copies of certificates, per copy . . . \$.20~~
- (5) Other requested office services, not specifically provided ~~((, shall be))~~ for, are charged a fee based on the portion of an hour at the applicable hourly rate in WAC 16-401-025 ~~((necessary to perform the service)).~~
- ~~((6))~~ (3) Nursery stickers and nursery stock inspection ~~((:))~~—certificate tags:
 - (a) In lots of 250 \$ ~~((5.00))~~ 5.21 per lot
 - (b) Less than 250 (minimum 10) . . . \$ ~~((.25))~~ .26 each
- ~~((7))~~ (4) Authorization by the department to preprint Washington nursery stock inspection certificates on shipping containers, yearly authorization fee or renewal \$ ~~((25.00))~~ 26.05

NEW SECTION

WAC 16-401-031 Schedule of fees and charges—Miscellaneous charges—Effective July 1, 1999. The following rates for miscellaneous charges on requested inspections shall apply.

- (1) Postage, special handling services and other miscellaneous costs exceeding five dollars are charged at the actual cost.
- (2) Other requested office services, not specifically provided for, are charged a fee based on the portion of an hour at the applicable hourly rate in WAC 16-401-026.
- (3) Nursery stickers and nursery stock inspection certificate tags:
 - (a) In lots of 250 \$ 5.35 per lot
 - (b) Less than 250 (minimum 10) \$ 0.26 each
- (4) Authorization by the department to preprint Washington nursery stock inspection certificates on shipping containers, yearly authorization fee or renewal \$ 26.90

PROPOSED

AMENDATORY SECTION (Amending Order 4016, filed 12/1/92, effective 1/1/93)

WAC 16-401-040 Nursery dealer license fees—Effective June 30, 1999. ~~((As provided in chapter 15.13 RCW, the director of agriculture hereby establishes the following schedule of))~~ Annual license fees ~~((which shall)), as established below, must accompany ((the)) an application for nursery dealer license(=)~~

(1) Retail nursery dealer license fee:

(a) ~~((For))~~ Gross business sales of horticultural plants and turf less than two thousand five hundred dollars ~~((, the license fee shall be thirty five dollars.))~~ \$ 36.46

(b) ~~((For))~~ Gross business sales of horticultural plants and turf between two thousand five hundred dollars and fifteen thousand dollars ~~((, the license fee shall be seventy five dollars.))~~ \$ 78.14

(c) ~~((For))~~ Gross business sales of horticultural plants and turf of fifteen thousand dollars or more ~~((, the license fee shall be one hundred fifty dollars.))~~ \$156.30

~~((d))~~ Retail nursery dealer license fee increases shall become effective January 1, 1993.)

(2) Wholesale nursery dealer license fee:

(a) ~~((For))~~ Gross business sales of horticultural plants and turf less than fifteen thousand dollars ~~((, the license fee shall be seventy five dollars.))~~ \$ 78.14

(b) ~~((For))~~ Gross business sales of horticultural plants and turf of fifteen thousand dollars or more ~~((, the license fee shall be one hundred fifty dollars.))~~ \$156.30

~~((c))~~ Wholesale nursery dealer license fee increases shall become effective January 1, 1993.)

(3) As provided in RCW ~~((15.13.280 there is hereby established))~~ 15.13.285, a surcharge of twenty percent of the base rate, in addition to the fees established on all classes of licenses in subsections (1) and (2) of this section ~~((to be used solely to support research projects recommended by the nursery advisory committee and of general benefit to the nursery industry))~~, is established.

(4) Permit fee for those types of sales and organizations exempted from licensing requirements by RCW 15.13.270, per permit \$ ~~((5.00))~~ 5.21

NEW SECTION

WAC 16-401-041 Nursery dealer license fees—Effective July 1, 1999. Annual license fees as established below, must accompany the application for nursery dealer license:

(1) Retail nursery dealer license fee:

(a) Gross business sales of horticultural plants and turf less than two thousand five hundred dollars \$ 37.67

(b) Gross business sales of horticultural plants and turf between two thousand five hundred dollars and fifteen thousand dollars, the license fee is \$ 80.72

(c) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more \$161.45

(2) Wholesale nursery dealer license fee:

(a) Gross business sales of horticultural plants and turf less than fifteen thousand dollars \$ 80.72

(b) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more \$161.45

(3) As provided in RCW 15.13.285, a surcharge of twenty percent of the base rate, in addition to the fees established on all classes of licenses in subsections (1) and (2) of this section, is established.

(4) Permit fee for those types of sales and organizations exempted from licensing requirements by RCW 15.13.270, per permit \$ 5.35

AMENDATORY SECTION (Amending Order 4016, filed 12/1/92, effective 1/1/93)

WAC 16-401-050 Annual assessment—Fruit tree material. As provided in RCW 15.13.310, ~~((the director of agriculture hereby establishes))~~ an annual assessment of one percent on the gross sale price of the wholesale market value for all fruit trees, fruit tree related ornamental trees, fruit tree seedlings, fruit tree rootstock, and all other rootstock used for fruit tree propagation produced in Washington, and sold within the state or shipped from the state by any licensed nursery dealer, is established.

**WSR 99-07-131
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS**
[Filed March 24, 1999, 11:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-02-033.

Title of Rule: Increasing fees of the Division of Banks.

Purpose: To increase fees of the Division of Banks (DOB) in an amount up to the "fiscal growth factor" through July 1, 2001.

Statutory Authority for Adoption: RCW 30.04.030, 30.04.070, 30.08.095, 33.04.025, 43.320.040.

Statute Being Implemented: RCW 30.04.070, 30.08.095, 33.28.020.

Summary: The rule raises fees for state chartered financial institutions regulated by the Division of Banks of the Department of Financial Institutions by the fiscal growth factor defined in RCW 43.135.025(6). Under the rule, the fiscal growth factor will be applied to fees on June 25, 1999, July 1, 1999, July 1, 2000, and July 1, 2001.

Reasons Supporting Proposal: As explained more fully below, recent unforeseen and unprecedented developments threaten the ability of the Division of Banks (DOB) at current funding levels, to carry out its statutory mission and to reach and maintain a target fund balance. This places at risk the viability of the existing state-federal dual chartering system of bank regulation. DOB's mission is to conduct full financial examinations of state chartered banks at least once during every eighteen-month period, as required by RCW 30.04.060, 32.04.211, and 33.04.020.

1. In recent months, the Division of Banks (DOB) has lost several of its most experienced examiners to the Federal Deposit Insurance Corporation (FDIC). The FDIC recently modified its long-standing practice and has been actively

PROPOSED

recruiting experienced examiners from among state banking divisions. The departure of these examiners represents a reduction of approximately thirty percent of DOB's overall examiner force and a greater portion of its financial experience. The primary reason for these staff departures is that the FDIC offers considerably higher compensation.

DOB is actively working on ways within state personnel rules, with the support and participation of its affected stakeholder groups, to increase the compensation package and career advancement opportunities of its experienced financial examiners. As recognized by DOB and stakeholder trade organizations, it is critical to take immediate steps to obtain adequate resources to support a program designed to attract and retain experienced examiners and to prevent further loss of key experienced examiners, all within the parameters of Initiative 601.

2. With the participation and approval of the Office of Financial Management, DOB has established a current target fund balance of approximately \$900,000 in order to handle reasonable foreseeable contingencies. As disclosed in WSR 99-02-033, DOB's financial projections indicate that, absent an annual increase in fees incorporating fee increases in this fiscal year and in the four succeeding fiscal years, up to the applicable fiscal growth factor determined by OFM, DOB will be unable to:

- Maintain any fund balance, and
- Have the resources to provide a reasonable increase in examiner compensation in order to attract and retain experienced field examiners.

This rule incorporates fee increases in this fiscal year and in the three succeeding fiscal years, one year short of the four succeeding fiscal years indicated by agency projections.

3. State agencies are expected to raise fees within the fiscal growth factor defined in RCW 43.135.025(6) as necessary to cover basic costs. Modest state mandated salary increases over the past four years have eroded the fund balance to the point where fee increases are required to properly manage the programs of the DOB. Fiscal year 1998 is the first year the fund balance targets were not achieved and projections show continuing drops in the fund balance every year thereafter regardless of changes to examiner staff compensation.

This rule change is intended to help DOB address the examiner compensation issue and to maintain an examiner staff capable of carrying out the division mission, including the added examination burdens presented by Year 2000 financial examinations, while addressing the challenge of maintaining an adequate fund balance.

DOB and stakeholder trade associations recognize it is impossible for DOB to build toward the targeted fund balance while maintaining a well-trained and experienced examination staff without increasing DOB's examination and asset assessment rates up to the fiscal growth factor in the fiscal years reflected in the rule.

DOB is cognizant of its accountability to its stakeholders and the citizens of the state for the effective and efficient use of the funds raised by this rule making and has incorporated several provisions in this rule to provide for that accountability. The rule allows the director to suspend the collection of any or all of the charges and/or fees imposed under the rule if

he or she determines the fund balance exceeds the projected acceptable minimum fund balance and that such course of action would be fiscally prudent. The rule provides for fee increases through fiscal year 2002, at which time the agency will review the adequacy of the rate and fee structure.

The purpose of this rule is to increase the rate of DOB's charges and fees effective June 25, 1999.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Division of Banks, 300 General Administration Building, Olympia, (360) 902-8704.

Name of Proponent: Department of Financial Institutions, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Chapters 50-44 and 419-14 WAC describe the fees charged to state chartered financial institutions by the Division of Banks. These fees provide the necessary funding to allow the Division of Banks to achieve its statutory mission to examine institutions within statutorily required time periods. The amendments will provide the division with sufficient funding to meet projected expenses associated with accomplishing its statutory mission.

Proposal Changes the Following Existing Rules: The amendments raise existing fees for regulated entities by the fiscal growth factor defined in RCW 43.135.025(6).

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

Small Business Economic Impact Statement

Regarding rule proposed by the Division of Banks "division" to increase rate of charges for examination fees, semi-annual assessments, and miscellaneous fees.

OVERVIEW: The proposed rule amends chapters 50-12, 50-44, 419-14, and 419-56 WAC to:

1. Increase the rate of charges and fees paid by regulated financial institutions to the Department of Financial Institutions (DFI) by 4.18%, effective June 25, 1999;

2. Establish a schedule for increases in the rate of charges, effective each July 1, beginning July 1, 1999, through July 1, 2001, based on the fiscal growth factor set by the state; and

3. Authorize the director to waive charges and/or fees if, in his or her opinion, the banking fund's balance exceeds the projected minimum fund balance approved by the Office of Financial Management and would be fiscally prudent.

The division has prepared this small business economic impact statement (SBEIS) in compliance with chapter 19.85 RCW, the Regulatory Fairness Act (RFA). The preproposal statement of intent in connection with the proposed rule was filed at WSR 99-02-033.

BACKGROUND FOR PROPOSED RULE: The division regulates state-chartered banks, savings banks, savings and loans, trust companies, and branches of alien banks pursuant to Titles 30, 32, and 33 RCW. These titles authorize the director of DFI to collect from each institution the cost of their examination and supervision. (See RCW 30.04.070, 32.04.150, and 33.28.020.) The operation of the division is paid for from the bank examination fund (fund), which is a

nonappropriated, dedicated fund supported solely by fees and charges paid by these regulated institutions.

The regulated financial institutions have paid three types of charges assessed by the department:

1. A semiannual asset charge based on the total assets of the institution;
2. Hourly charges for examinations and other tasks performed by the division;
3. Miscellaneous charges and fees associated with the issuance of various certificates, application processing, licensing, legal assistance, and filing of documents.

The charges and fees received by the division vary by charter type and activity performed. The following breaks down current charges by charter type and activity, excluding semi-annual assessments:

Charter	Activity	Charge
Bank, Savings Bank, Alien Branch	Examination	\$ 65 per hour
	Investigation	\$ 90 per hour
	Specialty Examination (EDP, Merger, Trust Dept.)	\$ 90 per hour
	Certificates and Filings	\$ 100
Savings and Loan	Examination (Examiner)	\$ 40 per hour
	Examination (Senior Examiner)	\$ 45 per hour
	Examination (Supervisory)	\$ 50 per hour
	Branch Application	\$ 500
	License Renewal - per office/branch	\$ 50
	Legal Assistance	\$ 60 per hour
	Acquisition Application Fee	\$ 5,000
	New Trust Application	\$ 1,000
	Branch Application/Foreign Assoc.	\$ 2,500
	Each Additional Branch	\$ 500
Trust Companies	Examination	\$ 90 per hour

Banks, savings banks, and alien banks are currently assessed a semi-annual charge for assets which are used to recoup nondirect examination related expenses. Savings and loans are charged .003 per thousand dollars of total assets semiannually, alien banks are charged .000035189 of total assets semiannually, and banks and savings banks are currently charged using the following schedule:

If total assets are:		The assessment is:		
Over	But not Over	This Amount	Plus	Of Excess Over
Million	Million			Million
0	500	0	.00001408	0
500	1,000	7,040	.0000135	500
1,000	-----	13,790	.0000133	1,000

In no event shall any bank pay semiannual assessments in excess of \$133,490.

The division has not increased fees of any kind since 1992. During that period costs of examination and supervision have risen significantly. The division has implemented a number of measures which reduce its cost of business without sacrificing its effectiveness. However, projected division revenues will not be sufficient to meet its estimated obligations

during the upcoming fiscal year and in the ensuing years.

The proposed rule provides for increases in the rate of charges paid by regulated financial institutions to the division, within the limits of Initiative 601. The purpose of the increases is to help provide sufficient funds for the division to meet its obligations in this and ensuing fiscal years. DFI intends for the proposed rule to take effect no later than June 25, 1999.

DESCRIPTION OF PROPOSED RULE: The proposed rule will increase the rate of charges paid by state-chartered banks, savings banks, alien branches, savings and loans, and trust companies to DFI by 4.18%, effective June 25, 1999. In addition the proposed rule will set up a schedule of increases in the rate of charges, effective July 1, 1999, 2000, and 2001.

Each increase will be in the amount of the then current fiscal growth factor set by the Washington State Office of Financial Management (OFM) in accordance with RCW 43.135.025. The estimated increases to take effect on July 1, of subsequent years are as follows:

2000	-	3.32%
2001	-	2.93%
2002	-	2.8 % (subject to revision)

The scheduled increases will continue until the director of DFI (director) determines that the fund is sufficient to meet the division's obligations and fund an adequate reserve as outlined to OFM. The proposed rule will allow the director discretion to suspend the collection of any or all of the charges and fees imposed under the proposal when he or she determines the bank examination fund exceeds the projected, approved minimum fund balance.

REQUIRED ELEMENTS OF SBEIS: The elements of the SBEIS required by the RFA are set forth below.

ELEMENT 1. A brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule and the kinds of professional services that a small business is likely to need in order to comply with the requirements.

RESPONSE: Because the proposed rule does not create new charges, but provides for an increase in the rate of existing charges, the rule will not result in additional compliance costs. Costs such as reporting or recordkeeping, the use of additional labor or professional services, the purchase of additional equipment or supplies, or increased administrative costs should remain unchanged.

ELEMENT 2. An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, labor, and increased administrative costs.

RESPONSE: It appears that the only type of cost for compliance with the proposed rule is the increase in charges assessed by the division. As noted in Element 1 above, there should be no additional costs of compliance.

ELEMENT 3. Whether compliance with the proposed rule will cause business to lose sales or revenue.

RESPONSE: The increase in charges requested in the proposal should not cause regulated institutions to lose sales or revenue. The estimated increased cost of the proposed rule averages \$396 for small institutions (with average assets of

PROPOSED

\$61 million) affected by the rule in fiscal year 2000. Based on current projections, the increase remains fairly nominal during fiscal years 2001 and 2002, at \$360 and \$356, respectively. These increases appear nominal and it is doubtful that their financial impact will make regulated financial institutions less competitive to the degree that they lose sales or revenue to competitors.

ELEMENT 4. A comparison of the compliance costs for the small business segment and large business segment of the affected industries.

RESPONSE: The RFA provides that the compliance costs for small businesses (businesses with fifty or fewer employees) affected by the proposed rule should be compared with such costs for the largest 10% of businesses affected by the rule, based on one of the following methods:

1. Cost per employee.
2. Cost per hour of labor to comply.
3. Cost per one hundred dollars of sales.

Cost per employee appears to be the most effective comparison for the purposes of this analysis because cost per hour of labor is not available to the division and cost per hundred dollars of sales varies significantly between institutions and over time periods due to economic impacts on revenue.

The division's analysis indicates the cost of compliance for small and large banks is as follows¹:

Institution Size	Average cost increase per employee
Small - 50 or fewer employees	\$22.37
Large - top 10% by asset size	\$ 5.19

The average cost increase per employee is significantly higher for the small institutions; however, this seemingly large increase is mitigated by the relatively nominal actual dollar increase in charges and fees (\$396 average in fiscal year 2000). Further, the percentage increase in charges and fees is consistent for all institutions.

The disparity between the average cost per employee and percentage increase per employee reflects the huge discrepancy in number of employees between small and large institutions. The following information shows this difference:

Institution Size	Avg. Number of Employees	Avg. Amount of Fees (FY 2000)
Small	17	\$ 12,346
Large	961	\$ 155,610

The above data reflects that the low number of employees in small institutions causes a very large per employee increase in charges under the proposed rule, in spite of the relatively small actual increase in charges (\$396 in fiscal year 2000).

CONCLUSION: Despite the seemingly large average cost increase per employee of the proposed rule on small institutions, the proposed rule has a fairly minimal actual dollar impact, and the percentage increase in charges per employee from current fee schedules is only marginally higher for small institutions than large.

ELEMENT 5. Steps taken by the agency to reduce the costs of the proposed rule on small businesses, or rea-

sonable justification for not doing so, addressing the specified mitigation steps.

RESPONSE: The RFA requires agencies to consider specific steps to mitigate the impact of the rule on small business, including:

1. Establishing different compliance or reporting requirements or timetables for small business.
2. Clarifying, consolidating or simplifying the compliance and reporting requirements for small businesses.
3. Establishing performance rather than design standards.
4. Exempting small business from any or all of the requirements.
5. Reducing or modifying fine schedules for not being in compliance.
6. Any other mitigation techniques.

The specific steps listed above do not appear to be pertinent to the proposed rule. The division is required by statute to pay for the cost of examination and supervision of regulated institutions and the current fee structure has been reviewed on an ongoing basis with regulated entities and their trade associations. The current fee structure will not be changed, simply increased by Initiative 601 allowable rates to offset increased costs faced by the division.

ELEMENT 6. A description of how the agency will involve small business in the development of the proposed rule.

RESPONSE: The division will provide a copy of the proposed rule to all institutions it supervises, including small banks, savings banks, alien branches, and trust companies. The division will hold a public hearing to discuss the proposed rule, as required by RCW 34.05.325. All of these entities are encouraged to contact the division to comment on the proposed rule. In addition, the division will work with the trade associations of these groups to discuss the proposed rule and solicit comments.

ELEMENT 7. A list of the industries affected by the proposed rule.

RESPONSE: The industries affected by the proposed rule are as follows:

1. State Commercial Banks (Savings and Trust) - Standard Industry Code 6022.
2. Branches of Foreign Banks - Standard Industry Code 6081.
3. Nondeposit Trust Facilities - Standard Industry Code 6091.

¹This analysis uses charges for the fiscal year 2000. Other years are not analyzed because final fiscal growth factors have not been determined.

A copy of the statement may be obtained by writing to L. Wayne Fralin, Director of Banks, Division of Banks, P.O. Box 41200, Olympia, WA 98504-1200, phone (360) 902-8747, fax (360) 753-6070.

RCW 34.05.328 does not apply to this rule adoption. The Department of Financial Institutions is requesting the amendments to provide sufficient funding to the Division of Banks to meet its regulatory obligations.

Hearing Location: 210 11th Avenue S.W., Suite 300, Olympia, WA 98504, on April 27, 1999, at 2:30 p.m.

PROPOSED

Assistance for Persons with Disabilities: Contact Patty Brombacher by 5:00 p.m. on April 22, 1999.

Submit Written Comments to: L. Wayne Fralin, Director of Banks, fax (360) 753-6070, by April 26, 1999.

Date of Intended Adoption: April 27, 1999.

March 24, 1999

John L. Bley

Director

NEW SECTION

WAC 50-44-037 Charges and fees effective June 25, 1999. Effective June 25, 1999, the rate of charges and fees under WAC 50-12-045, 50-44-020 and 50-44-030 shall be as follows:

- (1) WAC 50-12-045 (1)(c) and (d) - The fee shall be \$100.00 for the issuance and filing of certificates.
- (2) WAC 50-12-045 (1)(e) - The fee shall be 50 cents per page.
- (3) WAC 50-12-045(2) - The fee shall be \$93.76 per employee hour expended.
- (4) WAC 50-44-020(1) - The rates shall be the following:

If total assets are:		The assessment is:		
Over	But not Over	This Amount	Plus	Of Excess Over
Million	Million			Million
0	500	0	.000014668	0
500	1,000	7,344	.000014064	500
1,000	10,000	14,366	.000013855	1,000
10,000	—	139,061	.000	10,000

- (5) WAC 50-44-020(2) - The rate shall be .000036659.
- (6) WAC 50-44-030(1) - The fee shall be \$67.71 per hour.
- (7) WAC 50-44-030(2) - The fee shall be \$93.76 per hour.

NEW SECTION

WAC 50-44-039 Charges and fees effective July 1, 1999. (1) Effective July 1, 1999, the rate of charges and fees under WAC 50-12-045, 50-44-020 and 50-44-030 shall be as follows:

- (a) WAC 50-12-045 (1)(c) and (d) - The fee shall be \$100.00 for the issuance and filing of certificates.
- (b) WAC 50-12-045 (1)(e) - The fee shall be 50 cents per page.
- (c) WAC 50-12-045(2) - The fee shall be \$96.87 per employee hour expended.
- (d) WAC 50-44-020(1) - The rates shall be the following:

If total assets are:		The assessment is:		
Over	But not Over	This Amount	Plus	Of Excess Over
Million	Million			Million
0	500	0	.0000151549	0
500	1,000	7,577	.0000145309	500
1,000	10,000	14,842	.0000143149	1,000
10,000	—	143,676	.000	10,000

- (e) WAC 50-44-020(2) - The rate shall be .000037876.
- (f) WAC 50-44-030(1) - The fee shall be \$69.95 per hour.
- (g) WAC 50-44-030(2) - The fee shall be \$96.87 per hour.
- (2) Thereafter, effective July 1, 2000, and again on July 1, 2001, the charges and fees set forth in subsection (1)(c), (d), (e), (f), and (g) of this section shall be increased by the fiscal growth factor as determined by the office of financial management pursuant to RCW 43.135.025.
- (3) The director may suspend the collection of any or all of the charges and/or fees imposed under this section when he or she determines the banking examination fund established in RCW 43.320.110 exceeds the projected acceptable minimum fund balance level approved by the office of financial management and that such course of action would be fiscally prudent.

NEW SECTION

WAC 419-14-135 Charges and fees effective June 25, 1999. Effective June 25, 1999, the rate of charges and fees under chapter 419-14 and 419-56 WAC shall be as follows:

- (1) WAC 419-14-030(1) - The fee shall be \$41.67 per hour.
- (2) WAC 419-14-030(2) - The fee shall be \$46.88 per hour.
- (3) WAC 419-14-030(3) - The fee shall be \$52.09 per hour.
- (4) WAC 419-14-040 - The asset charge shall be .031254 per thousand dollars of assets.
- (5) WAC 419-14-075 - The fee shall be \$2,500.00 for the first branch and \$500.00 for each additional branch.
- (6) WAC 419-14-080 - The fee shall be \$50.00 for the home office and each branch.
- (7) WAC 419-14-090 - The fee shall be \$62.50 per hour.
- (8) WAC 419-14-100 - The fee shall be \$52.09 per hour.
- (9) WAC 419-14-110 - The fee shall be \$52.09 per hour.
- (10) WAC 419-14-110 - The fee shall be \$5,000.00.
- (11) WAC 419-56-070 - The fee shall be \$1,000.00.

NEW SECTION

WAC 419-14-140 Charges and fees effective July 1, 1999. (1) Effective July 1, 1999, the rate of charges and fees under chapters 419-14 and 419-56 WAC shall be as follows:

- (a) WAC 419-14-030(1) - The fee shall be \$43.05 per hour.

PROPOSED

- (b) WAC 419-14-030(2) - The fee shall be \$48.43 per hour.
- (c) WAC 419-14-030(3) - The fee shall be \$53.81 per hour.
- (d) WAC 419-14-040 - The asset charge shall be .0322916 per thousand dollars of assets.
- (e) WAC 419-14-075 - The fee shall be \$2,500.00 for the first branch and \$500.00 for each additional branch.
- (f) WAC 419-14-080 - The fee shall be \$50.00 for the home office and each branch.
- (g) WAC 419-14-090 - The fee shall be \$64.57 per hour.
- (h) WAC 419-14-100 - The fee shall be \$53.81 per hour.
- (i) WAC 419-14-110 - The fee shall be \$53.81 per hour.
- (j) WAC 419-14-110 - The fee shall be \$5,000.00.
- (k) WAC 419-56-070 - The fee shall be \$1,000.00.
- (2) Thereafter, effective July 1, 2000, and again on July 1, 2001, the charges and fees set forth in subsection (1)(a), (b), (c), (d), (g), (h), and (i) of this section shall be increased by the fiscal growth factor as determined by the office of financial management pursuant to RCW 43.135.025.
- (3) The director may suspend the collection of any or all of the charges and/or fees imposed under this section when he or she determines the banking examination fund established in RCW 43.320.110 exceeds the projected acceptable minimum fund balance level approved by the office of financial management and that such course of action would be fiscally prudent.

WSR 99-07-137
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medical Assistance Administration)
[Filed March 24, 1999, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-22-098.

Title of Rule: WAC 388-418-0025 Effect of changes on medical program benefits.

Purpose: To implement a federal option as allowed in the Balanced Budget Act (BBA) of 1997 which provides for twelve continuous months of medical benefits for children.

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

Statute Being Implemented: Section 4731 of the BBA (Public Law 105-33).

Summary: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Joanie Scotson, Medical Assistance Administration, Mailstop 45530, Olympia, WA 98504-5530, (360) 753-7462.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is necessary because of federal law, Section 4731 of the BBA of 1997.

Explanation of Rule, its Purpose, and Anticipated Effects: See Purpose above.

Proposal Changes the Following Existing Rules: See Purpose above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses. It concerns eligibility policy and affects only clients and staff.

RCW 34.05.328 applies to this rule adoption. These rules meet the definition of a significant legislative rule but the Department of Social and Health Services is exempt from preparing a cost benefit analysis under RCW 34.05.328 (5)(b)(vii).

Hearing Location: Lacey Government Center (behind Tokyo Bento Restaurant), 1009 College Street S.E., Room 104-B, Lacey, WA 98503, on April 27, 1999, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Paige Wall by April 16, 1999, phone (360) 902-7540, TTY (360) 902-8324, e-mail pwall@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Paige Wall, Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 902-8292, by April 27, 1999.

Date of Intended Adoption: April 28, 1999.

March 19, 1999

Edith M. Rice

for Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

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

WAC 388-418-0025 Effect of changes on medical program eligibility. (1) ~~((Categorically needy (CN) medical and medically needy (MN) medical is continued until a re-termination of))~~ A client continues to receive Medicaid until the department determines the client's eligibility ((is made for other)) or ineligibility for another medical ((programs when changes cause a client to become ineligible for)) program. This applies to a client who becomes ineligible for:

(a) A Medicaid program during the certification period;

or

(b) Any of the following cash grants:

(i) TANF/SFA; ((or

~~(b))~~ (ii) SSI; ((or

~~(e))~~ (iii) GA-H; ((or

~~(d))~~ (iv) GA-S; or

~~((e) CN medical))~~

(v) GA-X.

(2) ~~((When changes cause a refugee cash assistance client to be ineligible,))~~ A child remains continuously eligible for medical benefits for a period of twelve months from the date of certification for medical benefits or last review, whichever is later. This applies unless the child:

(a) Moves out of state;

(b) Loses contact with the department or the department does not know the child's whereabouts;

(c) Turns eighteen years of age if receiving children's health program benefits;

(d) Turns nineteen years of age if receiving children's CN or CN scope of care program benefits; or

(e) Dies.

~~(3) When a client becomes ineligible for refugee cash assistance, refugee medical assistance can ~~((only))~~ be continued only through the eight-month ~~((residence))~~ limit, as described in WAC ~~((388-400-0030(6)))~~ 388-400-0035(6).~~

~~((3))~~ (4) A client receiving a TANF~~((f))~~ or SFA cash ~~((recipients are))~~ grant is eligible for a medical extension, as described under WAC 388-523-0100, when ~~((termination))~~ the client's cash grant is ~~((a result of))~~ terminated because of:

~~((a))~~ ~~((Increased employment))~~ Earned income; or

~~((b))~~ Collection of ~~((, or increased collection of,))~~ child or spousal support.

~~((4))~~ ~~Clients who report changes in income or resources during a certification period will have their medical continued until eligibility is redetermined for:~~

~~((a))~~ ~~CN or medically needy (MN) for TANF/SFA-related, SSI-related, or refugee-related medical; or~~

~~((b))~~ ~~Medically indigent (MI) program.)~~

~~((5))~~ ~~((Changes))~~ A change in income ~~((reported by clients))~~ during a certification period ~~((will not have an affect on medical))~~ does not affect eligibility for:

~~((a))~~ ~~((The))~~ Pregnant women's medical programs; or

~~((b))~~ ~~((The children's CN program; or~~

~~((c))~~ ~~The children's health program; or~~

~~((d))~~ ~~The first six months of the TANF/SFA-related medical extension; or~~

~~((e))~~ ~~The newborn medical program))~~ The first six months of the TANF/SFA-related medical extension.

PROPOSED

WSR 99-07-012
EXPEDITED ADOPTION
DEPARTMENT OF
FINANCIAL INSTITUTIONS
 (Securities Division)
 [Filed March 8, 1999, 2:54 p.m.]

Department of Financial Institutions, Securities Division,
 P.O. Box 9033, Olympia, WA 98507-9033, AND
 RECEIVED BY May 22, 1999.

March 8, 1999
 John L. Bley
 Director

Title of Rule: Dishonest or unethical business practices—Broker-dealers and Dishonest or unethical business practices—Salespersons.

Purpose: To change term in definitions to conform with NASD regulation name change relating to rules referenced in the WAC.

Other Identifying Information: WAC 460-21B-060 and 460-22B-090.

Statutory Authority for Adoption: RCW 21.20.450(1).

Statute Being Implemented: RCW 21.20.110 [(1)](g).

Summary: Deletes reference to "fair practice rules" and inserts new name for those rules, "conduct rules."

Reasons Supporting Proposal: Necessary to bring the rules and code into conformance with the name amendment adopted by the NASD which tie into state definitions of unethical and dishonest business practices.

Name of Agency Personnel Responsible for Drafting: Kristina Kneip, GA 301, 902-8823; **Implementation:** John Bley, GA 301, 902-8707; and **Enforcement:** Deborah Bortner, GA 301, 902-8797.

Name of Proponent: Department of Financial Institutions, Securities Division, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Agency recommends changes, as written, to conform with amended rule name at the National Association of Securities Dealers.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rules set forth definitions of conduct which, by definition, are dishonest or unethical and thereby constitute a violation of RCW 21.20.110 [(1)](g). However, the reference, as presently written refers to the "fair practice rules" of the NASD. Those rules have been renamed the "conduct rules." The name change was made without substantive changes and will, therefore have no change in effect on persons subject to the cited WAC and RCW.

Proposal Changes the Following Existing Rules: The proposals change references in the rules to read "conduct rules" and replaces the words "fair practice rules."

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kristina L. Kneip,

AMENDATORY SECTION (Amending WSR 97-16-050, filed 7/31/97, effective 8/31/97)

WAC 460-22B-090 Dishonest and unethical business practices-salespersons. The phrase "dishonest or unethical practices" as used in RCW 21.20.110(7) as applied to salespersons, is hereby defined to include any of the following:

(1) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

(2) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

(5) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also registered for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

(6) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(7) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(8) Executing a transaction on behalf of a customer without authorization to do so;

(9) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(10) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(11) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(12) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering;

(13) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security;

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(14) Guaranteeing a customer against loss in any securities account for such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(15) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation presents a bona fide bid for, or offer of, such security;

(16) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions of any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(17) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act, when requested to do so by a customer;

(18) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited;

(19) Failing to comply with any applicable provision of the Conduct Rules (~~(of Fair Practice)~~) of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission; or

(20) Any act or practice enumerated in WAC 460-21B-010.

The conduct set forth above is not inclusive. Engaging in other conduct such a forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

AMENDATORY SECTION (Amending WSR 95-16-026, filed 7/21/95, effective 8/21/95)

WAC 460-21B-060 Dishonest or unethical business practices—Broker-dealers. The phrase "dishonest or unethical practices" as used in RCW 21.20.110(7) as applied to broker-dealers is hereby defined to include any of the following:

(1) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

(2) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(3) Recommending to a customer to purchase, sell or exchange any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(4) Executing a transaction on behalf of a customer without authorization to do so;

(5) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(6) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(7) Failing to segregate customers' free securities or securities held in safekeeping;

(8) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the securities and exchange commission;

(9) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(10) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering;

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest,

exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(12) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

(13) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he/she is acting or with whom he/she is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

(14) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customer;

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(15) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(16) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

(17) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(18) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(19) Failing to make bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member;

(20) Failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint;

(21) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act, when requested to do so by a customer;

(22) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited;

(23) For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each such security based on the closing market bid on a date certain: *Provided*, That this subsection shall apply only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued;

(24) Failing to comply with any applicable provision of the Conduct Rules (~~(of Fair Practice)~~) of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission; or

(25) Any acts or practices enumerated in WAC 460-21B-010.

The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

WSR 99-07-090

EXPEDITED ADOPTION

DEPARTMENT OF REVENUE

[Filed March 19, 1999, 1:52 p.m.]

Title of Rule: Amendatory section WAC 458-16-320
Emergency or transitional housing.

Purpose: The rule explains the requirements under which emergency or transitional housing for low-income persons or homeless victims of domestic violence may receive a property tax exemption under RCW 84.36.043.

Statutory Authority for Adoption: RCW 84.36.865.

Statute Being Implemented: RCW 84.36.043.

Summary: The 1991 version of the statute provided that rented or leased property would be exempt for taxes levied for collection in years 1991 through 1999 only. The legislature removed this limitation as to rented or leased property in chapter 174, Laws of 1998. The proposed amendments to the rule reflect this statutory change.

Reasons Supporting Proposal: WAC 458-16-320 needs to be amended so that it accurately reflects the criteria contained in the statute that authorizes the property tax exemption.

Name of Agency Personnel Responsible for Drafting: Kim M. Qually, 711 Capitol Way South, #303, Olympia, WA, (360) 664-0086; Implementation and Enforcement: Sandy Guilfoil, 6004 Capitol Boulevard, Tumwater, WA, (360) 753-5503.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: RCW 84.36.043 authorizes a property tax exemption for emergency or transitional housing for low-income homeless persons or victims of domestic violence who are homeless for personal safety reasons. To receive this exemption, the housing must also be owned by a nonprofit organization or rented or leased by the nonprofit organization with the benefit of the exemption inuring to the nonprofit organization. The 1991 version of the statute provided that rented or leased property would be exempt for taxes levied for collection in 1991 through 1999 only. The legislature removed this limitation as to rented or leased property in chapter 174, Laws of 1998. WAC 458-16-320 explains the statutory requirements in depth and contains definitions of terms used in the statute, which must be understood to administer the exemption. The proposed change in this rule reflects the 1998 statutory changes to RCW 84.36.043. The amended rule eliminates the time limit for rented or leased property. Property rented or leased by a nonprofit organization that provides emergency or transitional housing may now qualify for exemption for an unlimited period of time as long as the benefit of the exemption inures to the nonprofit organization and the other statutory requirements are satisfied.

Proposal Changes the Following Existing Rules: This proposed rule amends the current version of WAC 458-16-320. The amendments to this rule change it so that it conforms to the current text of the underlying statute.

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kim M. Qually, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-

7467, fax (360) 664-0693, AND RECEIVED BY May 22, 1999.

To obtain a copy of this form and rule in an alternative format: Contact Ginny Dale at (360) 586-0721, TDD 1-800-451-7985. Please allow ten days for the form and rule to be prepared and sent to you.

March 10, 1999

Claire Hesselholt, Rules Manager
Legislation and Policy Division

AMENDATORY SECTION (Amending WSR 94-07-008, filed 3/3/94, effective 4/3/94)

WAC 458-16-320 Emergency or transitional housing. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.043 to real and personal property used by a nonprofit organization, association, or corporation to provide emergency or transitional housing to low income persons or victims of domestic violence who are homeless for personal safety reasons.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Emergency housing" means a facility whose primary purpose is to provide temporary or transitional shelter and supportive services to the homeless in general or to a specific population of the homeless for no more than sixty days.

(b) "Homeless" means a person, persons, family, or families who do not have fixed, regular, adequate, or safe shelter nor sufficient funds to pay for such shelter.

(c) "Low-income" means income that does not exceed eighty percent of the median income for the standard metropolitan statistical area in which the city or town is located.

(d) "Supportive services" means resume writing, training, vocational and psychological counselling, or other similar programs designed to assist the homeless into independent living.

(e) "Transitional housing" means a facility that provides housing and supportive services to homeless individuals or families for up to two years and whose primary purpose is to enable homeless individuals or families to move into independent living and permanent housing.

(f) "Victim(s) of domestic violence" means either an adult(s) or a child(ren) who have been physically or mentally abused and who fled his or her home out of fear for his or her safety.

(g) "Property" means real or personal property used by a nonprofit organization, association, or corporation in providing emergency or transitional housing and supportive services for low-income homeless persons or victims of domestic violence.

(h) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(3) **Exemption.** The real and personal property exclusively used, or to the extent that it is exclusively used, by a nonprofit organization, association or corporation to provide emergency or transitional housing to low-income homeless persons or victims of domestic violence shall be exempt from taxation if the following conditions are met:

(a) The amount of the charge or fee for the housing does not exceed maintenance and operation expenses;

(b) The property is either:

(i) Owned by a nonprofit organization, association, or corporation; or

(ii) ~~((For taxes payable in 1992 through 2000,))~~ Rented or leased by a nonprofit organization, association, or corporation and the benefit of the exemption inures to a nonprofit organization, association, or corporation; and

(c) If any portion of the organization's, association's or corporation's property is used for a commercial purpose rather than for an exempt purpose, that portion of the property must be segregated and taxed.

(4) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165 that explains the additional conditions and requirements necessary to obtain a property tax exemption pursuant to RCW 84.36.043.

WSR 99-07-115

EXPEDITED ADOPTION

DEPARTMENT OF AGRICULTURE

[Filed March 24, 1999, 9:07 a.m.]

Title of Rule: WAC 16-30-001 through 16-30-100, registered feedlots, rules that regulate cattle feedlots that may feed female cattle that are not vaccinated for brucellosis for slaughter purposes. These feedlots are called "restricted feedlots."

Purpose: To allow an exemption to certain feedlots from the state requirement that all female cattle sold in or imported into the state must be official brucellosis vaccinates.

Other Identifying Information: This rule for a number of years was for "quarantined feedlots." When Washington received its brucellosis free status the federal government in granting that status would not allow infected animals to enter to quarantined feedlots, therefore the designation was changed to "restricted" and nonvaccinated cattle were allowed rather than infected or exposed cattle.

Statutory Authority for Adoption: Chapter 16.36 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

Summary: This rule lays out the rules for operating restricted feedlots and defines the types of feedlots and their requirements and privileges. The proposed changes are minimal in just repealing the old promulgation section, the penalty section and very minor changes to the definition section. The changes to the definition section do not materially change the definition and are stylistic only.

Reasons Supporting Proposal: A written survey of permittees showed that the industry supported these changes and that they requested that no other changes be made at this time.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert W. Mead, Natural Resources Building, 1111 Washington Street, Olympia, WA, (360) 902-1878.

Name of Proponent: Washington State Department of Agriculture, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This rule was reviewed as per the governor's executive order to review rules. Only very minor changes to update the form of the rule were recommended.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule defines restricted feedlots, spells out categories of restricted feedlots and how to apply for a permit. The conditions of the permit, expiration and revocation are explained. Brands for use by feedlots are described. Physical requirements for such feedlots are listed.

Proposal Changes the Following Existing Rules: The changes proposed will not change the rule as it stands. The repeal of the promulgation and penalty sections are uniform changes being made for all amended rules. The minor wording changes in the definition section are to make the wording consistent with current standards for rule language. The proposed changes do not materially change the rule.

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Dannie McQueen, Administrative Regulation Manager, Department of Agriculture, Administrative Regulation Program, P.O. Box 42560, Olympia, WA 98502-2560, AND RECEIVED BY May 25, 1999.

March 19, 1999

Candace Jacobs, DVM

Assistant Director

Chapter 16-30 WAC

~~((REGISTERED))~~ RESTRICTED FEEDLOTS

AMENDATORY SECTION (Amending Order 1995, filed 2/23/89)

WAC 16-30-010 Definition. ((A)) Restricted feedlot ((shall)) means a dry feed yard where cattle not known to be exposed to brucellosis and not vaccinated against brucellosis are restricted to prevent their use for breeding purposes.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-30-001

Promulgation.

WAC 16-30-100

Criminal penalty—Civil
injunction.**WSR 99-07-127****EXPEDITED ADOPTION****DEPARTMENT OF AGRICULTURE**

[Filed March 24, 1999, 9:53 a.m.]

Title of Rule: Chapter 16-462 WAC, Grapevines—Registration and certification.

Purpose: To comply with new grapevine standards developed by NAPPO (North American Plant Pest Organization), to reflect changes in industry and program practices, and to comply with legislative mandates such as regulatory reform and use of clear and readable format.

Statutory Authority for Adoption: Chapter 15.14 RCW.
Statute Being Implemented: Chapter 15.14 RCW.

Summary: NAFTA (North American Free Trade Agreement) and GATT (General Agreement on Trade and Tariffs) have altered the regulatory parameters for plant disease and insect phytosanitary issues, not only for international trade, but also for interstate and internal quarantines and certification programs such as the one defined in these rules. NAPPO (North American Plant Pest Organization), the international organization authorized to define the new standards in this area, has drafted NAPPO Standards for Phytosanitary Measures - requirements for importation of grapevines into a NAPPO member country. This rule revision brings the existing grapevine certification standards into compliance with this international standard, to position Washington growers to take advantage of market opportunities.

Reasons Supporting Proposal: In order to comply with new international standards and to maintain consistency with other states, this rule must be modified. In addition, changes in industry and program practices and legislative mandates (for instance, the regulatory reform statutes) have made other modifications necessary.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984.

Name of Proponent: Joint proposal of the Washington State Department of Agriculture and the Grapevine Certification Advisory Committee, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Nine participants enroll in the Washington grapevine certification program, which is created by these rules. Participation is entirely voluntary for any producer of grapevines. Enrollment and compliance with the requirements of this fee-supported program are intended to produce a known, high quality agricultural product apparently free of specified diseases and other pests, that normally commands a market premium. NAFTA and GATT have altered the regulatory parameters for plant disease and insect phytosanitary issues, not only for international trade, but also for certification pro-

grams such as these rules define. NAPPO (North American Plant Pest Organization), the international organization authorized to define the new standards in this area, has published grapevine standards as its most recent effort. In order to comply with new internationally mandated standards and to maintain consistency with other states, the existing rule must be modified. In addition, changes in industry and program practices and legislative mandates (for instance, the regulatory reform statutes) have made other modifications necessary.

The Washington State Department of Agriculture has sought individual and collective input from all program participants and other stakeholders. Because of the resulting high level stakeholder participation and intensive discussion, we feel a stakeholder consensus was reached. We anticipate that the positive effects of these rule changes, particularly expanded trade opportunities, outweigh any adverse effects that might result from the changes.

Proposal Changes the Following Existing Rules: The rule changes allow for expanded testing ("indexing" is the industry term used in the rule) to verify freedom from certain defined pests, mostly virus diseases, in grapevines used for production of certified stock. The pest list is more clearly defined and expanded. Record-keeping requirements for registered grapevines have been expanded, so that the source and ancestry of certified vines can be demonstrated. The terminology has been updated and made consistent throughout the rule. Some of the sections have been reorganized into a more coherent framework and clear and readable format has been incorporated into the rule.

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mary Toohey, Washington State Department of Agriculture, Lab Services Division, P.O. Box 42560, Olympia, WA 98504-2560, AND RECEIVED BY May 24, 1999.

March 24, 1999

Mary A. Martin Toohey
Assistant Director**Chapter 16-462 WAC****GRAPE((VINES)) PLANTING STOCK—REGISTRATION AND CERTIFICATION****AMENDATORY SECTION** (Amending Order 1883, filed 4/2/86)**WAC 16-462-010 ((Certified)) Grape ((nursery)) planting stock program—General.** (1) ((Vines may be reg-

istered as sources for the propagation of certified grape nursery stock when)) Grapevines or parts of grape plants may be designated as registered stock or certified stock, if they and the stock from which they were produced have been inspected, indexed, and tested in accordance with procedures and requirements outlined in rule and found to be ((true to name and apparently free from virus and virus-like diseases)) in compliance with all standards and requirements established in this chapter.

(2) The issuance of a ((certified)) state of Washington plant tag ((or)), stamp, or other document under this chapter ((affirms solely)) means only that the tagged ((or)), stamped ((rootstock)) or otherwise documented planting stock has been subjected to ((certification)) standards and procedures ((by the department)) described in this chapter and determined to be in compliance with its standards and requirements. The department disclaims all express or implied warranties, including without limitation, implied warranties of merchantability and fitness for particular purpose, regarding all plants, plant parts, and plant materials under this chapter.

(3) The department is not responsible for disease, genetic disorders, off-type, failure of performance, mislabeling, or otherwise, in connection with this chapter. No grower, nursery dealer, government official, or other person is authorized to give any expressed or implied warranty, or to accept financial responsibility on behalf of the department regarding this chapter.

(4) Participation in the ((certified)) grape ((nursery)) planting stock certification program ((shall be)) is voluntary.

AMENDATORY SECTION (Amending Order 1883, filed 4/2/86)

WAC 16-462-015 Definitions. The definitions ((set forth)) in this section ((shall)) apply throughout this chapter unless the context ((otherwise)) clearly requires otherwise:

(1) ("~~Department~~") means the department of agriculture of the state of Washington.

(2) "~~Director~~" means the director of the department of agriculture or a duly appointed representative.

(3) "~~Virus infected (affected)~~" means presence of a virus(es) in a plant or plant part.

(4) "~~Virus-like~~" means a disorder of genetic or nontransmissible origin.

(5) "~~Off-type~~" means not true to name.

(6) "~~Indicator plant~~" means any herbaceous or woody plant used to index or determine virus infection.

(7) "~~Index or indexing~~" means to determine virus infection by means of inoculation from the plant to be tested to an indicator plant; or by any other method.

(8) "~~Registered vine~~" means any vine propagated from the foundation block that has been inspected and indexed virus-free in accordance with recommendations of Washington State University, and is identified by the number assigned to the original vines in the foundation from which it was propagated.

(9) "~~Foundation block~~" means a planting of grape vines established, operated and maintained by Washington State University, that are indexed to be free from viruses and that are true to name. Cuttings to establish mother blocks shall be

furnished to the applicants by the Washington state department of agriculture. Written requests for foundation material shall be received by the department of agriculture before December 1 of each year.

(10) "~~Mother block~~" means a planting of grape vines for which propagating material originated directly from the Washington State University foundation block or first generation plants originating from such stock. The mother blocks shall be maintained by the nurserymen and provide propagating wood to produce Washington certified grape nursery stock.

(11) "~~Washington certified grape nursery stock~~" means vines, rooted cuttings and cuttings taken or propagated directly from foundation or mother blocks and certified in accordance with the provisions of this chapter. Certified plants grown in a greenhouse may be used for one growing season to propagate additional certified plants.) "Aseptic shoot tip propagation" means aseptically removing a vegetative shoot tip from growth arising from a dormant cutting from a foundation plant or from green growth (i.e., softwood) from a foundation plant during the growing season and aseptically transferring this shoot tip to a suitable vessel containing an appropriate culture medium.

(2) "Certified grape planting stock" means vines, rooted cuttings, cuttings or grafted plants taken or propagated directly from foundation vines, registered vines or certified plants grown in a green house for one year and certified in compliance with the provisions of this chapter.

(3) "Department" means the department of agriculture of the state of Washington.

(4) "Director" means the director of the department of agriculture or the director's designee.

(5) "Foundation block" means a planting of grapevines established, operated and maintained by Washington State University, that are indexed and found free from viruses designated in this chapter and that are not off-type.

(6) "Index" means determining whether a virus infection is present by means of inoculation from the plant to be tested to an indicator plant or by any other testing method approved by the department.

(7) "Indicator plant" means any herbaceous or woody plant used to index or determine virus infection.

(8) "Off-type" means appearing under visual examination to be different from the variety listed on the application for registration or certification, or exhibiting symptoms of a genetic or nontransmissible disorder.

(9) "Registered block" means a planting of registered grapevines maintained by a nursery and used as a source of propagation material for certified grapevines.

(10) "Registered vine" means any vine propagated from the foundation block, identified by the number assigned to the original vine in the foundation block from which it was propagated, and registered with the Washington state department of agriculture, in compliance with provisions of this chapter.

(11) "Virus-like" means a graft-transmissible disorder with symptoms resembling a characterized virus disease, including, but not limited to, disorders caused by viroids and phytoplasmas.

AMENDATORY SECTION (Amending Order 1883, filed 4/2/86)

WAC 16-462-020 (~~Certified grape nursery stock~~)
Requirements for participation in the grape planting stock program. (1) (~~Applicant:~~

~~(a))~~ The applicant shall be responsible, subject to the approval of the department, for the selection of the location and the proper maintenance of (~~mother~~) registered blocks and (~~nursery~~) planting stock.

~~(2)~~ The applicant (~~shall be responsible for maintaining~~) must maintain the identity of (~~all nursery stocks and mother block vines, and for keeping all plants in a thrifty growing condition and free of plant pests~~) registered vines. The applicant must maintain records identifying the source of certified planting stock.

~~((b))~~ ~~(3)~~ The applicant shall take suitable precautions in cultivation, irrigation, movement and use of equipment, and in other farming practices, to guard against spread of soil-borne pests to planting(~~s~~) stock entered (~~under~~) in this program. The applicant shall keep all (~~areas~~) registered blocks and certified planting stock clean cultivated except for cover crops.

~~((e))~~ ~~(4)~~ Following notification by the department the applicant shall remove and destroy immediately(~~, following notification by the department,~~) any registered vine or (~~nursery plant~~) certified planting stock found to be off-type or affected by a virus or virus-like (~~disease or is off-type~~) disease or a quarantined pest.

~~((d)~~ The applicant agrees to make available to commercial grape growers, following the establishment of a mother block, at least seventy-five percent of certified cuttings or plants of each variety available each year.

~~(2)~~ ~~Location:~~ ~~(5)~~ The foundation block, (~~all mother~~) registered blocks and (~~nursery~~) certified planting stock (~~shall~~) must be located at least one hundred feet from any land on which noncertified or nonregistered grape vines have been grown within the past ten years.

~~((3)~~ General:

~~(a)~~ Plants of different varieties in the mother blocks shall be separated by a minimum of twelve feet in the row. The distance between rows of different varieties shall be a minimum of eight feet.

~~(b)~~ Cuttings from each mother block variety and selection number shall be identified and kept separate during the growing season.

~~(e)~~ Treatment to eliminate soil-borne pests may be required.

~~(d)~~ All nursery stock other than greenhouse-grown plants shall comply with the grades and standards for Washington certified grape nursery stock as listed in the section for grades and standards.

~~(e)~~ Certified stock shall remain in the nursery no more than two growing seasons.

~~(f)~~ An inspection tag shall be attached by the plant grower. Certification is based solely on visual inspections of sample plants of this lot which were found to meet tolerances prescribed in the section on tolerances. Certification of this lot does not represent the freedom from disease or quality of any other lot of grape planting stock. Inspection reports of all

lots of grape planting stock entered for certification can be inspected at the Department of Agriculture, Seed Branch, 2015 South 1st Street, Yakima, Washington.)

NEW SECTION

WAC 16-462-021 Requirements for registered blocks. (1) All registered grapevines must be identified by the number assigned to the original grapevine in the foundation block from which they were taken.

(2) With the exception of practices allowed in subsections (3) and (4) of this section, registered plants must be propagated directly from cuttings taken from the foundation block.

(3) Plants propagated from the foundation block by aseptic shoot tip propagation and grown entirely under greenhouse conditions may serve as a source of softwood cuttings or shoot tip culture used to establish a registered block or registered grapevines.

(4) Registered grapevines may be propagated from other registered grapevines within the same registered block for the purpose of increasing the size of the registered block or for replacement grape vines.

(5) Grapevines of different varieties in registered blocks must be separated by a minimum of twelve feet within the row. The distance between rows of different varieties must be a minimum of eight feet.

NEW SECTION

WAC 16-462-022 Requirements for certified planting stock. (1) Certified planting stock must be propagated from cuttings taken from registered or foundation grapevines.

(2) Cuttings from registered blocks must be sorted and kept separate by variety and selection number or clone.

(3) Treatment to control soil-borne pests may be required at any time by the department.

(4) All certified planting stock other than greenhouse-grown plants must comply with the grades and standards for Washington certified grape planting stock as listed in WAC 16-462-055.

(5) Certification is based solely on visual inspection of grape planting stock that is found to meet requirements prescribed in WAC 16-462-050 and other requirements of this chapter.

AMENDATORY SECTION (Amending Order 1883, filed 4/2/86)

WAC 16-462-025 Foundation, registered, and certified grape (~~nursery~~) planting stock—Inspections. (~~The~~) (1) Inspections (~~shall~~) of foundation, registered and certified planting stock will be (~~made~~) performed by the department (~~and shall be conducted in a manner and~~) at times (~~determined as~~) it determines to be suitable for the detection of virus and virus-like disease symptoms.

(2) The foundation block and registered blocks must be indexed and reindexed periodically, as required to comply with the North American Plant Protection Organization (NAPPO) standards for phytosanitary measures - require-

ments for the importation of grapevines into a NAPPO member country.

~~((1) Foundation block.~~

~~((a)) (3) Two inspections ((shall be made)) of foundation and registered planting stock must be performed by the department during each growing season.~~

~~((b)) (4) Except for varieties to be used solely as rootstock, foundation and registered grape vines ((shall)) used for the production of certified planting stock must be pruned to allow some fruiting.~~

~~((2) Mother block.~~

~~((a) Two inspections shall be made during each growing season.~~

~~((b) Mother block vines shall be pruned to allow some fruiting.~~

~~(3) Nursery stock.~~

~~((a) Two inspections shall be made during each growing season.~~

~~((b) The stock shall also be inspected during or after digging and grading and shall be apparently free of rootknot nematode, crown gall and other visible diseases and serious pest injury.)~~

~~(5) Certified planting stock must be inspected three times per growing season by the department, twice during the growing season and once during or after harvest.~~

~~(6) Certification or registration will be refused or withdrawn for any planting stock which is infested or infected with any quarantine pest.~~

AMENDATORY SECTION (Amending Order 5001, filed 8/11/93, effective 9/11/93)

WAC 16-462-030 Certified grape nursery stock—Application and fees. (1) ((Application:

((a)) The applicant shall furnish all information requested on the application form and shall give ((his)) consent to the department to take plants or plant parts from any planting stock enrolled in the program as registered for inspection ((or testing purposes)) or indexing.

((b)) (2) Application for inspection shall be filed with the department by January 1 of each year accompanied by a one hundred seventy-five dollar application fee.

((c)) (3) Inspection, phytosanitary certification, indexing and testing fees ((established shall be payable upon completion of the work to be done and shall be for the sole purpose of defraying expenses incurred in the inspection, approval, registration, and certification procedures provided.

((d) Payment for inspection of mother blocks and nursery stock for registration and certification shall be made upon completion of the inspection. Billing to the applicant to be made by the chemical and plant division, seed branch.

(2) Inspection fees:

((a) The inspection tags shall be furnished by the department of agriculture)) are due upon completion of services.

((b) The mother block and nursery stock)) (4) Fees for inspection ((fee)), phytosanitary certification, and testing shall be ((twenty-five dollars per hour, and)) assessed at the appropriate rate established in WAC 16-401-025 and 16-470-910. Mileage for inspections and other on-site services shall

be charged at a rate established by the state office of financial management.

AMENDATORY SECTION (Amending Order 1883, filed 4/2/86)

WAC 16-462-035 Certified grape nursery stock—Tagging and identity. (1) ((Tagging. The department requires the use of official)) Certification tags ((for the identification of nursery stock such as rooted)) issued by the department must be securely attached by the grower to each certified planting stock, including rooted cuttings ((and)), cuttings ((that meet the requirements of this chapter)) and grafted plants.

(2) ((Identity:)) Any person selling Washington certified grape nursery stock ((shall be)) is responsible for the identity of such nursery stock. Persons issued tags authorized by this chapter ((shall)) must account by variety for stock produced and sold ((and)). They must keep ((such other)) and allow the department to inspect and copy records ((as may be)) necessary to verify this.

AMENDATORY SECTION (Amending Order 1883, filed 4/2/86)

WAC 16-462-050 Certified grape ((nursery)) planting stock—((Tolerances)) Requirements. Specific requirements for grape ((nursery)) planting stock ((inspection tolerances)) are based solely on visual inspections ((of sample plants)) conducted according to WAC 16-462-025((:)). Certified plants must be apparently free of grape fanleaf virus, grape leafroll virus, grape corky bark virus, rupestris stem pitting virus, grape phylloxera, rootknot nematode, crown gall and other visible diseases or serious pest injuries.

((Percentage tolerance for:
Registered mother blocks

<u>Pest and diseases</u>	<u>First Inspection</u>	<u>Second Inspection</u>
<u>Fanleaf virus</u>	<u>0%</u>	<u>0%</u>
<u>Leafroll virus</u>	<u>0%</u>	<u>0%</u>
<u>Grape phylloxera</u>	<u>0%</u>	<u>0%</u>

AMENDATORY SECTION (Amending Order 1883, filed 4/2/86)

WAC 16-462-055 Certified grape ((nursery)) planting stock—Grades and standards. All certified stock offered for sale ((shall)) must be bundled in accordance with commercial practice and ((shall be)) correctly identified by one or more legible printed labels.

(1) Grades for rooted cuttings((-) are as follows:

(a) Grade No. 1 ((shall)) must have one live cane at least nine inches long and ((shall)) must be well rooted.

(b) Grade No. 2 ((shall)) must have one live cane at least six inches long and ((shall)) must be well rooted.

(2) Cuttings ((shall)) must have at least three buds and ((shall not)) be ((less than)) at least nine inches long ((and at least one-fourth inch caliper at top end)). ((Top bud shall not be more than two inches from tip of cutting.)) The basal bud

EXPEDITED ADOPTION

((shall)) must be within one-((fourth)) half inch ((from)) of the basal end.

(3) Two year plants shall meet the same standard as rooted cutting Grade No. 1.

(4) Tolerances. In order to allow for variations incident to proper grading and packing, not more than a combined total of five percent by count, of the plants or cuttings in any lot ((shall)) may fail to meet the requirements of the ((above)) grades set forth in this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-462-045 Effective date.
- WAC 16-462-060 Certified grape nursery stock—Aseptic shoot tip propagation.

WSR 99-07-128
EXPEDITED ADOPTION
OFFICE OF
FINANCIAL MANAGEMENT

[Filed March 24, 1999, 10:24 a.m.]

Title of Rule: Setting official pay dates for 2000.

Purpose: To establish official pay dates for state officers and employees for calendar year 2000.

Statutory Authority for Adoption: RCW 42.16.010(1) and 42.16.017.

Statute Being Implemented: RCW 42.16.010(1) and 42.16.017.

Summary: This proposed rule making amends WAC 82-50-021 by establishing pay dates for state officers and employees for calendar year 2000 and removing now obsolete pay dates for calendar year 1998.

Reasons Supporting Proposal: Statute requires that the Office of Financial Management annually update and publish pay dates.

Name of Agency Personnel Responsible for Drafting: Millie Lund, 406 Legion Way S.E., (360) 664-3419; Implementation and Enforcement: Wendy Jarrett, 406 Legion Way S.E., (360) 664-3414.

Name of Proponent: Office of Financial Management, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 82-50-021 exists to publish the official lagged, semi-monthly pay dates for state officers and employees. This section of WAC, which provides pay dates for the current and ensuing calendar years, is amended each year to add pay dates for the ensuing calendar year and delete the obsolete pay dates for the previous year.

Proposal Changes the Following Existing Rules: Official lagged, semi-monthly pay dates for calendar year 2000

are added and the now obsolete pay dates for calendar year 1998 are deleted.

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Lynne McGuire, Office of Financial Management, P.O. Box 43113, Olympia, WA 98504-3113, AND RECEIVED BY May 22, 1999.

March 23, 1999
Lynne McGuire
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-14-079, filed 6/30/98, effective 6/30/98)

WAC 82-50-021 Official lagged, semimonthly pay dates established. Unless exempted otherwise under the provisions of WAC 82-50-031, the salaries of all state officers and employees are paid on a lagged, semimonthly basis for the official twice-a-month pay periods established in RCW 42.16.010(1). The following are the official lagged, semi-monthly pay dates for calendar years ((1998)) 1999 and ((1999)) 2000:

((CALENDAR YEAR 1998	CALENDAR YEAR 1999
Friday, January 9, 1998	Monday, January 11, 1999
Monday, January 26, 1998	Monday, January 25, 1999
Tuesday, February 10, 1998	Wednesday, February 10, 1999
Wednesday, February 25, 1998	Thursday, February 25, 1999
Tuesday, March 10, 1998	Wednesday, March 10, 1999
Wednesday, March 25, 1998	Thursday, March 25, 1999
Friday, April 10, 1998	Friday, April 9, 1999
Friday, April 24, 1998	Monday, April 26, 1999
Monday, May 11, 1998	Monday, May 10, 1999
Friday, May 22, 1998	Tuesday, May 25, 1999
Wednesday, June 10, 1998	Thursday, June 10, 1999
Thursday, June 25, 1998	Friday, June 25, 1999
Friday, July 10, 1998	Friday, July 9, 1999
Friday, July 24, 1998	Monday, July 26, 1999
Monday, August 10, 1998	Tuesday, August 10, 1999
Tuesday, August 25, 1998	Wednesday, August 25, 1999
Thursday, September 10, 1998	Friday, September 10, 1999
Friday, September 25, 1998	Friday, September 24, 1999
Friday, October 9, 1998	Friday, October 8, 1999
Monday, October 26, 1998	Monday, October 25, 1999
Tuesday, November 10, 1998	Wednesday, November 10, 1999
Wednesday, November 25, 1998	Wednesday, November 24, 1999
Thursday, December 10, 1998	Friday, December 10, 1999
Thursday, December 24, 1998	Thursday, December 23, 1999))

EXPEDITED ADOPTION

CALENDAR YEAR 1999

Monday, January 11, 1999
Monday, January 25, 1999
Wednesday, February 10, 1999
Thursday, February 25, 1999
Wednesday, March 10, 1999
Thursday, March 25, 1999
Friday, April 9, 1999
Monday, April 26, 1999
Monday, May 10, 1999
Tuesday, May 25, 1999
Thursday, June 10, 1999
Friday, June 25, 1999
Friday, July 9, 1999
Monday, July 26, 1999
Tuesday, August 10, 1999
Wednesday, August 25, 1999
Friday, September 10, 1999
Friday, September 24, 1999
Friday, October 8, 1999
Monday, October 25, 1999
Wednesday, November 10, 1999
Wednesday, November 24, 1999
Friday, December 10, 1999
Thursday, December 23, 1999

CALENDAR YEAR 2000

Monday, January 10, 2000
Tuesday, January 25, 2000
Thursday, February 10, 2000
Friday, February 25, 2000
Friday, March 10, 2000
Friday, March 24, 2000
Monday, April 10, 2000
Tuesday, April 25, 2000
Wednesday, May 10, 2000
Thursday, May 25, 2000
Friday, June 9, 2000
Monday, June 26, 2000
Monday, July 10, 2000
Tuesday, July 25, 2000
Thursday, August 10, 2000
Friday, August 25, 2000
Monday, September 11, 2000
Monday, September 25, 2000
Tuesday, October 10, 2000
Wednesday, October 25, 2000
Thursday, November 9, 2000
Wednesday, November 22, 2000
Monday, December 11, 2000
Friday, December 22, 2000



WSR 99-06-045
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medical Assistance Administration)
[Filed February 26, 1999, 3:25 p.m.]

Date of Adoption: February 26, 1999.

Purpose: A housekeeping action to correct outdated Washington Administrative Code (WAC) references. The recent major rewrite of financial and medical assistance eligibility rules, in which the rules were renumbered, rendered the WAC citations in chapters 388-513 and 388-515 WAC incorrect. These citations are updated with the correct new WAC numbers.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1305, 388-513-1315, 388-513-1320, 388-513-1330, 388-513-1350, 388-513-1360, 388-513-1365, 388-513-1395, 388-515-1510, and 388-515-1530.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.500.

Adopted under notice filed as WSR 98-24-126 on December 2, 1998.

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 10, Repealed 0.

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

February 26, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-513-1305 Maintenance standard—Alternate living. (1) The department shall ensure the categorically needy monthly standard for an SSI, SSI-related, or GAU client living in an adult family home (AFH), adult residential treatment facility (ARTF), adult residential rehabilitation center (ARRC), congregate care facility (CCF), or division of developmental disabilities (DDD) group home is the department cost standard of the facility plus a specified CPI.

(2) The department shall determine the medically needy monthly standard for an SSI-related client living in an AFH, ARTF, ARRC, CCF, or DDD group home to be the private facility rate based on a thirty-one-day month plus a specified CPI.

(3) See WAC 388-15-555, 388-15-568, ((388-250-1600,)) and ((388-250-1650)) 388-478-0045 for the definition of "department cost standard." The department shall ensure the monthly standard shall not exceed three hundred percent of the current SSI Federal Benefit Level.

(4) See chapters 388-450, 388-470, and 388-511 WAC and WAC 388-505-0595 for computation of available income and resources for an SSI-related person.

(5) See chapter 388-((219)) 450 WAC for computation of available income and resources for a GAU client.

AMENDATORY SECTION (Amending WSR 98-04-003, filed 1/22/98, effective 2/22/98)

WAC 388-513-1315 Eligibility determination—Institutional. (1) A person is eligible for institutional care under the categorically needy program, if the person:

(a) Has achieved institutional status as described under WAC 388-513-1320; and

(b) Has gross nonexempt income:

(i) For an SSI-related person, no greater than three hundred percent of the SSI Federal Benefit Amount; or

(ii) For ((an AFDC or)) a TANF-related person, no greater than the one-person program standard as described under chapter 388-478 WAC ((388-505-0590, 388-508-0805, or 388-509-0960)).

(c) Has resources which are:

(i) Not exempt under WAC 388-513-1360 and 388-513-1365, and

(ii) Less than the standards under WAC 388-513-1310 and 388-513-1395; and

(d) Is not subject to a period of ineligibility for transferring of resources under WAC 388-513-1365.

(2) A person is eligible for institutional care under the limited casualty program—medically needy, if the person meets the requirements in WAC 388-513-1395.

(3) For an AFDC- or TANF-related child under eighteen years of age residing or expected to reside in inpatient chemical dependency treatment or inpatient mental health treatment refer to chapters 388-408, 388-450, and 388-470 WAC ((388-506-0610-1)(F)).

(4) For other institutionalized persons twenty years of age or younger, the income and resources of the parents are not considered available unless the income and resources are actually contributed.

(5) A person is eligible for Medicaid who:

(a) Meets institutional status as a psychiatric facility resident; and

(b) Is twenty years of age or younger or is sixty-five years of age or older.

(6) A client's income and resources are allocated as described under WAC 388-513-1380.

(7) When both spouses are institutionalized, the department shall determine the eligibility of each spouse individually.

(8) A person's transfer between medical institutions is not a change in institutional status.

AMENDATORY SECTION (Amending WSR 97-15-025, filed 7/8/97, effective 8/8/97)

WAC 388-513-1320 Institutional status. (1) The department shall find that a person has achieved institutional status when the person is residing or expected to reside in a Medicaid-certified medical facility for a period of at least:

(a) Ninety consecutive days for ~~((an AFDC))~~ TANF-related child seventeen years of age or younger in residential mental health or chemical dependency/substance abuse treatment; or

(b) Thirty consecutive days for an SSI-related person and ~~((AFDC))~~ TANF-related persons other than as described under subsection (1)(a) of this section.

(2) The department shall consider a person receiving waived program services or hospice services to have achieved institutional status.

(3) The department shall make medical assistance available to an otherwise eligible person who has achieved institutional status as described under subsection (1) or (2) of this section.

(4) The department shall not deny Medicaid eligibility to a person in a nursing facility:

(a) On the grounds that the person did not establish residence in this state before entering the nursing facility; and

(b) When the person meets residency requirements described under chapter 388-~~((505))~~ 468 WAC at the time the person applies for medical assistance.

AMENDATORY SECTION (Amending WSR 97-10-022, filed 4/28/97, effective 5/29/97)

WAC 388-513-1330 Institutional—Available income. (1) Income is defined under chapters 388-450 and 388-511 WAC for a SSI-related client and under chapter 388-450 WAC (~~(388-22-030 for an AFDC))~~ for a TANF-related client.

(2) The methodology and standards for determining and evaluating income are defined under chapter 388-513 WAC.

(3) The department shall consider the following income available to an institutionalized person when determining income eligibility unless the criteria in subsection (4) of this section is met:

(a) Income the institutionalized spouse receives in the institutionalized spouse's name;

(b) Income paid on the behalf of the institutionalized spouse, but received in the name of the institutionalized spouse's representative;

(c) One-half of the income the community and institutionalized spouses receive in both names; and

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

(4) The department shall consider income as available to an institutionalized person when:

(a) Both spouses are institutionalized; or

(b) An institutionalized person has a community spouse and income in excess of three hundred percent of the SSI federal benefit rate (FBR). For the determination of eligibility only:

(i) Use community property law in determining ownership of income for purposes of Medicaid eligibility;

(ii) Presume all income received after marriage by husband or wife to be community income;

(iii) Divide the total of the community income, by two assigning one-half of the total to each person; and

(iv) Consider if the community income received in the name of the nonapplying spouse exceeds the community income received in the name of the applying spouse, the applicant's interest in that excess shall be unavailable to the applicant.

(5) The department shall consider income the community spouse receives in the community spouse's name as unavailable to the institutionalized spouse.

(6) The department shall consider an agreement between spouses transferring or assigning rights to future income from one spouse to the other spouse, or to a trust for the benefit of the other spouse, to the extent the income is not derived from a resource which has been transferred, as invalid in determining eligibility for medical assistance or the limited casualty program for the medically needy.

(7) The department shall consider any agreement or trust transferring or assigning rights to future income, to the extent the income is not derived from a resource which has been transferred, as invalid in determining eligibility for medical assistance or the limited casualty program for the medically needy.

(8) The department shall consider income produced by transferred or assigned resources as the separate income of the transferee.

(9) When an institutionalized spouse establishes the unavailability of income by a preponderance of evidence through a fair hearing, subsection (3) of this section shall not apply.

(10) See WAC 388-511-1130 for treatment of advance dated checks, and electronically transferred funds.

AMENDATORY SECTION (Amending WSR 98-11-033, filed 5/14/98, effective 6/14/98)

WAC 388-513-1350 Institutional—Available resources. This section describes those resources which are considered available to an institutionalized client.

(1) Resources are defined under chapter 388-~~((511))~~ 470 WAC for an SSI-related client and ~~((under chapter 388-216 WAC for))~~ a TANF-related client.

(2) The methodology and standards for determining and evaluating resources are under WAC 388-513-1310, 388-513-1350, and 388-513-1360. Transfers of resources are evaluated under WAC 388-513-1365. Trusts are described under WAC 388-505-0595.

(3) "Continuously institutionalized" means a person is residing in a nursing facility or receiving home-based or community-based waived services and the person has not had an absence or break in receiving services of thirty-consecutive days.

(4) For a person whose most recent period of continuous institutionalization began on or before September 30, 1989:

(a) Available resources are one-half of the total value of nonexempt resources held in the:

(i) Names of both the institutionalized spouse and the community spouse; or

(ii) Name of the institutionalized spouse only.

(b) Unavailable resources are:

- (i) The other half of the total value of nonexempt resources determined under subsection (3)(a) of this section;
- (ii) Held solely in the name of the community spouse; or
- (iii) Transferred between spouses as described under subsection (4)(b) of this section.

(5) For a person, whose most recent period of continuous institutionalization starts on or after October 1, 1989, available resources include all nonexempt resources in the name of either the community spouse or the institutionalized spouse except;

(a) The following resources are exempt when the institutionalized person has a community spouse:

- (i) One vehicle without regard to use or value; and
- (ii) Effective January 1, 1998, eighty thousand seven hundred sixty dollars; or

(b) An amount greater than the amount in subsection (4)(a)(ii) of this section if:

(i) Established by a fair hearing under chapter 388-08 WAC when the community spouse's resource allowance is inadequate to provide a minimum monthly maintenance needs allowance; or

(ii) Transferred to the community spouse by court order.

(6) Resources of the institutional spouse must be transferred to the community spouse or to another person for the sole benefit of the community spouse:

(i) Before the first regularly scheduled eligibility review;

or

(ii) As soon as possible, taking into account the time necessary to obtain a court order for the support of the community spouse.

(7) The resources of the community spouse are:

(a) Unavailable to the institutionalized spouse:

- (i) The month after the institutionalized spouse is determined eligible for institutional benefits; and
- (ii) While the institutionalized spouse is continuously institutionalized.

(b) Available to the institutionalized spouse when the institutionalized spouse:

(i) Acquires resources which, when added to resources held by the institutionalized spouse, exceed the one-person resource maximum, if the most recent period of institutionalization began on or after October 1, 1989; or

(ii) Is not continuously institutionalized.

AMENDATORY SECTION (Amending Order 3982, filed 5/22/96, effective 6/22/96)

WAC 388-513-1360 Resource exemptions. (1) In determining eligibility, the department shall exempt resources specified under chapter 388-470 WAC ((388-511-1160)).

(2) Effective July 1, 1996, the department shall exempt resources:

(a) For an aged, blind, or disabled person who has purchased a long-term care insurance policy approved by the Washington insurance commissioner under the Washington long-term care partnership program; and

(b) In an amount equal to the extent such policy has paid for licensed nursing facility and/or home- and community-based services covered under Medicaid.

(3) The department shall consider exempt resources described under subsection (2) of this section subject to estate recovery rules when the client has retained such resources.

(4) The department shall apply WAC 388-513-1365 for transfers of resources with the exception of resources exempted under subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 97-05-040, filed 2/14/97, effective 3/17/97)

WAC 388-513-1365 Transfer of assets. (1) The terms in this section shall have the following definitions:

(a) "**Assets**" means all income and resources of a client and the client's spouse, including such income or resources the person is entitled to but does not receive because of action by:

(i) The client or the client's spouse;

(ii) A person, court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse; or

(iii) A person, court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(b) "**Community spouse**" means the person married to an institutionalized client.

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

(d) "**Institutional services**" means a level of care provided in a nursing facility, equivalent nursing facility in a medical institution, or in a home-based or community-based program under WAC 388-515-1505 or 388-515-1510.

(e) "**Institutional spouse**" means a client who meets the requirements of subsection (1)(f) of this section and is married to a spouse who is not:

(i) In a medical institution;

(ii) In a nursing facility; or

(iii) Receiving home-based or community-based services under WAC 388-515-1505 or 388-515-1510.

(f) "**Institutionalized client**" means a person who is:

(i) An inpatient in a nursing facility;

(ii) An inpatient in a medical institution where the payment is made for a level of care provided in a nursing facility; or

(iii) In need of the level of care provided in a nursing facility or medical institution, but receiving home-based or community-based services under WAC 388-515-1505 or 388-515-1510; and

(iv) Expected to be in a nursing facility, in a medical institution, or receiving home-based or community-based services under WAC 388-515-1505 or 388-515-1510 for thirty consecutive days or more.

(g) "**Transfer**" means any act or omission to act, by a client or a nonapplying joint tenant, whereby title to or any interest in property is assigned, set over, or otherwise vested

or allowed to vest in another person, including but not limited to:

- (i) Delivery of personal property;
- (ii) Bills of sale, deeds, mortgages, and pledges; or
- (iii) Any other instrument conveying or relinquishing an interest in property.

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

(i) "**Undue hardship**" means the client's inability to meet shelter, food, clothing, and health needs.

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

(i) All money, real or personal property, food, shelter, or services the person receives under a legally enforceable agreement whereby the eligible client shall transfer the resource; and

(ii) The payment or assumption of a legal debt the client owes in exchange for the resource.

(2) The department shall not impose any penalty for the transfer of any exempt asset for less than FMV except as specified under subsection (11) of this section when the client transfers the client's home.

(3) The department shall determine whether the client or the client's spouse transferred an asset within a look-back period of the following duration:

(a) Thirty months when determining eligibility for services received:

(i) On or before September 30, 1993; or

(ii) On or after October 1, 1993, with respect to transfers of assets on or before August 10, 1993;

(b) Thirty-six months when determining eligibility for services on or after October 1, 1993, with respect to transfers of assets on or after August 11, 1993; or

(c) Sixty months when determining eligibility for services received on or after October 1, 1993, and all or part of the transferred assets are placed in a trust established on or after August 11, 1993, and all or part of the assets are deemed transferred as described under WAC 388-505-0595.

(4) The department shall consider the look-back period as the number of months described under subsection (3) of this section but not including any month before August, 1993 in the case of subsections (3)(b) and (3)(c) of this section, before the first day of the month the client:

(a) Becomes an institutionalized person, if the client is eligible for medical assistance on that date; or

(b) Applies for institutional care when the client is not eligible for medical assistance as of the date the client initially became institutionalized.

(5) The department shall calculate a period of ineligibility for nursing facility services, equivalent nursing facility services in a medical institution, and services described under WAC 388-515-1505 and 388-515-1510, for the institutionalized client when the client or the client's spouse transfers an asset for less than FMV during or after the look-back periods as described under subsections (3) and (4) of this section.

(6) When the client or the client's spouse has transferred assets, the department shall establish a period of ineligibility:

(a) Under subsection (7) of this section for assets transferred on or before August 10, 1993;

(b) Under subsection (8) of this section for assets transferred on or after August 11, 1993 and on or before February 28, 1997; and

(c) Under subsection (9) of this section for assets transferred on or after March 1, 1997.

(7) With respect to transfers of assets on or before August 10, 1993, and in any month within the applicable look-back period, the department shall establish a period of ineligibility which:

(a) Begins the first day of the month in which the assets were transferred;

(b) Is the lessor of:

(i) Thirty months; or

(ii) The number of whole months found by dividing the total uncompensated value of the assets transferred in the month by the state-wide average monthly cost of nursing facility services to a private patient at the time of the application; and

(c) Runs concurrently when transfers of assets have been made in multiple months during the look-back period.

(8) With respect to transfers of assets on or after August 11, 1993 and on or before February 28, 1997, and in any month within the applicable look-back period occurring on or after August 11, 1993, the department shall establish a period of ineligibility as follows:

(a) For such transfers during the look-back period:

(i) The period of ineligibility shall begin on the first day of the month in which such assets were transferred; and

(ii) Equal the number of whole months found by dividing the total, cumulative uncompensated value of all such assets transferred during the look-back period by the state-wide average monthly cost of nursing facility services to a private patient at the time of application.

(b) For such transfers of assets made while receiving medical assistance as an institutionalized client, or for such transfers made during a period of ineligibility established under this section:

(i) The period of ineligibility shall begin on the first day of the month in which such assets were transferred, or after the expiration of all other periods of ineligibility established under this section, whichever is later; and

(ii) Equal the number of whole months found by dividing the total, uncompensated value of such transferred assets by the state-wide average monthly cost of nursing facility services to a private patient at the time of application.

(9) With respect to transfers of assets on or after March 1, 1997 and in any month within the applicable look-back period occurring on or after August 11, 1993, the department shall:

(a) For a single transfer or multiple transfers within a single month during the look-back period:

(i) Add the value of all transferred assets;

(ii) Divide the total value of all transferred assets by the statewide average monthly cost of nursing facility services to a private patient at the time of application; and

(iii) Establish a period of ineligibility:

(A) Equal to the number of whole months as established under subsection (9)(a)(i) and (ii) of this section; and

(B) Which begins on the first day of the month of transfer.

(b) For multiple transfers during multiple months during the look-back period:

- (i) Treat assets transferred in each month as a separate event with its own period of ineligibility;
- (ii) Divide the total value of assets transferred in a month by the statewide average monthly cost of nursing facility services to a private patient at the time of application; and
- (iii) Establish multiple periods of ineligibility:
 - (A) Equal to the number of whole months as established under subsection (9)(b)(i) and (ii) of this section; and
 - (B) Which begin the latter of:
 - (I) The first day of the month of each transfer; or
 - (II) The first day of the month following the expiration of a previously computed period of ineligibility.

(10) The department shall not consider gifts or donations totaling one thousand dollars or under in any month as transfers of assets under subsections (7), (8), or (9) of this section.

(11) The department shall not find the institutionalized client ineligible for institutionalized services when the transferred asset was a home and the home was transferred to the client's:

- (a) Spouse; or
- (b) Child who is:
 - (i) Blind, or permanently and totally disabled; or
 - (ii) Twenty years of age or under.
- (c) Sibling who has:
 - (i) Equity in the home; and
 - (ii) Lived in the home for at least one year immediately before the client became institutionalized.
- (d) Child, other than described under subsection (11)(b) of this section who:
 - (i) Lived in the home for two years or more immediately before the client became institutionalized; and
 - (ii) Provided care to the client to permit the client to remain at home.

(12) The department shall not find the institutionalized client ineligible for institutionalized services if the asset other than the home was transferred:

- (a) To the client's spouse or to another person for the sole benefit of the client's spouse;
- (b) From the client's spouse to another person for the sole benefit of the client's spouse;
- (c) To the client's blind or permanently and totally disabled child, or to a trust established solely for the benefit of such child; or
- (d) To a trust established solely for the benefit of a person sixty-four years of age or younger who is disabled according to SSI criteria.

(13) The department shall only consider a transfer of assets or trust established under subsection (12) of this section for the sole benefit of the named person when:

- (a) The transfer or trust document provides for the expenditure of funds for the benefit of the person; and
- (b) Such expenditures must be on a basis that is actuarially sound, based on the life expectancy of the person.

(14) The department shall consider a transfer of asset or trust established under subsection (12) of this section which

does not meet the criteria found under subsection (13) of this section under subsection (7), (8), or (9) of this section.

(15) The department shall not find a person ineligible under this section when the client can satisfactorily show the department that:

- (a) The client intended to transfer the asset at FMV or other valuable consideration;
- (b) The client transferred the asset exclusively for a purpose other than to qualify for medical assistance;
- (c) All assets transferred by the client for less than FMV have been returned to the client; or
- (d) The client's denial of eligibility would cause an undue hardship.

(16) The department shall not impose a period of ineligibility on a client unless the client is subject to a period of ineligibility, as calculated under this section, with respect to any month for which eligibility for institutional services is sought.

(17) A client or the spouse of such a client, the department determines ineligible under this section, may request a hearing to appeal the determination of ineligibility. The procedure for the hearing is described under chapter 388-08 WAC.

(18) The department shall:

(a) Exempt cash received from the sale, transfer, or exchange of an asset to the extent that the cash is used for an exempt asset within the same month, except as specified under [chapter 388-470 WAC \(\(388-511-1160\)\)](#); and

(b) Consider any cash remaining as an available asset.

(19) When the transfer of an asset has resulted in a period of ineligibility for one spouse, the department shall not impose a period of ineligibility for the other spouse for the transfer of the same asset.

(20) The department shall disregard the transfer of assets to a family member when:

(a) The family member has received the assets for providing care to the client which keeps the client out of a nursing facility;

(b) The client and the family member initiated a written agreement at the time the care began; and

(c) The written agreement states:

- (i) The fair market value of the care; and
- (ii) That the care is to be paid from the assets of the client.

(21) When the fair market value of the care described under subsection (20) of this section is less than the value of the transferred asset, the department shall consider the difference as the transfer of an asset without adequate consideration.

(22) The department shall consider the transfer of an asset in exchange for care given by a family member without a written agreement as described under subsection (20) of this section as a transfer of an asset without adequate consideration.

(23) When the transfer of an asset includes the right to receive a stream of income received on a regular basis which has been transferred to a spouse, to the extent the income is not derived from a transferred resource, the department shall consider such a transfer under WAC 388-513-1330(6).

(24) When the transfer of an asset includes the right to receive a stream of income received on a regular basis which has been transferred to a person other than a spouse, to the extent the income is not derived from a transferred resource, the department shall:

(a) Add the total amount of income expected to be transferred during the person's lifetime, based on an actuarial projection of the person's life expectancy to the extent the income is not derived from a transferred resource; and

(b) Divide the total value of the transferred income by the statewide average monthly cost of nursing facility services to a private patient at the time of application; and

(c) Establish a period of ineligibility:

(i) Equal to the number of whole months as established under subsection (24)(a) and (b) of this section; and

(ii) Which begins the latter of:

(A) The first day of the month the person transferred the income stream; or

(B) The first day of the month following the expiration of a previously computed period of ineligibility.

AMENDATORY SECTION (Amending WSR 96-16-092, filed 8/7/96, effective 8/29/96)

WAC 388-513-1395 Institutional—Medically needy.

(1) The department shall consider a person institutionalized when the person resides in or is expected to reside in a medical facility for thirty consecutive days or more.

(a) The department shall determine:

(i) An SSI/SSP-related person in a medical facility as medically needy when the person's gross income exceeds three hundred percent of the SSI benefit amount;

(ii) ((An AFDC)) A TANF-related child in a medical facility as medically needy if countable income exceeds the one-person ((AFDC)) TANF grant standard; and

(iii) ((An AFDC)) A TANF-related adult as ineligible.

(b) The department shall determine a client ineligible for the medically needy program when the countable income is more than the private nursing facility rate plus verifiable recurring medical expenses.

(c) The department shall determine countable income of a medically needy client residing in a nursing facility by deducting the following amounts from gross income:

(i) Amounts that would be deducted in determining eligibility for ((AFDC)) TANF or SSI/SSP; and

(ii) Previously incurred medical expenses not subject to third-party payment and which are the current liability of the client.

(d) The department shall determine a client eligible for nursing facility care when the client's countable income and the amount of resources in excess of the amount in WAC 388-513-1310 are less than the department's contracted rate plus verifiable recurring medical expenses. These clients shall:

(i) Participate in the cost of nursing facility care per WAC 388-513-1380 for post-eligibility allocation of income and post-eligibility allocation of resources; and

(ii) Be certified for a three-, six-, or twelve-month period as described under chapters 388-416 and 388-519 WAC ((388-519-1905)).

(e) The department shall determine a client eligible for nursing facility care when the client's countable income and the amount of resources in excess of the amount in WAC 388-513-1310 are:

(i) Less than the private nursing facility rate plus recurring medical expenses; but

(ii) More than the department's contracted rate.

(f) The client shall:

(i) Participate in the cost of nursing facility care. See WAC 388-513-1380 for post-eligibility allocation of income;

(ii) Spenddown all income remaining after allocating income to the department's contracted rate to be eligible for nonnursing facility medical care. The department shall only certify medical assistance for noninstitutional eligibility after spenddown has been met; and

(iii) Choose a certification period of three or six months for nursing facility care. The department shall determine spenddown of a person's nonnursing facility medical expenses be on a three-month or six-month basis.

(g) For the effect of a social absence from an institutional living arrangement, see WAC ((388-88-115)) 388-97-280.

(h) The department shall not change a client's institutional status when the client is transferred between institutions.

(2) The department shall use other SSI financial criteria for consideration of resources as defined in WAC 388-513-1310 and 388-513-1360.

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-515-1510 Community alternatives program (CAP) and outward bound residential alternatives (OBRA). (1) The department shall determine an eligible person for CAP is a person:

(a) Meeting the requirements and eligible for division of developmental disabilities (DDD) services and disabled according to SSI rules;

(b) Meeting the categorically needy eligibility requirements for an SSI-related institutionalized person. For the purposes of CAP and OBRA, a person is considered institutionalized as of the date all eligibility criteria, except institutionalized status is met;

(c) The department assesses as requiring the level of care provided in an intermediate care facility for the mentally retarded (IMR);

(d) For whom the department approves an individual plan of care describing the provided community support services; and

(e) Able and choosing to reside in the community with community support services according to the plan of care.

(2) The department shall determine an eligible person for the OBRA home-based and community-based services program is a person:

(a) Meeting the CAP eligibility standards in WAC 388-515-1510(1); and

(b) Residing in a Medicaid nursing facility at the time of application for OBRA services.

(3) The department shall not require participation in the cost of CAP or OBRA services by a person:

(a) Receiving SSI; or
 (b) Remaining eligible for SSI under 1619(b) of the Social Security Act, but not receiving a cash grant.

(4) The department shall allocate available total income, including amounts disregarded in determining eligibility, of a SSI-related CAP or OBRA client as follows:

(a) For a client living in the client's residence, including a client receiving intensive tenant support services, the department shall use an amount equal to a maximum of three hundred percent of the SSI Federal Benefit Rate for one person for the client's maintenance needs;

(b) For a client residing in a state-contracted or state-operated group home, adult family home, or congregate care facility, the department shall use the following amounts for the client's maintenance needs:

(i) A specified personal needs allowance, as described under WAC (~~(388-250-1600 and 388-250-1650)~~) 388-478-0045;

(ii) An amount equal to the monthly room and board cost for the facility where the client resides;

(iii) The first twenty dollars per month of earned or unearned income; and

(iv) The first sixty-five dollars plus one-half of the remaining earned income not previously excluded.

(c) For a client described in (b) of this subsection, the maximum amount allowed for any client's individual maintenance needs shall not exceed three hundred percent of the SSI Federal Benefit Rate. The department shall not allow a client an individual maintenance needs deduction of less than the SSI payment standard;

(d) For a client with a spouse at home who is not receiving CAP or OBRA services, the department shall allocate an amount for the spouse's maintenance needs as computed under WAC 388-513-1380 (~~((4)(e))~~) (3)(b);

(e) For a client with a dependent relative living with the spouse not receiving CAP or OBRA services, the department shall designate an amount for the relative's maintenance needs as computed in WAC 388-513-1380 (~~((4)(f))~~) (3)(c);

(f) The department shall use amounts for incurred medical expenses not subject to third-party payment, including:

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical care recognized under state law but not covered under Medicaid.

(g) The department shall ensure income remaining after deductions in (a), (b), (c), (d), (e), and (f) of this subsection will be the participation amount for CAP or OBRA services.

AMENDATORY SECTION (Amending Order 3882, filed 8/23/95, effective 9/23/95)

WAC 388-515-1530 Coordinated community AIDS services alternatives (CASA) program. (1) The department shall determine that a person is eligible for CASA if the person:

(a) Meets the categorically needy eligibility requirements for an SSI-related institutionalized person. For the purposes of CASA, the department shall consider a person institutionalized the date the person meets eligibility criteria, except institutionalized status;

(b) Has a diagnosis of:

(i) Acquired immune deficiency syndrome or disabling Class IV human immunodeficiency virus disease; or

(ii) P2 HIV/AIDS diagnosis, if fourteen years of age or under.

(c) Is determined medically at risk of need for the level of hospital-provided care;

(d) Is certified by the person's physician or nurse practitioner as in the terminal state of life;

(e) Agrees to receive services in the person's own home, a licensed congregate care facility, or adult family home;

(f) Has a plan of care approved by the department and the department of health; and

(g) Does not have private insurance, including COBRA extensions, that covers inpatient hospital care.

(2) The department shall not require participation in the cost of CASA services by a person:

(a) Receiving SSI; or

(b) Remaining eligible for SSI under 1619(b) of the Social Security Act, but not receiving a cash grant.

(3) The department shall allocate available total income, including amounts disregarded in determining eligibility of a SSI-related CASA client residing at home, as follows:

(a) The client retains as maintenance needs an amount equal to the special income level (SIL) for one person; and

(b) As described under WAC 388-513-1380 (1), (2), (3)(b), (c) and (d), (4)((b), (e), (d), (e), (f), (g))), and ((h)); (5)((~~and~~ (6))).

(4) The department shall allocate available total income, including amounts disregarded in determining eligibility of a CASA client residing in an adult family home or congregate care facility, as follows:

(a) The client shall retain a specified personal needs allowance as described under WAC (~~(388-250-1600 or 388-250-1650)~~) 388-478-0045;

(b) As described under WAC 388-513-1380 (1), (2), (3)(b), (c) and (d), (4)((e), (d), (e), (f), and (g))), (5), and (6); and

(c) Pay remaining income up to the SIL to the facility for the cost of board and room.

(5) The SSI-related CASA client's income remaining after deductions in subsection (3) or (4) of this section shall be the participation amount for CASA services.

(6) When the department has determined that the client has financial participation under subsection (5) of this section, the department shall require the client to meet the participation obligation to remain eligible.

WSR 99-07-004
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 4, 1999, 3:22 p.m.]

Date of Adoption: March 4, 1999.

Purpose: Two of the rules are unnecessary or obsolete and are being repealed, one is being updated with housekeep-

ing amendments, and the others are being rewritten in language that can be more clearly understood.

Citation of Existing Rules Affected by this Order: Amending WAC 296-30-020 Vehicular assault, 296-30-060 Requirement to report criminal acts, 296-30-081 Acceptance of rules and fees for medical and mental health services, 296-30-900 Effective date of amendatory acts, 296-31-040 Special programs, 296-31-071 Keeping of records, 296-31-072 Review of mental health service providers, 296-31-073 Utilization management, 296-31-075 Excess recoveries and 296-31-080 Billing procedures; and new section and 296-31-085 Can out-of-state providers bill the department?; and repealing WAC 296-30-025 Medical assistance eligibility and 296-31-100 Severability.

Statutory Authority for Adoption: WAC 296-30-020 is RCW 7.68.020, 7.68.030; WAC 296-30-060 is RCW 7.68.060 (1)(b), 7.68.030; WAC 296-30-900 and 296-31-040 is RCW 7.68.030; WAC 296-31-071, 296-31-072 and 296-31-073 is RCW 7.68.030, 51.04.020(4), 51.04.030; WAC 296-31-075 is RCW 7.68.030, 7.68.050, 7.68.130; WAC 296-30-081, 296-31-080, and 296-31-085 is RCW 7.68.030, 7.68.080, 7.68.120, 51.36.010, 51.04.020 (1) and (4), 51.04.030.

Adopted under notice filed as WSR 99-01-179 on December 23, 1998.

Changes Other than Editing from Proposed to Adopted Version: Subsection (6) was added to WAC 296-31-040 to clarify that requests for special agreements with the program must be made in writing. This was stated in another rule, but is related to special agreements and is more appropriate in WAC 296-31-040.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 10, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 10, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 10, Repealed 2.

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

March 1, 1999

Gary Moore

Director

AMENDATORY SECTION (Amending WSR 94-02-015, filed 12/23/93, effective 1/24/94)

WAC 296-30-020 (~~Vehicular assault.~~) **Who is covered when a motor vehicle crime occurs?** (~~Chapter 7.68 RCW shall cover those people killed or injured as a result of a vehicular assault that occurred after July 24, 1983 if there has been a conviction for the vehicular assault. Eligibility~~

~~occurs when the claimant's injury results in the assailant's conviction for vehicular assault, or when the claimant's injury is a direct result of the collision that led to the vehicular assault conviction. The claimant's injury need not be the one that led to the conviction.~~) The Crime Victims Act covers injury or death in motor vehicle crimes covered by RCW 7.68.020 (2)(a). Anyone injured or killed in the accident is eligible for benefits.

AMENDATORY SECTION (Amending WSR 97-02-090, filed 12/31/96, effective 1/31/97)

WAC 296-30-060 (~~(Requirement to report criminal acts.)~~) **Who does a victim report the crime to in order to meet reporting requirements?** (~~((1) The following are examples under which the twelve-month reporting requirement in RCW 7.68.060 (1)(b) may be tolled:~~

- ~~(a) Unconsciousness or coma of victim.~~
- ~~(b) Youth of victim (because of age the victim is unaware that a crime has been committed against her).~~
- ~~(c) Rape trauma syndrome or medical condition affecting the victim's capacity to act.~~
- ~~(d) A report of an assault against a child made to children's protective services when the report is made within twelve months of when it reasonably could have been made.~~

~~(2) This list is not and should not be considered exhaustive but is for illustrative purposes.)~~ The crime can be reported to any of the following:

- (1) Local law enforcement (city, county or state police agencies);
- (2) Federal police;
- (3) Indian tribal police;
- (4) Military police; or
- (5) Child protective services (CPS) when they have reported to local police.

AMENDATORY SECTION (Amending WSR 97-02-090, filed 12/31/96, effective 1/31/97)

WAC 296-30-081 **Acceptance of rules and fees for medical and mental health services.** Providing medical or counseling services to an injured crime victim whose claim for crime victims compensation benefits has been accepted by the department constitutes acceptance of the department's medical aid rules and compliance with its rules and fees. Maximum allowable fees shall be those fees contained in the publications entitled *Medical Aid Rules and Fee Schedules and Crime Victims Compensation Program Mental Health Treatment Rules and Fees*, less any available benefits of public or private collateral resources, except as follows:

~~((The percentage of allowed charges authorized by WAC 296-23A-105: Payment for hospital inpatient and outpatient services, WAC 296-23A-155: New hospitals, WAC 296-23A-160(3): Excluded and included services, and WAC 296-23A-165: Out-of-state hospitals shall be equal to the percentage of allowed charges established by the department of social and health services under Title 74 RCW and WAC 388-87-070(6): Payment hospital inpatient services.))~~ The percent of allowed charges authorized for hospital inpatient and outpatient services billed by revenue code are those rates

established by the department of social and health services under Title 74 RCW and WAC 388-550-4500 (1)(a) and 388-550-6000 (1)(a).

If any of the maximum allowable fees in the publications entitled *Medical Aid Rules and Fee Schedules and Crime Victims Compensation Program Mental Health Treatment Rules and Fees* is lower than the maximum allowable fees for those procedures established by the department of social and health services under Title 74 RCW, the Title 74 RCW fees are the maximum allowable fees for those procedures.

Prior to the establishment or amendment of the fee schedules, the department will give at least thirty calendar days notice by mail to interested persons who have made timely request for advance notice of the establishment or amendment of the fee schedules. To request advance notice of the establishment or amendment of the medical fee schedules, interested persons must contact the department at the following address:

Department of Labor and Industries
Health Services Analysis
P.O. Box 44322
Olympia, WA 98504-4322

To request advance notice of the establishment or amendment of the mental health fee schedules, interested persons must contact the department at the following address:

Department of Labor and Industries
Crime Victims Compensation Section
P.O. Box 44520
Olympia, WA 98504-4520

An injured victim shall not be billed for his or her accepted injury. The department shall be billed only after available benefits of public or private insurance have been determined. Bills must be submitted within ninety days from the date of service to be considered for payment. If insurance or public agency collateral resources exist, bills must be received within ninety days following payment or rejection by the resource. A copy of the payment or rejection must accompany the bill.

If the service provider has billed the injured victim and is later notified that the department has accepted the victim's claim, the provider shall refund to the injured victim any amounts paid, and bill the department for services rendered at their usual and customary fees if such rates are in excess of the public or private insurance entitlements.

On claims closed over ninety days, the department will pay for completion of a reopening application (Code 1041M), an office visit and diagnostic studies necessary to complete the application. No other benefits will be paid until the adjudication decision is rendered. When reopening is granted, the department can pay benefits for a period not to exceed sixty days prior to the date the reopening application is received by the department.

Providers outside of the state of Washington are subject to the same requirements, and are paid the same fees, as providers inside the state, with the exception of independent medical or mental health examinations, which will be paid at the examiner's usual customary fee.

AMENDATORY SECTION (Amending WSR 97-02-090, filed 12/31/96, effective 1/31/97)

WAC 296-30-900 ((Effective date of amendatory acts.)) **What law controls a claim if a statute is amended after the date of the criminal act?** ((The statute in effect at the time the criminal act occurred is the controlling law.)) The statute in effect when the criminal act occurred is the controlling law. The act occurs when the perpetrator commits the criminal conduct.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-30-025 Medical assistance eligibility.

AMENDATORY SECTION (Amending WSR 92-23-033, filed 11/13/92, effective 12/14/92)

WAC 296-31-040 ((Special programs.)) **Can the department purchase or authorize a special service or treatment that does not appear in its fee schedule?** ((4) The department may enter into special agreements for services or special treatment modalities or services provided by community based mental health treatment centers, rape crisis centers, domestic violence shelters, medical facilities, and medical facility based sexual assault treatment centers, provided under the direction of registered providers authorized to bill the department. Special agreements are for services or treatment modalities other than routine services or treatment modalities covered under the fee schedule, and may include, but are not limited to, group counseling, crisis counseling, and emergency assistance and referral programs, or multidisciplinary or inter-disciplinary programs such as day treatment, drug, alcohol, and chemical dependency treatment.

(2) The department shall establish payment rates for special agreements or treatment modalities, and may establish outcome criteria, measures of effectiveness, minimum staffing levels, certification requirements, special reporting requirements, and such other criteria as will ensure that claimants receive good quality and effective services treatment at the least cost, consistent with necessary services.

(3) Special agreements shall be purchased or authorized at the discretion of the department. The department may terminate special programs from the crime victims compensation program upon thirty days notice to the provider.)) (1) We may purchase and/or authorize agreements for service or treatment not covered in the fee schedule.

(2) The service or treatment must be provided by registered providers authorized to bill the department.

(3) We must establish payment rates for special agreements for service or treatment that we purchase or authorize.

(4) We may establish criteria to ensure each claimant receives quality and effective service or treatment that is provided at the least cost and is consistent with necessary services. Examples include, but are not limited to, outcome criteria, measures of effectiveness, minimum staffing levels,

certification requirements, and special reporting requirements.

(5) We may terminate a special agreement by giving the provider thirty days written notice.

(6) Any request for a special agreement must be made in writing to the crime victims' compensation program.

AMENDATORY SECTION (Amending WSR 92-23-033, filed 11/13/92, effective 12/14/92)

WAC 296-31-071 ((Keeping of records.)) **What records must providers maintain?** ((A provider who requests payment from the department for services shall maintain all patient and billing records necessary for the director's authorized auditors to audit the provision of services. A provider shall keep all records necessary to disclose the extent of services furnished to claimants or their family members. These records shall be provided to department representatives upon request and at a minimum, these records shall include specific documentation of the level and type of service for which payment is sought. Records must be maintained for audit purposes for a minimum of five years from the date of the last treatment of the claimant.

The confidentiality concerning the safeguarding and release of claimant personal information is governed under RCW 7.68.140 and 7.68.145 of the Crime Victims Act. The department may be contacted for brochures and copies of the act.)) **If providers request payment from us for service, they must:**

(1) Maintain all patient and billing records needed to:

(a) Determine the extent of services provided to claimants or to their family members. Each record must, at a minimum:

(i) Document the level and type of service provided; and

(ii) Where applicable, indicate the name of our representative who authorized equipment or treatment.

(b) Comply with our audit of services, if an audit is authorized.

(2) Maintain records for audit purposes for at least five years from the claimant's last treatment date.

(3) Provide records to us, if requested.

Note: The confidentiality (safeguarding and release) of a claimant's records is governed by RCW 7.68.140 and 7.68.145 of the Crime Victims Act.

AMENDATORY SECTION (Amending WSR 92-23-033, filed 11/13/92, effective 12/14/92)

WAC 296-31-072 ((Review of mental health services providers.)) **Are provider records subject to a health care services review or an audit?** ((1) The department may review providers' patient and billing related records to ensure claimants are receiving proper and necessary care and to ensure providers' compliance with the department's rules, fee schedules, and policies. A records review may be the basis for corrective action against the provider.

(2) The department may review records before, during, or after delivery of services. Records reviews may be conducted for cause or at random and may include the utilization of statistical sampling methodologies and projections based

upon sample findings. Records reviews may be conducted at or away from the provider's places of business, at the department's discretion.

(3) The department will give ten working days written notification to any provider, except as authorized in WAC 296-18A-460, that the provider's patient and billing related records will be reviewed by an auditor at the provider's place(s) of business to determine compliance with mental health rules and standards.

(4) The provider shall provide, in lieu of originals, legible copies of providers' records if requested by the department. Providers shall furnish copies of the requested records within thirty calendar days of receipt of the request.

(5) The department will not remove original records from provider's premises.

(6) For information regarding the formal appeals process, refer to chapter 51.52 RCW.)) (1) We may review or audit patient and related billing records to ensure:

(a) Claimants are receiving proper and necessary care; and

(b) You are complying with our mental health rules, fee schedules, and policies.

A records review can become the basis of corrective action against you.

(2) We may review your records:

(a) Before, during or after delivery of services;

(b) For cause or at random;

(c) Using statistical sampling methods and projections based on sample findings; and

(d) At or away from your place(s) of business.

(3) We must provide you with ten working days written notice that our auditors intend to review your patient and related billing records at your place(s) of business.

(4) We will not remove original records from your place of business, but we may request copies of your records. If copies are requested, they must be legible and provided to us within thirty calendar days of receiving our request.

AMENDATORY SECTION (Amending WSR 92-23-033, filed 11/13/92, effective 12/14/92)

WAC 296-31-073 ((Utilization management.)) **Can the department enlist utilization review or management programs?** ((The department, as a trustee of funds appropriated by legislature, has a duty to supervise the provision of proper and necessary mental health care that is delivered promptly, efficiently, and economically. Toward this end, the department uses utilization management programs. These programs are designed to monitor and control the proper and necessary use and cost of services.

These programs include, but are not limited to, managed care contracting, prior authorization for services, and alternative reimbursement systems.)) **As a trustee of funds appropriated by the legislature, we have a duty to supervise the provision of proper and necessary mental health care. We may enlist utilization review or management programs to monitor and control the delivery, use, and cost of necessary mental health care services. Examples include, but are not limited to, managed care contracting, prior authorization of services, and alternative reimbursement systems.**

AMENDATORY SECTION (Amending WSR 95-15-004, filed 7/5/95, effective 8/5/95)

WAC 296-31-075 (~~(Excess recoveries.)~~) **What is excess recovery?** ~~((In cases where a recovery has been made resulting in an excess recovery subject to offset from the future benefits or compensation due, the department is not liable for payment for services rendered by providers. The claimant is responsible for payment at department fee schedule rates. The claimant should be treated and the department billed in accordance with these mental health treatment rules and instructions. When bills are processed against the amount of the excess recovery, the department will notify the provider. The department will resume financial responsibility to or on behalf of the claimant when the amount of such excess has been reduced to zero. Charges for reports, consultations and other actions required of providers by the department solely for the purpose of the department's management of claims will be paid by the department during the period within which the excess recovery is being reduced.))~~ **The remaining balance of a recovery, which is paid to the victim but must be used to offset future payment of benefits.**

How does excess effect the bill payment process?

(1) When an excess recovery exists, the department is not responsible for payment of bills.

(2) The provider must bill the department in accordance with the department's medical aid rules and maximum fee schedules.

(3) The department will:

(a) Determine the amount payable according to the fee schedule;

(b) Credit the excess recovery with the amount payable; and

(c) Send the provider a remittance advice showing the amount due from the victim.

(4) The victim must pay the provider in accordance with the remittance advice.

(5) When the excess is reduced to zero the department will resume responsibility for payment of bills.

AMENDATORY SECTION (Amending WSR 97-02-090, filed 12/31/96, effective 1/31/97)

WAC 296-31-080 (~~(Billing procedures.)~~) **How do providers bill for services?** ~~((1) All services rendered must be in accordance with these mental health treatment rules. The department may reject bills for services rendered in violation of these rules. The claimant may not be billed for services rendered in violation of these rules. However, claimants may be billed if they fail to keep or miss a properly scheduled appointment.~~

Providers shall bill their usual and customary fee for services. If a usual and customary fee for any particular service is lower to the general public than listed in the fee schedules, the practitioner shall bill the department at the lower rate.

~~(a) Bills must be itemized on department forms or other forms which have been approved by the department. Physicians, advanced registered nurse practitioners, psychologists, and masters level mental health counselors may use the National Standard HCFA 1500 Health Insurance Claim Form~~

~~or the department's statement for crime victim services. When billing for treatment of a family member other than the claimant, you must identify the family member by name and relationship to the claimant. Hospitals use the UB 92 billing form for institution services and the National Standard HCFA 1500 Health Insurance Claim Form for professional services.~~

~~(b) Bills must specify the date and type of service, the appropriate procedure code, the condition treated, and the charges for each service.~~

~~(c) Every bill submitted to the department must be completed to include the following:~~

~~(i) Claimant's name and address;~~

~~(ii) Claimant's claim number;~~

~~(iii) Date of injury;~~

~~(iv) Referring provider's name;~~

~~(v) Dates of service;~~

~~(vi) Place of service;~~

~~(vii) Type of service;~~

~~(A) Psychiatrists and psychologists use type of service 3.~~

~~(B) Master level counselors use type of service M.~~

~~(C) Advanced registered nurse practitioners (ARNP) use type of service N.~~

~~(viii) Appropriate procedure code or hospital revenue code;~~

~~(ix) Description of service; if mental health patient is not the claimant, give name and relationship to the claimant;~~

~~(x) Charge;~~

~~(xi) Units of service;~~

~~(xii) Total bill charge;~~

~~(xiii) Provider of service;~~

~~(xiv) Group, clinic, center, or facility name;~~

~~(xv) Billing address;~~

~~(xvi) Federal tax information;~~

~~(A) Federal tax identification number; or~~

~~(B) Social Security number.~~

~~(xvii) Date of billing;~~

~~(xviii) Submission of supporting documentation required under (f) of this subsection;~~

~~(xix) Private or public insurance eligibility and amounts paid.~~

~~(d) Responsibility for the completeness and accuracy of the description of services and charges billed rests with the provider rendering the service, regardless of who actually completes the bill form.~~

~~(e) Providers are urged to bill on a monthly basis. Bills must be submitted within ninety days from the date of service to be considered for payment. If insurance or public agency collateral resources exist bills must be received within ninety days following payment or rejection by the resource. A copy of the payment or rejection must accompany the bill.~~

~~(f) The following supporting documentation must be maintained and submitted when billing for services, as may be appropriate:~~

~~(i) Intake evaluation;~~

~~(ii) Progress reports;~~

~~(iii) Consultation reports;~~

~~(iv) Special or diagnostic study reports;~~

~~(v) Independent assessment or closing exam reports;~~

~~(vi) For BR procedures see WAC 296-31-090 for requirements;~~

(vii) ~~Claimant public or private insurance information.~~

(g) ~~The claim number must be placed in the upper right hand corner on each bill and on each page of reports and other correspondence.~~

(h) ~~Rebills. If a provider does not receive payment or notification from the department within ninety days, services may be rebilled. Rebills must be submitted for services denied if a claim is closed or rejected and subsequently reopened or allowed. Rebills should be identical to the original bill. Same charges, codes, and billing date. The statement "rebill" must appear on the bill.~~

(i) ~~Any inquiries regarding adjustment of charges must be submitted within ninety days from the date of payment to be considered.~~

(j) ~~Any denied charge may be protested in writing to the department or appealed to the board of industrial insurance appeals.~~

(2) ~~Allowance and payment for medication. The department will pay for medications or supplies dispensed for the treatment of conditions resulting from a crime victim injury and/or conditions which are retarding the recovery from the claimant's condition, for which the department has accepted temporary responsibility. Specific information governing allowance and payment for medication is contained in WAC 296-20-1700.~~

(3) ~~Payment of out-of-state providers.~~

(a) ~~Providers of mental health services located outside of the state of Washington shall bill their usual and customary fees and will be paid according to the Washington state crime victims compensation program mental health treatment rules and fees.~~

(b) ~~Independent medical exams (independent assessments) shall be billed and paid according to the examiner's usual and customary fee.~~

(c) ~~In all cases these payment levels are the maximum allowed to providers of services to claimants. Should a provider's charge exceed the payment amount allowed under the state of Washington crime victim compensation program rules, the provider is prohibited from charging the claimant for the difference between the provider's charge and the allowable rate. Providers violating this provision are ineligible to treat claimants as provided by these mental health rules and are subject to other applicable penalties.~~

(d) ~~Only those diagnostic and treatment services authorized under the state of Washington mental health rules may be allowed by the department. As determined by the department, the scope of practice of providers in bordering states may be recognized for payment purposes, except that in all cases WAC 296-20-03002 (treatment not authorized) shall apply. Specifically, services permitted under crime victims compensation programs in the provider's place of business, but which are not allowed chapters 296-20, 296-30, and 296-31 WAC of the state of Washington, may not be reimbursed. When in doubt, the provider should verify coverage of a service with the department.~~

(e) ~~Out-of-state hospitals will be paid according to WAC 296-30-081.)~~ (1) Neither the department nor the claimant is required to pay for provider services which violate the mental health treatment rules, fee schedule or department policy.

(2) All fees listed are the maximum fees allowable. Providers must bill their usual and customary fee for each service. If this is less than our fee schedule rate, you must bill us at the lesser rate. The department will pay the lesser of the billed charge or the fee schedule's maximum allowable.

The provider is prohibited from charging the claimant for any difference between the provider's charge and our allowable amount.

(3) Regardless of who completes the bill form, you are responsible for the completeness and accuracy of the description of services and of the charges billed.

(4) All bills submitted to the department must:

(a) Be itemized on forms approved by us.

For example: Physicians, psychologists, advanced registered nurse practitioners and master level mental health counselors may use our form or the national standard HCFA 1500 health insurance claim form. Hospitals use the UB 92 billing form for institution services and the national standard HCFA 1500 health insurance claim form for professional services.

(b) Refer to the crime victims compensation program mental health treatment rules and fees booklet for procedure code listings and detailed billing instructions. Billings must be submitted in accordance with this publication.

(5) The following supporting documentation must be maintained and, if applicable, submitted when billing for services:

(a) Intake evaluation;

(b) Progress reports;

(c) Consultation reports;

(d) Special or diagnostic study reports;

(e) Independent assessment or closing exam reports;

(f) BR (by report) describing why a service or procedure is too unusual, variable, or complex to be assigned a value unit;

(g) The claimant's or patient's (if patient is other than claimant) private or public insurance information;

For example: When services provided are for survivors of homicide victims.

(6) The claim number must appear in the appropriate field on each bill form. Reports and other correspondence must have the claim number in the upper right hand corner of each page.

(7) You may rebill us if your bill is not reported on your remittance advice within sixty days. Unless the information on the original bill was incorrect, a rebill should be identical. Rebills must be submitted for services denied if a claim is closed or rejected and subsequently reopened or allowed.

(8) We will adjust charges when appropriate. We must provide you with a written explanation as to why a billing was adjusted. A written explanation is not required if the adjustment was made solely to conform to our maximum allowable fees. Any inquiries regarding adjustment of charges must be received in the required format within ninety days from the date of payment.

NEW SECTION

WAC 296-31-085 Can out-of-state providers bill the department? (1) Providers of mental health diagnostic and treatment services located outside the state of Washington:

(a) May bill us for services that we allow and are authorized by the crime victims compensation program mental health treatment rules;

(b) Must bill us according to the provisions of this chapter;

(c) Must bill their usual and customary fees; and

(d) Will be paid according to the Washington state crime victims compensation program mental health treatment rules and fees.

Exception: Hospitals located outside the state of Washington are paid according to WAC 296-30-081.

(2) Independent medical or mental health examinations must be billed and will be paid according to the examiner's usual and customary fee.

(3) We will not reimburse a charge for service(s) allowed under any out-of-state crime victims compensation program unless it is allowed in chapters 296-30 and 296-31 WAC. When in doubt, the provider should contact us to verify coverage.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-31-100 Severability.

WSR 99-07-013

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed March 8, 1999, 3:21 p.m.]

Date of Adoption: March 8, 1999.

Purpose: To reflect changes in the chain of command within the Washington State Department of Transportation.

Citation of Existing Rules Affected by this Order: Amending WAC 468-06-040.

Statutory Authority for Adoption: RCW 47.01.101.

Adopted under notice filed as WSR 99-02-065 on January 6, 1999.

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

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

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

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

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

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

March 8, 1999

Gerald E. Smith

Deputy Secretary, Operations

AMENDATORY SECTION (Amending Order 163, filed 7/24/96, effective 8/24/96)

WAC 468-06-040 Description of central and field organization of the Washington state department of transportation. (1) The department of transportation is a statutorily created agency of the state of Washington. The central office of the department of transportation is located in the Transportation Building, Olympia, WA 98504.

(2) The department of transportation is headed by a secretary who is the executive head of the department and is appointed by the Washington state transportation commission.

(a) Serving directly under the secretary are the deputy secretary for operations, deputy secretary for policy (~~and the~~), audit office, equal opportunity office and the ombudsman. There are also assistant attorney generals assigned to the department who provide legal services in department matters.

(b) Reporting directly to the deputy secretary for (~~policy~~) operations are the following offices: Communications and public involvement, governmental liaison office, (~~office of equal opportunity, office of~~) human resources office and Q2000 office.

(c) The following service centers report to the deputy (~~secretaries~~) secretary for operations depending upon their needs: Environmental and engineering, field operations support, finance and administration, planning and programming and transaid. Also reporting to the deputy (~~secretaries~~) secretary are the aviation division, transportation economic partnerships division, highways and local roadways division, public transportation and rail division and Washington state ferries.

(d) The department field functions are carried out by six regions which are each headed by a region administrator and report directly to the deputy secretary for operations. The central regional office locations are: Seattle, Wenatchee, Tumwater, Vancouver, Yakima, and Spokane. The regions have various project and maintenance area offices which are headed by a supervisor.

WSR 99-07-018

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed March 9, 1999, 2:58 p.m.]

Date of Adoption: January 18, 1999.

Purpose: The rule defines temporary and provisional SOTP certification for applicants whose applications were received by the department before September 1, 1991. The rule is no longer necessary as the authority to issue temporary and provisional certification ended on June 30, 1994.

Citation of Existing Rules Affected by this Order:
Repealing WAC 246-930-499.

Statutory Authority for Adoption: RCW 18.155.040.

Adopted under preproposal statement of inquiry filed as
WSR 99-01-093 on December 17, 1998.

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 Nongov-
ernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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.

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

February 17, 1999

Laurie Jinkins

Executive Director

WSR 99-07-019

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed March 9, 1999, 3:01 p.m.]

Date of Adoption: December 4, 1998.

Purpose: The rule has not remedied the problem it was
intended to address. The surety bond requirement is clearly
defined in RCW 18.35.240.

Citation of Existing Rules Affected by this Order:
Repealing WAC 246-828-340.

Statutory Authority for Adoption: RCW 18.35.161.

Adopted under preproposal statement of inquiry filed as
WSR 98-22-080 on November 3, 1998.

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 Nongov-
ernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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 1.

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

January 27, 1999

Sheila Winkler, Chair

Board of Hearing and Speech

WSR 99-07-020

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed March 9, 1999, 3:04 p.m.]

Date of Adoption: December 4, 1998.

Purpose: The content of the rules is redundant of the
Uniform Disciplinary Act, chapter 18.130 RCW or they are
no longer appropriate because of changes in technology.

Citation of Existing Rules Affected by this Order:
Repealing WAC 246-828-110, 246-828-120, 246-828-130,
246-828-140, 246-828-150, 246-828-160, 246-828-170, 246-
828-180, 246-828-190, 246-828-200, 246-828-210, 246-828-
230, 246-828-240, 246-828-250, 246-828-260, and 246-828-
310.

Statutory Authority for Adoption: RCW 18.35.161.

Adopted under preproposal statement of inquiry filed as
WSR 98-22-081 on November 3, 1998.

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 Nongov-
ernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Ini-
tiative: New 0, Amended 0, Repealed 16.

Number of Sections Adopted in Order to Clarify,
Streamline, or Reform Agency Procedures: New 0,
Amended 0, Repealed 16.

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 16.

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

January 27, 1999

Sheila Winkler, Chair

Board of Hearing and Speech

WSR 99-07-021

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed March 9, 1999, 3:08 p.m.]

Date of Adoption: December 9, 1998.

Purpose: The purpose of the public water supply provi-
sions of chapter 246-290 WAC is to develop performance-
based standards, incorporate state and federal legislative
changes and reduce ambiguity. These changes are in
response to the reauthorization of the Safe Drinking Water
Act, the recommendations of the Water Supply Advisory

Committee and the Drinking Water Task Force 2000, as well as studies performed by an engineering consultant concerning the department's water system design standards.

Citation of Existing Rules Affected by this Order: Amending WAC 246-290-001, 246-290-010, 246-290-020, 246-290-025, 246-290-030, 246-290-040, 246-290-050, 246-290-060, 246-290-100, 246-290-110, 246-290-120, 246-290-130, 246-290-135, 246-290-140, 246-290-200, 246-290-220, 246-290-230, 246-290-250, 246-290-300, 246-290-310, 246-290-320, 246-290-420, 246-290-460, 246-290-470, 246-290-480, 246-290-490, 246-290-601, 246-290-620, 246-290-630, 246-290-632, 246-290-634, 246-290-636, 246-290-638, 246-

290-640, 246-290-650, 246-290-652, 246-290-654, 246-290-660, 246-290-662, 246-290-664, 246-290-666, 246-290-668, 246-290-670, 246-290-672, 246-290-674, 246-290-676, 246-290-678, 246-290-686, 246-290-690, 246-290-692, 246-290-694 and 246-290-696; and repealing WAC 246-290-115, 246-290-240, 246-290-330, 246-290-410, 246-290-430, 246-290-440, and 246-290-610.

Statutory Authority for Adoption: RCW 43.02.050.

Adopted under notice filed as WSR 98-20-108 on October 7, 1998.

Changes Other than Editing from Proposed to Adopted Version:

Revisions Made To WAC After SBOH Hearing And Public Testimony

Section	Existing	Proposed	Recommendation
010 - Definitions	Definition of "source meter" includes rate of flow and totalizer	Revise to define as "a meter that measures total output of a water source and has a totalizer"	Revise to read "a device that measures total output of a water source over specific time periods"
020 - Applications (Group B Definition) (line 3)	Table 1 defines Group B systems as a system that serves less than 15 residential connections or less than 25 people/day	Revise to refer either to all Group B systems as "A PWS which does not fall under the Group A definition" OR Change "or" to "and"	Change "or" to "and"
040(2) - Engineering requirements	Refers to subsection -125 (1)(e) re projects	Change subsection 125 (1) (e) to subsection (d)	Change 125 (1)(e) to (d)
250(4) - Treatment design	References to sections 451(4) and 451(5)	Change to sections 451(3) and 451(4)	Make changes as suggested
310 Table 4 - Maximum contaminant levels (MCLs)	"The EPA has also established a recommended level of 20mg/L for copper ..."	2nd line from the bottom should read 20mg/L for sodium - not copper	Change already made by DOH prior to 11/12 hearing - insert "sodium" for "copper"
490 (1)(b) - Cross connection control	Applicability, purpose and responsibility of CCC program... (b) all noncommunity water systems shall apply the principles and provisions... to the extent possible	"to the extent possible is not clear" - appears as though a system could opt not to comply if there were financial constraints	Change to "as applicable,"
601 (1),(2) - Purpose of surface water treatment	Subsection (1) lists treatment technique for turbidity in lieu of MCL, and subsection (2) refers to turbidity MCL	Eliminate "(e) Turbidity" from 601(2) to avoid the inconsistency	Revise language in subsection (2) to refer to turbidity levels as required under 40 CFR 141.13. **

Proposed Language:

** "For water systems using unfiltered surface sources, in whole or part, and that have been required to install, but have yet to complete the installation and operation of filtration facilities, the turbidity levels at entry point to distribution and sampling/analytical requirements shall be in accordance with 40 CFR 141.13 and 40 CFR 141.22, respectively."

PERMANENT

DOH Recommended Revisions to chapter 246-290 WAC
at November 12, 1998, SBOH Meeting

Section	Existing Proposed Rule	Recommended Change
010 - Definitions	Multiple additional definitions and consolidation of definitions from other sections	Add several definitions re cross-connection and surface water treatment that are omitted; clarify several other definitions
100 - Water system plan	Miscellaneous changes	Clarified in subsection (10) that small systems may be able to submit SWSMP in lieu of WSP if they qualify
120 - Construction documents	Miscellaneous changes	Clarifies that the purveyor must make record drawings available to DOH upon request
132 - Interties	New section implementing RCW 90.03.383	Adds language from statute regarding when DOH is to refer applicants to ecology for water rights
140 - Existing system as-built approval	Miscellaneous minor changes, including elimination of outdated programmatic references	Elimination of duplicative language
221 - Water demand design criteria	New section incorporating design concepts from multiple places	Miscellaneous wording clarifications
250 - Treatment design	Modifications to existing requirements	Add internal references in subsections (6) and (7) to other WAC provisions
300 - Monitoring requirements	Numerous changes to conform to federal changes or clarify existing requirements	Clarify residual disinfectant measurement as part of coliform monitoring under subsection (3)(a)(i), and add reference to coliform monitoring plans under 451 (5),(6); restore current WAC language regarding baseline coliform monitoring for noncommunity systems; add language clarifying sampling points for ground water and surface water sources
310 - Maximum Contaminant Levels	Numerous changes to conform to federal changes or clarify existing requirements	Change note for Table 4 to refer to sodium, not copper, as the substance for which a 20 mg/L level is recommended
320 - Follow-up action	Numerous changes to conform to federal changes or clarify existing requirements	Add language referring to 40 CFR 141.30 (b)(3) and otherwise clarifying follow-up sampling for trihalomethanes
420 - Reliability and emergency response	Incorporates the concept of customer participation in determination of reliability level, and otherwise refers to performance standards rather than detailed requirements	Rewritten to clarify public health minimum level of reliability, and elements for which customer participation plays a role
480 - Recordkeeping and reporting	Miscellaneous changes to make record-keeping requirements consistent and nonduplicative	Add clarification relative to federal minimum record-keeping requirements re corrective actions for violations of federal requirements
490 - Cross-connection control	Numerous changes to conform to statute, eliminate ambiguity, place industry standards in regulation, implement advisory group recommendations	Add clarifications as requested by CCC advisory committee, and to resolve ambiguities between DOH and water system responsibilities
620 - Applicability of surface water treatment requirements	Numerous changes to conform to federal regulations	Adds reference to potential GWI sources

Section	Existing Proposed Rule	Recommended Change
630 - General requirements	Numerous changes to conform to federal regulations	Adds explicit reference to surface and GWI sources in subsection (6)
632 - Treatment technique violations	Numerous changes to conform to federal regulations	Clarifies language in subsection (2) re filtration of surface water
634 - Follow-up to treatment technique violations	Adds clarifying language re unfiltered systems, including new option of limited alternative to filtration	Clarifies language
640 - Determination of GWI sources	Numerous changes to conform to federal regulations, and specify DOH implementation requirements	Clarifies language
674 - Interim monitoring and reporting	Miscellaneous changes to conform to federal requirements	Add reference to 40 CFR 141.22
686 - Compliance requirements for unfiltered systems	Miscellaneous changes to conform to federal requirements	Correct internal references, and refer to appropriate CFR requirements
690 - Criteria to remain unfiltered	Miscellaneous changes to conform to federal requirements	Correct internal references
691 - Criteria for unfiltered systems with a "limited alternative to filtration" to remain unfiltered	New section to utilize new federal statutory alternative	Modify language to conform to federal guidance
692 - Disinfection for unfiltered systems	Miscellaneous changes to conform to federal requirements	Clarify requirements for systems while remaining unfiltered
Miscellaneous spelling, punctuation, and grammatical errors, and restoring inadvertent mistakes in text		Correct, where identified, spelling, punctuation, and grammar in the text, and restoring text inadvertently changed, added, or omitted from existing language

Number of Sections Adopted in Order to Comply with Federal Statute: New 3, Amended 8, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, 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 3, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 14, Amended 52, Repealed 7.

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.

Effective Date of Rule: Thirty-one days after filing.
 March 5, 1999
 Patty Hayes
 Interim Executive Director

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-001 Purpose and scope. (1) The purpose of ~~((these rules))~~ this chapter is to define basic regula-

tory requirements and to protect the health of consumers using public drinking water supplies.

(2) The rules of this chapter are specifically designed to ensure:

(a) Adequate design, construction, sampling, management, maintenance, and operation practices; and

(b) Provision of safe and high quality drinking water in a reliable manner and in a quantity suitable for intended use.

(3) Purveyors shall be responsible for complying with the regulatory requirements of this chapter.

(4) These rules are intended to conform with ~~((P.L.))~~ Public Law 93-523, the Federal Safe Drinking Water Act of 1974, and ~~((P.L.))~~ Public Law 99-339, the Safe Drinking Water Act Amendments of 1986, and certain provisions of Public Law 104-182, the Safe Drinking Water Act Amendments of 1996.

(5) The rules set forth are adopted under chapter 43.20 RCW. Other statutes relating to this chapter are:

(a) RCW 43.20B.020, Fees for services—Department of health and department of social and health services;

(b) Chapter 43.70 RCW, Department of health;

(c) Chapter 70.05 RCW, Local health department, boards, officers—Regulations;

(d) Chapter 70.116 RCW, Public Water System Coordination Act of 1977;

(e) Chapter 70.119 RCW, Public water supply systems—Certification and regulation of operators;

PERMANENT

(f) Chapter 70.119A RCW, Public water systems—Penalties and compliance; and

(g) Chapter 70.142 RCW, Chemical contaminants and water quality.

NEW SECTION

WAC 246-290-002 Guidance. (1) The department has numerous guidance documents available to help purveyors comply with state and federal rules regarding drinking water. These include documents on the following subjects:

- (a) Compliance;
- (b) System management and financial assistance;
- (c) Groundwater protection;
- (d) Growth management;
- (e) Operations/maintenance;
- (f) Operator certification;
- (g) Water system planning;
- (h) Monitoring and water quality;
- (i) System approval;
- (j) Small water systems;
- (k) Water resources;
- (l) Water system design; and
- (m) General information.

(2) The guidance documents are available at minimal or no cost by contacting the division of drinking water's publication service at (360) 236-3099 or (800) 521-0323. Individuals can also request the documents via the Internet at <http://www.doh.wa.gov/ehp/dw> or through conventional mail at P.O. Box 47822, Olympia, Washington 98504-7822.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-010 Definitions. Abbreviations and acronyms:

- ADD** - average day demand;
- AG** - air gap;
- ANSI** - American National Standards Institute;
- APWA** - American Public Works Association;
- ASCE** - American Society of Civil Engineers;
- AVB** - atmospheric vacuum breaker;
- AWWA** - American Water Works Association;
- BAT** - best available technology;
- BAT** - backflow assembly tester (for WAC 246-29-490);
- C** - residual disinfectant concentration in mg/L;
- CCS** - cross-connection control specialist;
- CFR** - code of federal regulations;
- ~~(**CSE** - comprehensive system evaluation;)~~
- CT** - the mathematical product in mg/L - minutes of "C" and "T";
- CWSSA** - critical water supply service area;
- DCDA** - double check detector assembly;
- DCVA** - double check valve assembly;
- DWSRF** - drinking water state revolving fund;
- ERU** - equivalent residential unit;
- gph** - gallons per hour;
- gpm** - gallons per minute;

GW - ground water under the direct influence of surface water;

HPC - heterotrophic plate count;

IAPMO - International Association of Plumbing and Mechanical Officials;

kPa - kilo pascal (SI units of pressure);

m - meter;

MCL - maximum contaminant level;

MDD - maximum day demand;

mg/L - milligrams per liter (1 mg/L = 1 ppm);

mL - milliliter;

mm - millimeter;

MTTP - maximum total trihalomethane potential;

NSF - National Sanitation Foundation;

NTNC - nontransient noncommunity;

NTU - nephelometric turbidity unit;

PAA - project approval application;

pCi/L - picocuries per liter;

PHD - peak hourly demand;

ppm - parts per million (1 ppm = 1 mg/L);

psi - pounds per square inch;

PVBA - pressure vacuum breaker assembly;

RPBA - reduced pressure backflow assembly;

RPDA - reduced pressure detector assembly;

SAL - state advisory level;

SCA - sanitary control area;

SDWA - Safe Drinking Water Act;

SEPA - State Environmental Policy Act;

SOC - synthetic organic chemical;

SMA - satellite management agency;

SPI - special purpose investigation;

SRF - state revolving fund;

SVBA - spill resistant vacuum breaker assembly;

SWTR - surface water treatment rule;

T - disinfectant contact time in minutes;

TTHM - total trihalomethane;

TNC - transient noncommunity;

TNTC - too numerous to count;

UBC - Uniform Building Code;

ug/L - micrograms per liter;

UL - Underwriters Laboratories, Inc.;

umhos/cm - micromhos per centimeter;

UPC - Uniform Plumbing Code;

UTC - utilities and transportation commission;

VOC - volatile organic chemical;

WAC - Washington Administrative Code;

WADOT - Washington department of transportation;

WFI - water facilities inventory and report form; and

WHPA - wellhead protection area.

"Acute" means posing an immediate risk to human health.

"**Alternate filtration technology**" means a filtration process for substantial removal of particulates (generally > 2 log *Giardia lamblia* cysts) by other than conventional, direct, diatomaceous earth, or slow sand filtration processes.

"**Analogous treatment system**" means an existing water treatment system that has unit processes and source

water quality characteristics that are similar to a proposed treatment system.

"Approved air gap" means a physical separation between the free-flowing end of a potable water supply pipeline and the overflow rim of an open or nonpressurized receiving vessel. To be an air gap approved by the department, the separation must be at least:

Twice the diameter of the supply piping measured vertically from the overflow rim of the receiving vessel, and in no case be less than one inch, when unaffected by vertical surfaces (sidewalls); and:

Three times the diameter of the supply piping, if the horizontal distance between the supply pipe and a vertical surface (sidewall) is less than or equal to three times the diameter of the supply pipe, or if the horizontal distance between the supply pipe and intersecting vertical surfaces (sidewalls) is less than or equal to four times the diameter of the supply pipe and in no case less than one and one-half inches.

"Approved atmospheric vacuum breaker" means an AVB of make, model, and size that is approved by the department. AVBs that appear on the current approved backflow prevention assemblies list developed by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research or that are listed or approved by other nationally recognized testing agencies (such as IAPMO, ANSI, or UL) acceptable to the local administrative authority are considered approved by the department.

"Approved backflow preventer" means an approved air gap, an approved backflow prevention assembly, or an approved AVB. The terms "approved backflow preventer," "approved air gap," or "approved backflow prevention assembly" refer only to those approved backflow preventers relied upon by the purveyor for the protection of the public water system. The requirements of WAC 246-290-490 do not apply to backflow preventers installed for other purposes.

"Approved backflow prevention assembly" means an RPBA, RPDA, DCVA, DCDA, PVBA, or SVBA of make, model, and size that is approved by the department. Assemblies that appear on the current approved backflow prevention assemblies list developed by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research or other entity acceptable to the department are considered approved by the department.

"As-built drawing" means the drawing created by an engineer from the collection of the original design plans, including changes made to the design or to the system, that reflects the actual constructed condition of the water system.

"Authorized agent" means any person who:

Makes decisions regarding the operation and management of a public water system whether or not he or she is engaged in the physical operation of the system;

Makes decisions whether to improve, expand, purchase, or sell the system; or

Has discretion over the finances of the system.

"Average day demand (ADD)" means the total quantity of water use from all sources of supply as measured or estimated over a calendar year divided by three hundred sixty-five. ADD is typically expressed as gallons per day per ERU (gpd/ERU).

"Backflow" means the undesirable reversal of flow of water or other substances through a cross-connection into the public water system or consumer's potable water system.

"Backflow assembly tester" means a person holding a valid BAT certificate issued in accordance with chapter 246-292 WAC.

"Backpressure" means a pressure (caused by a pump, elevated tank or piping, boiler, or other means) on the consumer's side of the service connection that is greater than the pressure provided by the public water system and which may cause backflow.

"Backsiphonage" means backflow due to a reduction in system pressure in the purveyor's distribution system and/or consumer's water system.

"Best available technology (BAT)" means the best technology, treatment techniques, or other means ((which)) that EPA finds, after examination for efficacy under field conditions, are available, ((t))taking cost into consideration((s)). ((For the purposes of setting MCLs for synthetic organic chemicals, any BAT shall be at least as effective as granular activated carbon.))

"Blended sample" means a sample collected from two or more individual sources at a point downstream of the confluence of the individual sources and prior to the first connection.

"C" means the residual disinfectant concentration in mg/L at a point before or at the first consumer.

"Category red operating permit" means an operating permit identified as such pursuant to chapter 246-294 WAC. Placement in this category results in permit issuance with conditions and a determination that the system is inadequate.

((~~"Coliform sample" means a sample of water collected from the distribution system at or after the first service and analyzed for coliform presence in compliance with this chapter.~~) "Chemical contaminant treatment facility" means a treatment facility specifically used for the purpose of removing chemical contaminants.

"Clarification" means a treatment process that uses gravity (sedimentation) or dissolved air (flotation) to remove flocculated particles.

"Closed system" means any water system or portion of a water system in which water is transferred to a higher pressure zone closed to the atmosphere, such as when no gravity storage is present.

"Coagulant" means a chemical used in water treatment to destabilize particulates and accelerate the rate at which they aggregate into larger particles.

"Coagulation" means a process using coagulant chemicals and rapid mixing to destabilize colloidal and suspended particles and agglomerate them into flocs.

"Combination fire protection system" means a fire sprinkler system that:

Is supplied only by the purveyor's water;

Does not have a fire department pumper connection; and

Is constructed of approved potable water piping and materials that serve both the fire sprinkler system and the consumer's potable water system.

"Completely treated water" means water from a surface or GWI source that receives filtration or disinfection

treatment that fully complies with the treatment technique requirements of Part 6 of this chapter as determined by the department.

"Composite sample" means a sample ((created in a certified laboratory by mixing equal parts of water from up to five different sources)) in which more than one source is sampled individually by the water system and then composited by a certified laboratory by mixing equal parts of water from each source (up to five different sources) and then analyzed as a single sample.

"Comprehensive monitoring plan" means a schedule ((which)) that describes both the frequency and appropriate locations for sampling of drinking water contaminants as required by state and federal rules.

(("Comprehensive system evaluation (CSE)" means a review, inspection, and assessment of a public water system, including but not limited to: Source; facilities; equipment; operation and administration; maintenance; records; planning documents and schedules; and monitoring, for the purpose of ensuring that safe and adequate drinking water is provided.))

"Confirmation" means to demonstrate the accuracy of results of a sample ((to be precise)) by analyzing ((a)) another sample from the same location within a reasonable period of time, generally not to exceed two weeks. Confirmation ((each)) is when analysis results fall within plus or minus thirty percent of the original sample results.

"Confluent growth" means a continuous bacterial growth covering a portion or the entire filtration area of a membrane filter in which bacterial colonies are not discrete.

"Conservation program" means policies and activities implemented to encourage or cause efficient use of water on a long-term basis. Conservation programs shall include identification of the conservation objectives of the purveyor, evaluation of conservation measures considered, and identification of specific conservation measures identified for implementation.

"Construction completion report" means a form provided by the department and completed for each specific construction project to document:

- Project construction in accordance with this chapter and general standards of engineering practice;
- Physical capacity changes; and
- Satisfactory test results.

The completed form must be stamped with an engineer's seal, and signed and dated by a professional engineer.

"Consumer" means any person receiving water from a public water system from either the meter, or the point where the service line connects with the distribution system if no meter is present. For purposes of cross-connection control, "consumer" means the owner or operator of a water system connected to a public water system through a service connection.

"Consumer's water system," as used in WAC 246-290-490, means any potable and/or industrial water system that begins at the point of delivery from the public water system and is located on the consumer's premises. The consumer's water system includes all auxiliary sources of supply, storage, treatment, and distribution facilities, piping, plumbing, and fixtures under the control of the consumer.

"Contaminant" means a substance present in drinking water ((which)) that may adversely affect the health of the consumer or the aesthetic qualities of the water.

"Contingency plan" means that portion of the wellhead protection program section of the water system plan or small water system management program ((which)) that addresses the replacement of the major well(s) or wellfield in the event of loss due to ground water contamination.

"Continuous monitoring" means determining water quality with automatic recording analyzers that operate without interruption twenty-four hours per day.

"Conventional filtration treatment" means a series of processes including coagulation, flocculation, clarification, and filtration that together result in substantial particulate removal (≥ 2.5 log *Giardia lamblia* cysts).

"Critical water supply service area (CWSSA)" means a geographical area which is characterized by a proliferation of small, inadequate water systems, or by water supply problems which threaten the present or future water quality or reliability of service in such a manner that efficient and orderly development may best be achieved through coordinated planning by the water utilities in the area.

"Cross-connection" means ((a physical arrangement connecting a public water system, directly or indirectly, with anything other than another potable water system, and capable of contaminating the public water system)) any actual or potential physical connection between a public water system or the consumer's water system and any source of nonpotable liquid, solid, or gas that could contaminate the potable water supply by backflow.

"Cross-connection control program" means the administrative and technical procedures the purveyor implements to protect the public water system from contamination via cross-connections as required in WAC 246-290-490.

"Cross-connection control specialist" means a person holding a valid CCS certificate issued in accordance with chapter 246-292 WAC.

"Cross-connection control summary report" means the annual report that describes the status of the purveyor's cross-connection control program.

"CT" or "CTcalc" means the product of "residual disinfectant concentration" (C) and the corresponding "disinfectant contact time" (T) i.e., "C" x "T".

"CT_{99.9}" means the CT value required for 99.9 percent (3 log) inactivation of *Giardia lamblia* cysts.

"CTreq" means the CT value a system shall provide to achieve a specific percent inactivation of *Giardia lamblia* cysts or other pathogenic organisms of health concern as directed by the department.

"Curtailement" means short-term, infrequent actions by a purveyor and its consumers to reduce their water use during or in anticipation of a water shortage.

"Dead storage" means the volume of stored water not available to all consumers at the minimum design pressure in accordance with WAC 246-290-230(5) and (6).

"Demand forecast" means an estimate of future water system water supply needs assuming historically normal weather conditions and calculated using numerous parameters, including population, historic water use, local land use

plans, water rates and their impacts on consumption, employment, projected conservation savings from implementation of a conservation program, and other appropriate factors.

"Department" means the Washington state department of health or health officer as identified in a joint plan of operation in accordance with WAC 246-290-030(1).

"Design and construction standards" means department design guidance and other peer reviewed documents generally accepted by the engineering profession as containing fundamental criteria for design and construction of water facility projects. Design and construction standards are comprised of performance and sizing criteria and reference general construction materials and methods.

"Diatomaceous earth filtration" means a filtration process for substantial removal of particulates (> 2 log *Giardia lamblia* cysts) in which:

A precoat cake of graded diatomaceous earth filter media is deposited on a support membrane (septum); and

Water is passed through the cake on the septum while additional filter media, known as body feed, is continuously added to the feed water to maintain the permeability of the filter cake.

"Direct filtration" means a series of processes including coagulation, flocculation, and filtration (but excluding sedimentation) that together result in substantial particulate removal (> 2 log *Giardia lamblia* cysts).

"Direct service connection" means a service hookup to a property that is contiguous to a water distribution main and where additional distribution mains or extensions are not needed to provide service.

"Disinfectant contact time (T in CT)" means: When measuring the first or only C, the time in minutes it takes water to move from the point of disinfectant application to a point where the C is measured; and

For subsequent measurements of C, the time in minutes it takes water to move from one C measurement point to the C measurement point for which the particular T is being calculated.

"Disinfection" means the use of chlorine or other agent or process the department approves for killing or inactivating microbiological organisms, including pathogenic and indicator organisms.

"Distribution coliform sample" means a sample of water collected from a representative location in the distribution system at or after the first service and analyzed for coliform presence in compliance with this chapter.

"Distribution-related projects" means distribution projects such as storage tanks, booster pump facilities, transmission mains, pipe linings, and tank coating. It does not mean source of supply (including interties) or water quality treatment projects.

"Distribution reservoir" means a water storage structure (~~which~~) that is integrated with a water system's distribution network to provide for variable system demands including, but not limited to, daily equalizing storage, standby storage, or fire reserves, or to provide for disinfectant contact time.

"Distribution system" means (~~that portion~~) all piping components of a public water system (~~which~~) that serve to

convey(~~s~~) water from (~~the source and/or~~) transmission mains linked to source, storage and treatment facilities to the consumer(~~s~~) excluding individual services.

"Domestic or other nondistribution system plumbing problem," means contamination of a system having more than one service connection with the contamination limited to the specific service connection from which the sample was taken.

"Drinking water state revolving fund (DWSRF)" means the revolving loan program financed by the state and federal governments and managed by the state for the purpose of assisting water systems to meet their capital needs associated with complying with the federal Safe Drinking Water Act.

"Duplicate (verification) sample" means a second sample collected at the same time and location as the first sample and used for verification.

"Emergency" means an unforeseen event that causes damage or disrupts normal operations and requires immediate action to protect public health and safety.

"Emergency source" means any source that is approved by the department for emergency purposes only, is not used for routine or seasonal water demands, is physically disconnected, and is identified in the purveyor's emergency response plan.

"Engineering design review report" means a form provided by the department and completed for a specific distribution-related project to document:

- Engineering review of a project report and/or construction documents under the submittal exception process in accordance with WAC 246-290-125(3); and

- Design in accordance with this chapter and general standards of engineering practice.

The completed form must be stamped with engineer's seal, and signed and dated by a professional engineer.

"Equalizing storage" means the volume of storage needed to supplement supply to consumers when the peak hourly demand exceeds the total source pumping capacity.

"Equivalent residential unit (ERU)" means a system-specific unit of measure used to express the amount of water consumed by a typical full-time single family residence.

"Expanding public water system" means a public water system installing additions, extensions, changes, or alterations to their existing source, transmission, storage, or distribution facilities (~~which~~) that will enable the system (~~increasing~~) to increase in size its existing service area and/or its number of approved service connections. Exceptions:

A system (~~which~~) that connects new approved individual retail or direct service connections onto an existing distribution system within an existing service area; or

A distribution system extension in an existing service area identified in a current and approved water system plan or project report.

"Filtration" means a process for removal of particulate matter from water by passage through porous media.

"Financial viability" means the capability of a water system to obtain sufficient funds to construct, operate, main-

tain, and manage a public water system, on a continuing basis, in full compliance with federal, state, and local requirements.

"Fire flow" means the maximum rate and duration of water flow needed to ((fight)) suppress a fire((s)) under WAC 246-293-640 or ((adopted city, town, or county)) as required under local fire protection authority standards.

"Fire suppression storage" means the volume of stored water available during fire suppression activities to satisfy minimum pressure requirements per WAC 246-290-230.

"First ((customer) consumer" means the first service connection((;)) associated with any source (i.e., the point where water is first withdrawn for human consumption, excluding connections where water is delivered to another water system covered by these regulations).

"Flocculation" means a process enhancing agglomeration and collection of colloidal and suspended particles into larger, more easily settleable or filterable particles by gentle stirring.

"Flow-through fire protection system" means a fire sprinkler system that:

Is supplied only by the purveyor's water;

Does not have a fire department pumper connection;

Is constructed of approved potable water piping and materials to which sprinkler heads are attached; and

Terminates at a connection to a toilet or other plumbing fixture to prevent the water from becoming stagnant.

"Grab sample" means a water ~~((qualify [quality]))~~ quality sample collected at a specific instant in time and analyzed as an individual sample.

"Ground water under the direct influence of surface water (GWI)" means any water beneath the surface of the ground~~((, which))~~ that the department determines has the following characteristics:

Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia*; or

Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH closely correlating to climatological or surface water conditions where natural conditions cannot prevent the introduction of surface water pathogens into the source at the system's point of withdrawal.

"Guideline" means a department document assisting the purveyor in meeting a rule requirement.

"Health officer" means the health officer of the city, county, city-county health department or district, or an authorized representative.

"Heterotrophic Plate Count (HPC)" means a procedure to measure a class of bacteria that use organic nutrients for growth. The density of these bacteria in drinking water is measured as colony forming units per milliliter and is referred to as the HPC.

"High health cross-connection hazard" means a cross-connection which could impair the quality of potable water and create an actual public health hazard through poisoning or spread of disease by sewage, industrial liquids or waste.

"Human consumption" means the use of water for drinking, bathing or showering, hand washing, food preparation, cooking, or oral hygiene.

"Hydraulic analysis" means the study of ~~((the water system network evaluating water flows within the distribution system under worst case conditions such as, peak hourly design flow plus fire flow, when required. Hydraulic analysis includes consideration of all factors affecting system energy losses:~~

"Initial inventory" means an inventory which consists, at a minimum, of all potential sources of ground water contamination located within the one-year time of travel area of a WHPA and all high risk potential sources of ground water contamination located within the ten-year ground water time of travel area) a water system's distribution main and storage network to determine present or future adequacy for provision of service to consumers within the established design parameters for the system under peak flow conditions, including fire flow. The analysis is used to establish any need for improvements to existing systems or to substantiate adequacy of design for distribution system components such as piping, elevated storage, booster stations or similar facilities used to pump and convey water to consumers.

"Inactivation" means a process which renders pathogenic microorganisms incapable of producing disease.

"Inactivation ratio" means the ratio obtained by dividing CTcalc by CTreq.

"Incompletely treated water" means water from a surface or GWI source that receives filtration and/or disinfection treatment that does not fully comply with the treatment technique requirements of Part 6 of this chapter as determined by the department.

"In-line filtration" means a series of processes, including coagulation and filtration (but excluding flocculation and sedimentation) that together result in particulate removal.

"In-premises protection" means a method of protecting the health of consumers served by the consumer's potable water system, located within the property lines of the consumer's premises by the installation of an approved air gap or backflow prevention assembly at the point of hazard, which is generally a plumbing fixture.

"Intertie" means an interconnection between public water systems permitting the exchange or delivery of water between those systems.

"Legionella" means a genus of bacteria containing species which cause a type of pneumonia called Legionnaires' Disease.

"Limited alternative to filtration" means a process that ensures greater removal and/or inactivation efficiencies of pathogenic organisms than would be achieved by the combination of filtration and chlorine disinfection.

"Local administrative authority" means the local official, board, department, or agency authorized to administer and enforce the provisions of the Uniform Plumbing Code as adopted under chapter 19.27 RCW.

"Low health cross-connection hazard" means a cross-connection that could cause an impairment of the quality of potable water to a degree that does not create a hazard to the public health, but does adversely and unreasonably

affect the aesthetic qualities of such potable waters for domestic use.

"Major project" means all construction projects subject to SEPA in accordance with WAC 246-03-030 (3)(a) and include all surface water source development, all water system storage facilities greater than one-half million gallons, new transmission lines longer than one thousand feet and larger than eight inches in diameter located in new rights of way and major extensions to existing water distribution systems involving use of pipes greater than eight inches in diameter, that are designed to increase the existing service area by more than one square mile.

"Mandatory curtailment" means curtailment required by a public water system of specified water uses and consumer classes for a specified period of time.

"Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in water the purveyor delivers to any public water system user, measured at the locations identified under WAC 246-290-300, Table ((4)) 3.

"Maximum contaminant level violation" means a confirmed measurement above the MCL and for a duration of time, where applicable, as outlined under WAC 246-290-310.

"Maximum day demand (MDD)" means the highest actual or estimated quantity of water that is, or is expected to be, used over a twenty-four hour period, excluding unusual events or emergencies. MDD is typically expressed as gallons per day per ERU (gpd/ERU).

"Monitoring waiver" means an action taken by the department pursuant to WAC 246-290-300 ((3)) (4)(g) or (7)(f) to allow a water system to reduce specific monitoring requirements based on a determination of low source vulnerability to contamination. ((Guidance on applying for monitoring waivers is found in the department guideline titled, Source Vulnerability and Monitoring Waivers which is available from the department.))

"Nested storage" means one component of storage is contained within the component of another.

"Nonacute" means posing a possible or less than immediate risk to human health.

"Nonresident" means a person ((without a permanent home or without a home served by the system, such as)) having access to drinking water from a public water system, but who lives elsewhere. Examples include travelers, transients, employees, students, etc.

"Normal operating conditions" means those conditions associated with the designed, day-to-day provision of potable drinking water that meets regulatory water quality standards and the routine service expectations of the system's consumers at all times, including meeting fire flow demands. Operation under conditions such as power outages, floods, or unscheduled transmission or distribution disruptions, even if considered in the system design, are considered abnormal.

"Operational storage" means the volume of distribution storage associated with source or booster pump normal cycling times under normal operating conditions and is additive to the equalizing and standby storage components, and to

fire flow storage if this storage component exists for any given tank.

"Peak hourly ((design flow)) demand (PHD)" means the maximum rate of water use, excluding fire flow, ((which)) that can be expected to ((ever)) occur within a defined service area over a continuous sixty minute time period. PHD is typically expressed in gallons per minute (gpm).

"Peak hourly flow" means, for the purpose of CT calculations, the greatest volume of water passing through the system during any one hour in a day.

"Performance criteria" means the level at which a system shall operate in order to maintain system reliability compliance, in accordance with WAC 246-290-420, and to meet consumers' reasonable expectations.

"Permanent residence" means any dwelling that is, or could reasonably be expected to be, occupied on a continuous basis.

"Permanent source" means a public water system supply source that is used regularly each year, and based on expected operational requirements of the system, will be used more than three consecutive months in any twelve-month period. For seasonal water systems that are in operation for less than three consecutive months per year, their sources shall also be considered to be permanent.

"Point of disinfectant application" means the point where the disinfectant is added, and where water downstream of that point is not subject to contamination by untreated surface water.

"Population served" means the number of persons, resident and nonresident, having immediate access to drinking water from a public water system, whether or not such persons have actually consumed water from that system. The number of nonresidents shall be the average number of persons having immediate access to drinking water on days access was provided during that month. In the absence of specific population data, the number of residents shall be computed by multiplying the number of active services by two and one-half.

"Potable" means water suitable for drinking by the public.

"Potential GWI" means a source identified by the department as possibly under the influence of surface water, and includes, but is not limited to, all wells with a screened interval fifty feet or less from the ground surface at the well-head and located within two hundred feet of a surface water, and all Ranney wells, infiltration galleries, and springs.

"Premises isolation" means a method of protecting a public water system by installation of approved air gaps or approved backflow prevention assemblies at or near the service connection or alternative location acceptable to the purveyor to isolate the consumer's water system from the purveyor's distribution system.

"Pressure filter" means an enclosed vessel containing properly sized and graded granular media through which water is forced under greater than atmospheric pressure.

"Primary disinfection" means a treatment process for achieving inactivation of *Giardia lamblia* cysts, viruses, or other pathogenic organisms of public health concern to com-

ply with the treatment technique requirements of Part 6 of this chapter.

"**Primary standards**" means standards based on chronic, nonacute, or acute human health effects.

"**Primary turbidity standard**" means an accurately prepared formazin solution or commercially prepared polymer solution of known turbidity (prepared in accordance with "standard methods") that is used to calibrate bench model and continuous turbidimeters (instruments used to measure turbidity).

"**Project approval application (PAA)**" means a department form documenting ownership of water system, design engineer for the project, and type of project.

"**Protected ground water source**" means a ground water source the purveyor shows to the department's satisfaction as protected from potential sources of contamination on the basis of hydrogeologic data and/or satisfactory water quality history.

"**Public water system**" is defined and referenced under WAC 246-290-020.

"**Purchased source**" means water a purveyor purchases from a public water system not under the control of the purveyor for distribution to the purveyor's ((customers)) consumers.

"**Purveyor**" means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or other entity owning or operating a public water system. Purveyor also means the authorized agents of such entities.

"**Reclaimed water**" means effluent derived in any part from sewage from a wastewater treatment system that has been adequately and reliably treated, so that as a result of that treatment, it is suitable for beneficial use or a controlled use that would not otherwise occur, and it is no longer considered wastewater.

"**Record drawings**" means the drawings bearing the seal and signature of a professional engineer that reflect the modifications made to construction documents, documenting actual constructed conditions of the water system facilities.

"**Recreational tract**" means an area that is clearly defined for each occupant, but has no permanent structures with internal plumbing, and the area has been declared as such in the covenants or on the recorded plat in order to be eligible for reduced design considerations.

"**Regional public water supplier**" means a water system that provides drinking water to one, or more, other public water systems.

"**Regularly**" means four hours or more per day for four days or more per week.

"**Removal credit**" means the level (expressed as a percent or log) of *Giardia* and virus removal the department grants a system's filtration process.

"**Repeat sample**" means a sample collected to confirm the results of a previous analysis.

"**Resident**" means an individual living in a dwelling unit served by a public water system.

"**Residual disinfectant concentration**" means the ((concentration of disinfectant in mg/L in a representative sample of disinfected water)) analytical level of a disinfectant,

measured in milligrams per liter, that remains in water following the application (dosing) of the disinfectant after some period of contact time.

"**Same farm**" means a parcel of land or series of parcels ((which)) that are connected by covenants and devoted to the production of livestock or agricultural commodities for commercial purposes and does not qualify as a **Group A** public water system.

"**Sanitary survey**" means a review, inspection, and assessment of a public water system by the department or department designee including, but not limited to: Source, facilities, equipment, administration and operation, maintenance procedures, monitoring, recordkeeping, planning documents and schedules, and management practices. The purpose of the survey is to evaluate the adequacy of the water system for producing and distributing safe and adequate drinking water.

"**Satellite management agency (SMA)**" means a person or entity that is approved by the department to own or operate public water systems on a regional or county-wide basis without the necessity for a physical connection between such systems.

"**Seasonal source**" means a public water system source used on a regular basis, ((but not in use more than three consecutive months within a twelve-month period)) that is not a permanent or emergency source.

"**Secondary standards**" means standards based on factors other than health effects.

"**Service connection**" means a connection to a public water system designed to provide potable water to a single family residence, or other residential or nonresidential population. When the connection ((is)) provides water to a ((system)) residential population without clearly defined single family residences ((or with a nonresident population)), the following formulas shall be used in determining ((equivalent)) the number of services to be included as residential connections on the WFI form:

((For group home or barracks type accommodation:)) Divide the average population served each day by two and one-half;

((For NTNC systems, divide the average population served each day by two and one-half; and

For TNC systems, divide the average population served each day by twenty-five:)) or

Using actual water use data, calculate the total ERUs represented by the service connection in accordance with department design guidance.

In no case shall the calculated number of services be less than one.

"**Significant noncomplier**" means a system that is violating or has violated department rules, and the violations may create, or have created an imminent or a significant risk to human health. Such violations include, but are not limited to, repeated violations of monitoring requirements, failure to address an exceedance of permissible levels of regulated contaminants, or failure to comply with treatment technique standards or requirements.

"**Simple disinfection**" means any form of disinfection that requires minimal operational control in order to maintain

the disinfection at proper functional levels, and that does not pose safety concerns that would require special care, equipment, or expertise. Examples include hypochlorination, UV-light, contactor chlorination, or any other form of disinfection practice that is safe to use and easy to routinely operate and maintain.

"Slow sand filtration" means a process involving passage of source water through a bed of sand at low velocity (generally less than 0.10 gpm/ft²) that results in substantial particulate removal (> 2 log *Giardia lamblia* cysts) by physical and biological mechanisms.

"Source meter" means a meter that measures total output of a water source over specific time periods.

"Source water" means untreated water that is not subject to recontamination by surface runoff and:

For unfiltered systems, enters the system immediately before the first point of disinfectant application; and

For filtered systems, enters immediately before the first treatment unit of a water treatment facility.

"Special purpose investigation (SPI)" means on-site inspection of a public water system by the department or designee to address a potential public health concern, regulatory violation, or consumer complaint.

"Special purpose sample" means a sample collected for reasons other than the monitoring compliance specified in this chapter.

"Spring" means a source of water where an aquifer comes in contact with the ground surface.

"Standard methods" means the 18th edition of the book, titled *Standard Methods for the Examination of Water and Waste Water*, jointly published by the American Public Health Association, American Water Works Association (AWWA), and Water Pollution Control Federation. This book is available through public libraries or may be ordered from AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235.

"Standby storage" means the volume of stored water available for use during a loss of source capacity, power, or similar short-term emergency.

"State advisory level (SAL)" means a ((department-established value)) level established by the department and state board of health for a contaminant without an existing ((state board of health)) MCL. The SAL represents a level ((which)) that when exceeded, indicates the need for further assessment to determine if the chemical is an actual or potential threat to human health.

"State board of health" and "board" means the board created by RCW 43.20.030.

"Surface water" means a body of water open to the atmosphere and subject to surface runoff.

"Susceptibility assessment" means the completed Susceptibility Assessment Survey Form developed by the department to evaluate the hydrologic setting of the water source and assess its contribution to the source's(;) overall ((vulnerability to pollution)) susceptibility to contamination from surface activities.

"Synthetic organic chemical (SOC)" means a manufactured carbon-based chemical.

"System capacity" means the system's operational, technical, managerial, and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations.

"System physical capacity" means the maximum number of service connections or equivalent residential units (ERUs) that the system can serve when considering the limitation of each system component such as source, treatment, storage, transmission, or distribution, individually and in combination with each other.

"Time-of-travel" means the time required for ground water to move through the water bearing zone from a specific point to a well.

"Too numerous to count (TNTC)" means the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

"Tracer study" means a field study conducted to determine the disinfectant contact time, T, provided by a water system component, such as a clearwell or storage reservoir, used for *Giardia lamblia* cyst and virus inactivation. The study involves introducing a tracer chemical at the inlet of the contact basin and measuring the resulting outlet tracer concentration as a function of time.

"Transmission line" means pipes used to convey water from source, storage, or treatment facilities to points of distribution or distribution mains, and from source facilities to treatment or storage facilities. This also can include transmission mains connecting one section of distribution system to another section of distribution system as long as this transmission main is clearly defined as such on the plans and no service connections are allowed along the transmission main.

"Treatment technique requirement" means a department-established requirement for a public water system to provide treatment, such as filtration or disinfection, as defined by specific design, operating, and monitoring requirements. A "treatment technique requirement" is established in lieu of a primary MCL when monitoring for the contaminant is not economically or technologically feasible.

"Trihalomethane (THM)" means one of a family of organic compounds, named as derivatives of methane, where three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure. ((Trihalomethanes)) THMs may occur when chlorine, a halogen, is added to water containing organic material and are generally found in water samples as disinfection byproducts.

"Turbidity event" means a single day or series of consecutive days, not to exceed fourteen, when one or more turbidity measurement each day exceeds 5 NTU.

"T10" means the time it takes ten percent of the water passing through a system contact tank intended for use in the inactivation of *Giardia lamblia* cysts, viruses, and other microorganisms of public health concern, as determined from a tracer study conducted at peak hourly flow or from published engineering reports or guidance documents for similarly configured tanks.

"Unapproved auxiliary water supply" means a water supply (other than the purveyor's water supply) on or available to the consumer's premises that is either not approved for

human consumption by the health agency having jurisdiction or is not otherwise acceptable to the purveyor.

"Uncovered distribution reservoir" means a distribution reservoir that is open, without a suitable water-tight roof or cover, where the potable water supply is exposed to external contaminants, including but not limited to people, birds, animals, and insects.

"Uniform Plumbing Code" means the code adopted under RCW 19.27.031(4) and amended under chapter 51-46 WAC. This code establishes state-wide minimum plumbing standards applicable within the property lines of the consumer's premises.

"Used water" means water which has left the control of the purveyor.

"Verification" means to demonstrate the results of a sample to be precise by analyzing a duplicate sample. Verification occurs when analysis results fall within plus or minus thirty percent of the original sample.

"Virus" means a virus of fecal origin which is infectious to humans and transmitted through water.

"Volatile organic chemical (VOC)" means a manufactured carbon-based chemical that vaporizes quickly at standard pressure and temperature.

"Voluntary curtailment" means a curtailment of water use requested, but not required of consumers.

"Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with drinking water from a public water system, as determined by the appropriate local health agency or the department.

"Water facilities inventory (WFI) form (~~WFI~~)" means the department form summarizing each public water system's characteristics.

"Water right" means a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

"Water right assessment" means an evaluation of the legal ability of a water system to use water for existing or proposed usages in conformance with state water right laws. Such an assessment may be done by a water system, a purveyor, the department of ecology, or any combination thereof.

"Watershed" means the region or area (~~which~~) that:

Ultimately drains into a surface water source diverted for drinking water supply; and

Affects the physical, chemical, microbiological, and radiological quality of the source.

"Water shortage" means a situation during which the water supplies of a system cannot meet normal water demands for the system, including peak periods.

"Water shortage response plan" means a plan outlining policies and activities to be implemented to reduce water use on a short-term basis during or in anticipation of a water shortage.

"Well field" means a group of wells one purveyor owns or controls (~~which~~) that:

Draw from the same aquifer or aquifers as determined by comparable inorganic chemical analysis and comparable static water level and top of the open interval elevations; and

Discharge water through a common pipe and the common pipe shall allow for collection of a single sample before the first distribution system connection.

"Wellhead protection area (WHPA)" means the portion of a well's, wellfield's or spring's zone of contribution defined as such using WHPA criteria established by the department.

"Zone of contribution" means the area surrounding a pumping well or spring that encompasses all areas or features that supply ground water recharge to the well or spring.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-020 Applicability. (1) Public water system shall mean any system providing water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm(~~(providing piped water for human consumption, including any))~~). Such term includes:

(a) Collection, treatment, storage, and/or distribution facilities under control of the purveyor and used primarily in connection with such system; and

(b) Collection or pretreatment storage facilities not under control of the purveyor, but primarily used in connection with such system.

(2) The rules of this chapter shall apply to all Group A public water systems except those systems meeting all of the following conditions:

(a) Consists only of distribution and/or storage facilities and does not have any source or treatment facilities;

(b) Obtains all water from, but is not owned by, a public water system where the rules of this chapter apply;

(c) Does not sell water directly to any person; and

(d) Is not a passenger-conveying carrier in interstate commerce.

(3) Group A public water systems meeting all of the provisions under subsection (2) of this section may be required by the department to comply with such provisions of this chapter as are necessary to resolve a public health concern if the department determines a public health threat exists or is suspected.

(4) A Group A system shall be defined as a public water system(~~:~~

~~(a) With fifteen or more service connections, regardless of the number of people; or~~

~~(b) Serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections)) providing service such that it meets the definition of a public water system provided in the 1996 amendments to the federal Safe Drinking Water Act (Public Law 104-182, Section 101, subsection b).~~

(5) Group A water systems are further defined as community and noncommunity water systems.

(a) **Community** water system means any **Group A** water system(~~(+)~~

~~(i) With~~) providing service to fifteen or more service connections used by year-round residents for one hundred eighty or more days within a calendar year, regardless of the number of people(~~(s)~~), or

~~((i+))~~ regularly serving at least twenty-five ~~((or more))~~ year-round (i.e., more than one hundred eighty days per year) residents ~~((for one hundred eighty or more days within the calendar year, regardless of the number of service connections))~~.

Examples of a **community** water system might include a municipality, subdivision, mobile home park, apartment complex, college with dormitories, nursing home, or prison.

(b) **Noncommunity** water system means a **Group A** water system ~~((which))~~ that is not a **community** water system. **Noncommunity** water systems are further defined as:

(i) **Nontransient (NTNC)** water system ~~((which regularly serves))~~ that provides service opportunity to twenty-five or more of the same ~~((nonresidents))~~ nonresidential people for one hundred eighty or more days within a calendar year.

Examples of a **NTNC** water system might include a school, day care center, or a business, factory, motel, or restaurant with twenty-five or more employees on-site.

(ii) **Transient (TNC)** water system ~~((which))~~ that serves:

~~(A) ((Has fifteen or more service connections used less than one hundred eighty days within a calendar year; or~~

~~(B) Serves))~~ Twenty-five or more different ((nonresidents)) people each day for sixty or more days within a calendar year; ~~((or~~

~~(C) Serves))~~ ~~(B)~~ Twenty-five or more of the same ((nonresidents)) people each day for sixty or more days, but less than one hundred eighty days within a calendar year; or

~~((D) Serves twenty five or more residents for sixty or more days, but less than one hundred eighty))~~ ~~(C)~~ One thousand or more people for two or more consecutive days within a calendar year.

Examples of a **TNC** water system might include a restaurant, tavern, motel, campground, state or county park, an RV park, vacation cottages, highway rest area, fairground, public concert facility, special event facility, or church.

(c) A **Group B** water system is a public water system ~~((which))~~ that does not meet the definition of a **Group A** water system. (See Table 1 and chapter 246-291 WAC for further explanation of a **Group B** water system.)

(6) A **Group A** system meeting more than one of the categories described in this section shall be classified by the department in the following order:

(a) **Community** water system;

(b) **NTNC** water system; ~~((and))~~ or

(c) **TNC** water system.

~~((7) The rules of this chapter to apply to the source or supply of water used by bottled water or ice plants to produce bottled water or ice are as follows:~~

~~(a) If the bottled water or ice plant is a **Group A** water system and the plant uses the system's source for the water that is bottled or made into ice, the source and supply used for~~

~~the bottled water and ice shall meet the applicable **Group A** requirements;~~

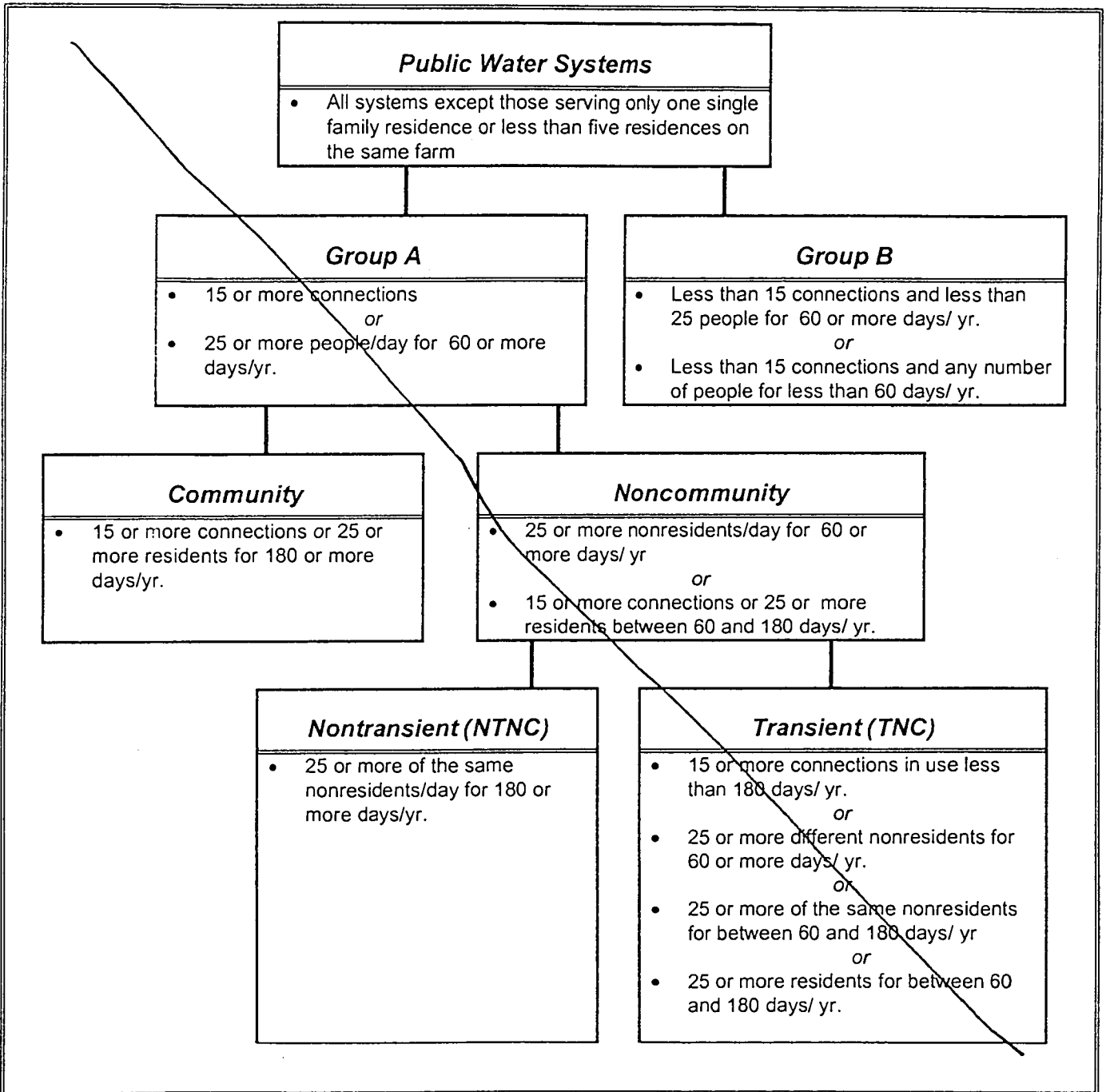
~~(b) If the bottled water or ice plant uses its own source for the water that is bottled or made into ice, and the plant is not a **Group A** system, the owner or operator shall obtain source approval from the department, and the source water shall meet the ongoing source water quality monitoring requirements for a **Group A** community system;~~

~~(c) If the bottled water or ice plant purchases the water for bottling or making ice from another source or supply, the water shall meet the minimum requirements for a **Group A** system, and the owner or operator of the plant shall ensure that the water meets such requirements;~~

~~(d) The source or supply for the water that is bottled or made into ice shall be protected from contamination prior to the bottling or ice-making process; and~~

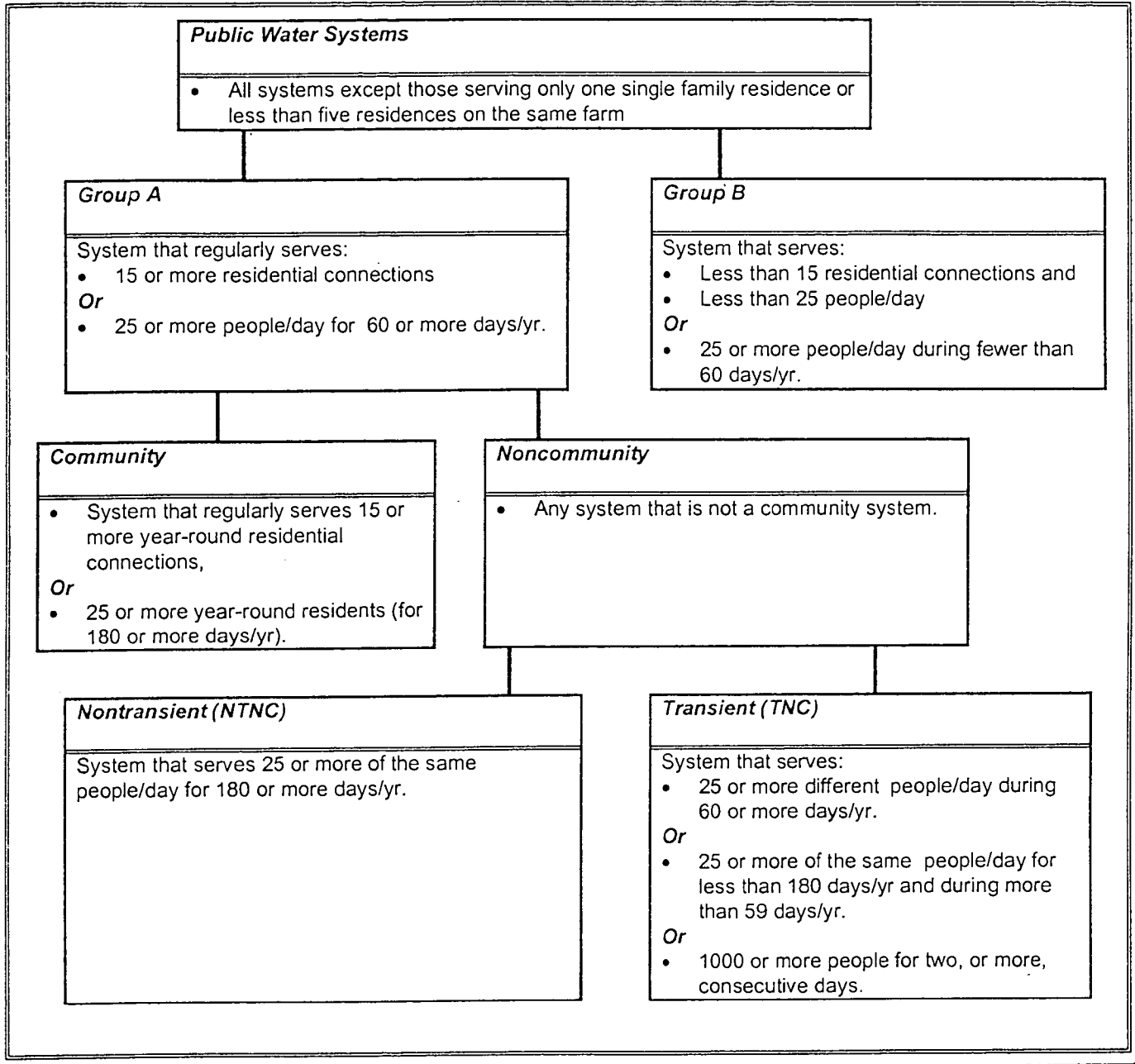
~~(e) In addition to the requirements imposed under this subsection, the processing of bottled water shall be subject to regulation by the state department of agriculture and the United States Food and Drug Administration.))~~

Table 1



PERMANENT

Table 1



PERMANENT

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-025 Adoption by reference. The following sections and subsections of Title 40 Code of Federal Regulations (CFR) Part 141 National Primary Drinking Water Regulations revised as of July 1, (~~1993~~) 1996, and including all amendments and modifications thereto effective as of the date of adoption of this chapter are adopted by reference:

141.2 Definitions. Only those definitions listed as follows:

Action level;
Corrosion inhibitor;
Effective corrosion inhibitor residual;
First draw sample;
Large water system;
Lead service line;
Medium-size water system;
Optimal corrosion control treatment;
Service line sample;
Single family structure; and
Small water system.

141.12 Maximum contaminant levels for organic chemicals.

141.13 Maximum contaminant levels for turbidity.

141.21 Coliform monitoring

141.22 Turbidity sampling and analytical requirements.

141.23(a) - 141.23(j), Inorganic chemical sampling.

141.23(m) - 141.23(o)

141.24(a) - 141.24(d), Organic chemicals other than total trihalomethanes.

141.24 (f)(1) - 141.24 (f)(15),

141.24 (f)(18), 141.24 (f)(19),

141.24 (f)(21),

141.24 (g)(1) - 141.24 (g)(9),

141.24 (g)(12) - 141.24 (g)(14),

141.24 (h)(1) - 141.24 (h)(11),

141.24 (h)(14) - 141.24 (h)(17)

141.40(a) - 141.40(e), Special monitoring for inorganic and organic chemicals.

141.40(g), 141.40(i) - 141.40(n)

141.61 Maximum contaminant levels for organic contaminants.

141.62 Maximum contaminant levels for inorganic chemical and physical contaminants.

Control of Lead and Copper

141.80 General requirements.

141.81 Applicability of corrosion control treatment steps to small, medium-size and large water systems.

141.82(a) - 141.82(h) Description of corrosion control treatment requirements.

141.83 Source water treatment requirements.

141.84 Lead service line replacement requirements.

141.85 Public education and supplemental monitoring requirements.

141.86 Monitoring requirements for lead and copper in tap water.

141.87 Monitoring requirements for water quality parameters.

141.88 Monitoring requirements for lead and copper in source water.

141.90 Reporting requirements.

141.91 Recordkeeping requirements.

143.1-143.5 Secondary contaminants.

Copies of the incorporated sections and subsections of Title 40 CFR are available from the Department of Health, Airstustrial Center Building 3, P.O. Box 47822, Olympia, Washington 98504-7822, or by calling the department's drinking water hotline at 1-800-521-0323.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-030 General administration. (1) The department and the health officer for each local health jurisdiction may develop a joint plan of operation. This plan shall:

(a) List the roles and responsibilities of each agency;

(b) Specifically designate those **Group A** systems for which the department and local health officer have primary responsibility;

(c) Provide for ~~((a minimum))~~ an agreed-to level of public water system ((supervision)) oversight;

(d) Be signed by the department and the local health department or district; and

(e) Be reviewed at least once every five years and updated as needed.

Wherever in ~~((these rules))~~ this chapter the term "department" is used, the term "health officer" may be substituted based on the terms of this plan of operation.

(2) The department shall, upon request, review and report on the adequacy of water supply supervision to both the state and local boards of health.

(3) The local board of health may adopt rules governing **Group A** water systems within its jurisdiction for which the health officer has assumed primary responsibility. Adopted local board of health rules shall be:

(a) No less stringent than this chapter; and

(b) Revised, if necessary, within twelve months after the effective date of revised state board of health rules. During this time period, existing local rules shall remain in effect, except provisions of the revised state board of health rules

~~((which))~~ that are more stringent than the local board of health rules shall apply.

(4) For those **Group A** water systems where the health officer has assumed primary responsibility, the health officer may approve project reports and construction documents in accordance with engineering criteria approved by the department and listed under ~~((WAC 246-290-200))~~ Part 3 of this chapter and water system plans in accordance with planning criteria listed under WAC 246-290-100.

(5) An advisory committee shall be established to provide ~~((guidance))~~ advice to the department on the organization, functions, service delivery methods, and funding of the drinking water ((issues)) program. Members shall be appointed by the department ~~((and conform to department policies for advisory committees))~~ for fixed terms of no less than two years, and may be reappointed. The committee shall ~~((be composed of representatives of public water systems, public groups, agencies, and individuals having an interest in drinking water))~~ reflect a broad range of interests in the regulation of public water supplies, including water utilities of all sizes, local governments, business groups, special purpose districts, local health jurisdictions, other state and federal agencies, financial institutions, environmental organizations, the legislature, professional engineers engaged in water system design, and other groups substantially affected by the department's role in implementing state and federal requirements for public water systems.

(6) The department may develop ~~((guidelines))~~ guidance to clarify sections of the rules as needed and make these available for distribution. Copies of the guidance may be obtained by contacting the division of drinking water.

(7) Fees may be charged and collected by the department as authorized in chapter 43.20B RCW and by local health agencies as authorized in RCW 70.05.060 to recover all or a portion of the costs incurred in administering ~~((these rules))~~ this chapter or that are required to be paid under WAC 246-290-990.

(8) All state and local agencies involved in review, approval, surveillance, testing, and/or operation of public water systems, or issuance of permits for buildings or sewage systems shall be governed by these rules and any decisions of the department.

NEW SECTION

WAC 246-290-035 Water system ownership. (1) The following requirements apply to all newly developed public water systems:

(a) Except for systems proposed within an individual water system's approved service area in a critical water supply service area as governed by the Public Water System Coordination Act, chapter 70.116 RCW and chapter 246-293 WAC, and offered service by that existing system, any proposed new public water system must be owned or operated by a department approved satellite management agency (SMA) if one is available;

(b) The approval of any proposed new public water system shall be conditioned upon the periodic review of the system's operational history to determine its ability to meet the department's financial viability and other operating require-

ments. If, upon periodic review, the department determines the system is in violation of financial viability or other operating requirements, the system shall transfer ownership to an approved SMA or obtain operation and management by an approved SMA, if such ownership or operation and management can be made with reasonable economy and efficiency.

(2) An owner of a public water system who is proposing to transfer or has transferred ownership shall:

(a) Provide written notice to the department and all consumers at least one year prior to the transfer, unless the new owner agrees to an earlier date. Notification shall include a time schedule for transferring responsibilities, identification of the new owner, and under what authority the new ownership will operate. If the system is a corporation, identification of the registered agent shall also be provided;

(b) Ensure all health-related standards pursuant to this chapter are met during transfer of the utility. It shall also be the responsibility of the utility transferring ownership to inform and train the new owner regarding operation of the utility; and

(c) Comply with the operating permit requirements pursuant to chapter 246-294 WAC.

(3) The purveyor may be required to document compliance with other relevant ownership requirements, such as those pursuant to UTC jurisdiction under Title 80 RCW.

(4) No purveyor may end utility operations without providing written notice to all customers and to the department at least one year prior to termination of service. A purveyor that fails to provide such notice remains subject to the provisions of this chapter.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-040 Engineering requirements. (1) Purveyors shall ensure that all work required to be prepared under the direction of a professional engineer, including, but not limited to, water system plans, project reports, corrosion control recommendation reports, tracer studies, ((and)) construction documents ((are)) and construction completion reports, and engineering design review reports for distribution-related submittal exceptions, is prepared under the direction, and bears the seal, date, and signature of a professional engineer:

(a) Licensed in the state of Washington under chapter 18.43 RCW; and

(b) Having specific expertise regarding design, operation, and maintenance of public water systems.

(2) Exceptions to this requirement are ~~((minor))~~ projects identified under WAC ((246-290-120 (2)(a) through (d))) 246-290-125 (1)(a) through (d).

~~((2))~~ Purveyors shall submit a Construction Report For Public Water System Projects to the department within sixty days of completion and before use of any project approved by the department. The form shall:

~~(a) Be signed by a professional engineer.~~

~~(b) State:~~

~~(i) The project is constructed and is substantially completed in accordance with approved construction documents; and~~

~~(ii) In the opinion of the engineer, based on information available, the installation, testing, and disinfection of the system was carried out per department guidelines.~~

~~(3) The purveyor shall ensure the requirements of this section are fulfilled before the use of any completed project. When required by the department, the purveyor shall submit an updated water facilities inventory form with the Construction Report For Public Water System Projects form.))~~

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-050 Enforcement. When any purveyor is out of compliance with ~~((these rules))~~ a law or rule regulating public water systems and administered by the department, the department may initiate appropriate enforcement actions, regardless of any prior approvals issued ~~((by the department))~~. These actions may include, but are not limited to, any one or combination of the following:

(1) Notice of violation instructing or requiring appropriate corrective measures;

(2) Compliance schedule for specific actions necessary to achieve compliance status;

(3) Departmental order requiring submission of project reports, construction documents, and construction report forms;

(4) Departmental order requiring specific actions or ceasing unacceptable activities within a designated time period;

(5) Departmental order to stop work and/or refrain from using any public water system or improvements thereto until all written approvals required by statute or rule are obtained;

(6) Imposition of civil penalties ~~((for failure to comply with departmental orders))~~ may be issued for up to ~~((5,000))~~ five thousand dollars per day per violation, or, in the case of a violation that has been determined to be a public health emergency, a penalty of not more than ten thousand dollars per day per violation under authority of chapter 70.119A RCW; ~~((and))~~

(7) Imposition of civil penalties may be issued to a person who constructs, modifies, or expands a public water system or who commences the construction, modification, or expansion of a public water system without first obtaining the required department approval. The amount of the penalty may be up to five thousand dollars per service connection, or, in the case of a system serving a transient population, a penalty of not more than four hundred dollars per person based on the highest average daily population the system serves or is anticipated to serve. The total penalty that may be imposed pursuant to this subsection and RCW 70.119A.040 (1)(b) is five hundred thousand dollars;

(8) Action that requires the purveyor to take preventive or corrective steps when results of a sanitary survey or special purpose investigation conducted by, or on behalf of, the department indicate conditions that are currently or may become a detriment to system operation;

(9) Legal action may be taken by the attorney general or local prosecutor. The legal action may be criminal or civil.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-060 Variances, exemptions, and waivers. (1) General.

(a) The state board of health may grant variances, exemptions, and waivers of the requirements of this chapter according to the procedures outlined in subsection (5) of this section. See WAC 246-290-300 ~~((3))~~ (4)(g) and (7)(f) for monitoring waivers.

(b) Consideration by the board of requests for variances, exemptions, and waivers shall not be considered adjudicative proceedings as that term is defined in chapter 34.05 RCW.

(c) Statements and written material regarding the request may be presented to the board at or before the public hearing wherein the application will be considered. Allowing cross-examination of witnesses shall be within the discretion of the board.

(d) The board may grant a variance, exemption, or waiver if it finds:

(i) Due to compelling factors, the public water system is unable to comply with the requirements; and

(ii) The granting of the variance, exemption, or waiver will not result in an unreasonable risk to the health of consumers.

(2) Variances.

(a) MCL.

(i) The board may grant a MCL variance to a public water system that cannot meet the MCL requirements because of characteristics of the source water that is reasonably available to the system.

(ii) A MCL variance may only be granted after the system has applied the best available technology (BAT), treatment techniques, or other means as identified by the environmental protection agency (EPA) and still cannot meet ~~((a))~~ an MCL standard as specified in section 1415, ~~((P.L. 99-523))~~ Public Law 93-523 (federal Safe Drinking Water Act) as amended by ~~((P.L.))~~ Public Law 99-339 (SDWA amendments of 1986), and Public Law 104-182 (SDWA amendments of 1996), as codified at 42 USC 300g-4.

(iii) A variance shall not be granted from the MCL for presence of total coliform under WAC 246-290-310 ~~((3))~~ (2).

(b) Treatment techniques.

(i) The board may grant a treatment technique variance to a public water system if the system demonstrates that the treatment technique is not necessary to protect the health of consumers because of the nature of the system's source water.

(ii) A variance shall not be granted from any treatment technique requirement under Part 6 of chapter 246-290 WAC.

(c) The board shall condition the granting of a variance upon a compliance schedule as described in subsection (6) of this section.

(3) Exemptions.

(a) The board may grant a MCL or treatment technique exemption to a public water system that cannot meet an MCL standard or provide the required treatment in a timely manner, or both, as specified under section 1416, ~~((P.L.))~~ Public Law 93-523 (federal Safe Drinking Water Act) as amended

by ~~((P.L.))~~ Public Law 99-339 (SDWA amendments of 1986), and Public Law 104-182 (SDWA amendments of 1996), as codified at 42 USC 300g-4.

(b) An exemption may be granted for up to one year if the system was:

(i) In operation on the effective date of the MCL or treatment technique requirement; or

(ii) Not in operation on the effective date, and no reasonable alternative source of drinking water is available.

(c) No exemption shall be granted from:

(i) The requirement to provide a residual disinfectant concentration in the water entering the distribution system under WAC 246-290-662 or 246-290-692; or

(ii) The MCL for presence of total coliform under WAC 246-290-310(2).

(d) The board shall condition the granting of an exemption upon a compliance schedule as described in subsection (6) of this section.

(4) Waivers. The board may grant a waiver to a public water system if the system cannot meet the requirements of these regulations pertaining to any subject not covered by EPA regulations.

(5) Procedures.

(a) For variances and exemptions. The board shall consider granting a variance or exemption to a public water system upon completion of the following actions:

(i) The purveyor applies in writing to the department. The application, which may be in the form of a letter, shall clearly state the reason for the request and what actions the purveyor has taken to meet the requirement;

(ii) The purveyor provides notice of the purveyor's application to ~~((customers))~~ consumers and provides proof of such notice to the department;

(iii) The department prepares recommendations, including a compliance schedule for the board's consideration;

(iv) The board provides notice for and conducts a public hearing on the purveyor's request~~((:));~~ and

(v) EPA reviews any variance or exemption granted by the board for concurrence, revocation, or revision as provided under sections 1415 and 1416 of ~~((P.L.))~~ Public Law 93-523 (federal Safe Drinking Water Act), as amended, codified at 42 USC 300g-4.

(b) For waivers. The board shall consider granting a waiver upon completion of the following actions:

(i) The purveyor applies to the department in writing. The application, which may be in the form of a letter, shall clearly state the reason for the request;

(ii) The purveyor provides notice of the purveyor's application to ~~((customers))~~ consumers and provides proof of such notice to the department;

(iii) The department prepares a recommendation to the board; and

(iv) The board provides notice for and conducts a public hearing on the purveyor's request.

(6) Compliance schedule.

(a) The board shall condition the granting of a variance or exemption based on a compliance schedule. The compliance schedule shall include:

(i) Actions the purveyor ~~((must))~~ shall undertake to comply with a MCL or treatment technique requirement within a specified time period; and

(ii) A description and time-table for implementation of interim control measures the department may require while the purveyor completes the actions required in (a)(i) of this subsection.

(b) The purveyor shall complete the required actions in the compliance schedule within the stated time frame.

(7) Extensions to exemptions.

(a) The board may extend the final date of compliance prescribed in the compliance schedule for a period of up to three years after the date the exemption was granted upon a finding that the water system:

(i) Cannot meet the MCL or treatment technique requirements without capital improvements ~~((which))~~ that cannot be completed within the original exemption period; ~~((or))~~

(ii) Has entered into an agreement to obtain needed financial assistance for necessary improvements; or

(iii) Has entered into an enforceable agreement to become part of a regional public water system and the system is taking all practicable steps to meet the MCL.

(b) The board may extend the final date of compliance prescribed in the compliance schedule of an exemption for one or more additional two-year periods if the purveyor:

(i) Is a community water system providing water to less than five hundred service connections; ~~((and))~~

(ii) Needs financial assistance for the necessary improvements; and

(iii) Is taking all practicable steps to meet the compliance schedule.

(c) Procedures listed in subsection (5) of this section shall be followed in the granting of extensions to exemptions.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-100 Water system plan. (1) The purpose of this section is to establish a uniform process for purveyors to:

(a) ~~((Identify present and future needs))~~ Demonstrate the system's operational, technical, managerial, and financial capability to achieve and maintain compliance with relevant local, state, and federal plans and regulations;

(b) ~~((Set forth means for addressing those needs; and))~~ Demonstrate how the system will address present and future needs in a manner consistent with other relevant plans and local, state, and federal laws, including applicable land use plans;

(c) ~~((Do so in a manner consistent with other relevant plans and local, state, and federal laws))~~ Establish eligibility for funding pursuant to the drinking water state revolving fund.

(2) Purveyors of the following categories of community public water systems shall ~~((ensure the development and submittal of))~~ submit a water system plan for review and approval by the department:

(a) ~~((A))~~ Systems having one thousand or more services;

(b) ~~Systems (located in areas utilizing)~~ required to develop water system plans under the Public Water System Coordination Act of 1977 (chapter 70.116 RCW) ~~(and chapter 248-56 WAC as required in WAC 246-293-230))~~;

(c) Any system experiencing problems related to planning, operation, and/or management as determined by the department;

(d) All new systems;

(e) Any expanding system;

(f) ~~Any system for which a change of ownership is proposed~~); and

(g) ~~(All new systems.)~~ Any system proposing to use the document submittal exception process in WAC 246-290-125.

(3) The ~~(department)~~ purveyor shall work with the ~~(purveyor)~~ department and other parties to establish the level of detail for a water system plan. In general, the scope and detail of the plan will be related to size ~~(and)~~, complexity, past performance, and use of the water system. Project reports may be combined with a water system plan.

(4) In order to demonstrate system capacity, the water system plan shall address the following elements, as a minimum, for a period of at least twenty years into the future ~~(A department guideline titled *Planning Handbook* is available to assist the utility in adequately addressing these elements))~~:

(a) ~~(Basic water system planning data;~~

(b) ~~Existing system analysis;~~

(c) ~~Planned improvements;~~

(d) ~~Conservation;~~

(e) ~~Source of supply analysis when additional water rights are being pursued;~~

(f) ~~Financial viability;~~

(g) ~~Consistency with adjacent water system plans;~~

(h) ~~Consistency with applicable land use plans;~~

(i) ~~Supporting maps;~~

(j) ~~Operations program;~~

(k) ~~Ownership and management;~~

(l) ~~State Environmental Policy Act; and~~

(m) ~~Source protection, including a watershed control program or wellhead protection program when applicable under WAC 246-290-135.~~

(5) Description of the water system, including:

(i) Ownership and management, including the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system;

(ii) System history and background;

(iii) Related plans, such as coordinated water system plans, abbreviated coordinated water system plans, local land use plans, ground water management plans, and basin plans;

(iv) Service area map, characteristics, agreements, and policies; and

(v) Satellite management, if applicable.

(b) Basic planning data, including:

(i) Current population, service connections, water use, and equivalent residential units; and

(ii) Projected land use, future population, and water demand for a consecutive six-year and final twenty-year planning period within the system's service area.

(c) System analysis, including:

(i) System design standards;

(ii) Water quality analysis;

(iii) System inventory description and analysis; and

(iv) Summary of system deficiencies.

(d) Water resource analysis, including:

(i) Development and implementation of a cost-effective conservation program, which includes evaluation of conservation-oriented water rate structures;

(ii) Water demand forecasts;

(iii) Water use data collection;

(iv) Source of supply analysis, which includes an evaluation of water supply alternatives if additional water rights will be pursued within twenty years;

(v) Water shortage response plan if a water system experiences a water shortage, or anticipates it will experience a water shortage within the next six-year planning period;

(vi) Water right assessment;

(vii) Water supply reliability analysis; and

(viii) Interties.

(e) Source water protection in accordance with WAC 246-290-135.

(f) Operation and maintenance program in accordance with WAC 246-290-415 and 246-290-654(5), as applicable.

(g) Improvement program, including a six-year capital improvement schedule.

(h) Financial program, including demonstration of financial viability by providing:

(i) A summary of past income and expenses;

(ii) A one-year balanced operational budget for systems serving one thousand or more connections or a six-year balanced operational budget for systems serving less than one thousand connections;

(iii) A plan for collecting the revenue necessary to maintain cash flow stability and to fund the capital improvement program and emergency improvements; and

(iv) A rate structure that has considered:

(A) The affordability of water rates; and

(B) The feasibility of adopting and implementing a rate structure that encourages water conservation.

(i) Other documents, such as:

(i) Documentation of SEPA compliance;

(ii) Agreements; and

(iii) Comments from the county and adjacent utilities.

(5) Purveyors intending to implement the project report and construction document submittal exceptions authorized under WAC 246-290-125 must include:

(a) Standard construction specifications for distribution mains; and/or

(b) Design and construction standards for distribution-related projects, including:

(i) Description of project report and construction document internal review procedures, including engineering design review and construction completion reporting requirements;

(ii) Construction-related policies and requirements for external parties, including consumers and developers;

(iii) Performance and sizing criteria; and

(iv) General reference to construction materials and methods.

(6) The department, at its discretion, may require reports from purveyors identifying the progress in developing their water system plans.

~~((6))~~ (7) Purveyors shall transmit water system plans to adjacent utilities and local governments having jurisdiction, to assess consistency with ongoing and adopted planning efforts.

~~((7))~~ (8) For community systems, the purveyor shall hold an informational meeting for system consumers prior to departmental approval of a water system plan or a water system plan update. The purveyor shall notify consumers in a way that is appropriate to the size of the system.

(9) Department approval of a water system plan shall be in effect for six years from the date of written approval unless:

(a) Major ~~((system improvements are contemplated which))~~ projects subject to SEPA as defined in WAC 246-03-030 (3)(a) are proposed that are not addressed in the plan;

(b) Changes occur in the basic planning data significantly affecting system improvements identified; or

(c) The department requests an updated plan or plan amendment.

~~((8))~~ (10) The purveyor shall update the plan and submit it for approval at least every six years. ~~((However, if only minor alterations to an existing plan are considered necessary, the purveyor may submit an amendment to the plan for department approval.~~

~~(9) Project reports and construction documents submitted for approval per WAC 246-290-110 and 246-290-120 by purveyors required to have a water system plan, will not be considered for approval unless there is a current approved water system plan and the plan adequately addresses the project))~~ If the system no longer meets the conditions of subsection (2) of this section, the purveyor shall as directed by the department, submit either a plan amendment the scope of which will be determined by the department, or a small water system management program under WAC 246-290-105.

NEW SECTION

WAC 246-290-105 Small water system management program. (1) The purpose of a small water system management program is to:

(a) Demonstrate the system's operational, technical, managerial, and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations; and

(b) Establish eligibility for funding pursuant to the drinking water state revolving fund.

(2) All noncommunity and all community systems not required to complete a water system plan as described under WAC 246-290-100(2) shall develop and implement a small water system management program.

(3) The purveyor shall submit this program for review and approval to the department when:

(a) A new NTNC public water system is created; or

(b) An existing system has operational, technical, managerial, or financial problems, as determined by the department.

(4) Content and detail shall be consistent with the size, complexity, past performance, and use of the public water

system. General content topics shall include, but not be limited to, the following elements:

(a) System management;

(b) Annual operating permit;

(c) Water facilities inventory form;

(d) Service area and facility map;

(e) Documentation of water rights, through a water right assessment;

(f) Record of source water pumped;

(g) Water usage;

(h) Water conservation program;

(i) Source protection;

(j) Component inventory and assessment;

(k) List of planned system improvements;

(l) Water quality monitoring program;

(m) Operation and maintenance program;

(n) Cross-connection control program;

(o) Emergency response plan; and

(p) Budget.

(5) The department may require changes be made to a small water system management program if necessary to effectively accomplish the program's purpose.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-110 Project report. (1) ~~((The purpose of this section is to assure the following factors are taken into account for specific projects prior to construction:~~

~~(a) Engineering concepts;~~

~~(b) Design criteria;~~

~~(c) Planning;~~

~~(d) Source protection, including a watershed control program or wellhead protection program when applicable under WAC 246-290-135;~~

~~(e) Water quality and quantity;~~

~~(f) Results of the filtration facility pilot study;~~

~~(g) Local requirements such as fire flow;~~

~~(h) Facility operation;~~

~~(i) Short-term and long-term financing; and~~

~~(j) Other necessary department-determined considerations.~~

The project report shall document the reasons for carrying out the project and construction documents shall identify how the project will be constructed.

~~(2) The purveyor shall submit project reports to the department for written approval prior to installation of any new water system, water system extension, or improvement with the following exceptions:~~

~~(a) Installation of valves, fittings, and meters;~~

~~(b) Installation of hydrants under WAC 246-290-230;~~

~~(c) Repair of a system component or replacement with a similar component;~~

~~(d) Maintenance or painting of surfaces not contacting potable water; and~~

~~(e) Distribution mains if:~~

~~(i) Approved standard construction specifications are documented in the water system plan approved by the department; and~~

(ii) The purveyor provides documentation to the department that a professional engineer registered in Washington, certified the construction and that said construction complied with the standard specifications found in the current department approved water system plan; and

(iii) The purveyor provides documentation to the department of the pressure test results, disinfection procedures used and tests performed, and water quality sample results obtained prior to placing the distribution pipe into service.

(3) Project reports shall be consistent with the standards identified under WAC 246-290-200 and shall include, at a minimum, the following elements (information contained in a current approved water system plan or current project report need not be duplicated in the new project report. Any planning information in a project report shall be project specific.):

(a) Project description. Identify what the project is intended to achieve, design considerations, approach, etc.;

(b) Planning. If the system has an approved water system plan, show the project's relationship to the plan. If a water system plan is not required, include:

(i) General project background with population and water demand forecasts;

(ii) Relationship between the project and other system components;

(iii) Project schedule;

(iv) Management program; and

(v) How the project will impact neighboring water systems.

(c) Alternatives. Describe options, their impacts, and justify the selected alternative;

(d) Legal considerations. Identify legal aspects such as ownership, right-of-way, sanitary control area, and restrictive covenants. Include discussion of the project's relationship with the boundary review board and the utility and transportation commission;

(e) Engineering calculations. Describe how the project complies with the design considerations. Include the hydraulic analysis, sizing justification, and other relevant technical considerations necessary to support the project;

(f) Management. If the system has an approved management program, refer to that document. If not, describe:

(i) System ownership and management responsibilities;

(ii) Long-term management considerations;

(iii) How the project will be operated; and

(iv) How the project will be maintained over time.

(g) Implementation. Identify the schedule for completion of the project and implementation strategies, if any. Project phasing should also be discussed;

(h) State Environmental Policy Act (SEPA). Include an environmental impact statement, determination of nonsignificance, or justify why SEPA does not apply to the project. Refer to chapter 246-03 WAC and the *DOH Drinking Water SEPA Guide*;

(i) Source development information. If the project involves source development, address requirements under WAC 246-290-130; and

(j) Type of treatment. If the project involves treatment, refer to WAC 246-290-250.

(4) Approval of project documents shall be in effect for two years unless the department determines a need to with-

draw the approval. An extension of the approval may be obtained by submitting a status report and a written schedule for completion. Extensions may be subject to additional terms and conditions imposed by the department.) The project report is a written document that describes why a project is being proposed and includes engineering design calculations showing how the project will meet its objectives.

(2) The purveyor shall submit project reports to the department and receive written approval prior to installation or construction of any new water system, water system extension, or improvement. The department may require the submittal of a project report for the purpose of resolving a system operational problem. Exceptions to this requirement are listed in WAC 246-290-125.

(3) Project reports submitted for approval by purveyors who are required to have a water system plan will not be considered for approval unless a current, approved water system plan that adequately addresses the project is on file with the department. In the event that a purveyor of an existing system does not have such a plan, the department may enter into a compliance agreement with the purveyor that grants a time extension to complete the water system plan.

(4) Project reports shall be consistent with the standards identified in Part 3 of this chapter. Depending on the complexity and type of project or problem, shall include the following elements (information contained in a current water system plan or other engineering document previously approved by the department need not be duplicated, but must be specifically referenced):

(a) Project description, including:

(i) Why the project is being proposed, how problem(s) (if any) are to be addressed, and the relationship of the project to other system components;

(ii) A statement of State Environmental Policy Act (SEPA) determination of nonsignificance or justification of why SEPA does not apply to project;

(iii) If applicable, source development information (refer to WAC 246-290-130, Source approval, WAC 246-290-132, Interties, and WAC 246-290-135, Source protection);

(iv) If applicable, type of treatment (refer to WAC 246-290-250, Water treatment and Part 6, Surface water treatment); and

(v) A summary of consumer and user complaints.

(b) Planning data. If a purveyor has a water system plan or small water system management program, the project report shall indicate the proposed project's relationship to the plan. If the purveyor is not required by WAC 246-290-100 to have a water system plan, planning related information shall include:

(i) General project background with population and water demand forecasts;

(ii) How the project will impact neighboring water systems;

(iii) Local requirements, such as fire flow;

(iv) Additional management responsibilities in accordance with WAC 246-290-105, Small water system management program, WAC 246-290-415, Operations and maintenance, and chapter 246-292 WAC, Waterworks operator certification regulations;

(v) Implementation strategies or proposed construction schedule;

(vi) Estimated capital and annual operating cost, and method of financing, if applicable.

(c) An analysis of alternatives, including description of options and rationale for selecting the proposed option.

(d) A review of water quality as it relates to the purpose of the proposed project. If a project involves treatment and/or a filtration facility pilot study, refer to departmental guidance, reporting requirements for corrosion control under 40 CFR 141.90, and tracer studies under WAC 246-290-636(5).

(e) When the project involves a new source or an increase in system physical capacity, a review of water quantity, including a water rights assessment, unless such an assessment has previously been submitted in a water system plan or small water system management program that has been approved by the department. The purveyor shall take any follow-up action as directed by the department, to determine conformance with applicable state water rights laws.

(f) Engineering calculations including sizing justification, hydraulic analysis, physical capacity analysis, and other relevant technical considerations necessary to support the project.

(g) Design and construction standards, including performance standards, construction materials and methods, and sizing criteria, if applicable.

(h) Project reports for the design of treatment facilities shall include the following:

(i) Detailed design criteria and calculations to support the proposed treatment processes, process control, and process utilities; and

(ii) Proposed methods and schedules for start-up, testing, and operation of the completed treatment facility.

(i) Legal considerations, such as ownership, right-of-way, sanitary control area (SCA), restrictive covenants, restrictions related to water use that are recorded on titles or deeds to properties, and relationship with the boundary review board and the utilities and transportation commission (UTC).

(j) Other necessary department-determined considerations.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-120 Construction documents. (1) ~~((The purpose of this section is to assure detailed plans, specifications, drawings, and other documents are adequately prepared for specific projects.))~~ Construction documents shall identify how specific projects will be constructed while ~~((the project report documents the reasons for carrying out the project))~~ satisfying the requirements and conditions established in the project report and/or the water system plan.

(2) Purveyors shall submit construction documents to the department for written approval prior to installation of any new water system, or water system extension or improvement ~~((with the following exceptions:~~

(a) Installation of valves, fittings, and meters;

(b) Installation of hydrants per WAC 246-290-230(3);

~~(c) Repair of a system component or replacement with a similar component;~~

~~(d) Maintenance or painting of surfaces not contacting potable water; or~~

~~(e) Distribution mains if:~~

~~(i) Approved water system plan documents standard construction specifications approved by the department; and~~

~~(ii) The purveyor provides documentation to the department that a professional engineer registered in Washington, certified the construction and that said construction complied with the standard specifications found in the current department-approved water system plan; and~~

~~(iii) The purveyor provides documentation to the department of the pressure test results, disinfection procedures used and tests performed, and water quality sample results obtained prior to placing the distribution pipe into service)). Exceptions to this requirement are listed in WAC 246-290-125.~~

(3) Construction documents submitted for approval by purveyors who are required to have a water system plan will not be considered for approval unless a current, approved water system plan that adequately addresses the project is on file with the department. In the event that a purveyor of an existing system does not have such a plan, the department may enter into a compliance agreement with the purveyor that grants a time extension to complete the water system plan.

(4) Construction documents shall be consistent with the standards identified in ((WAC 246-290-200)) **Part 3 of this chapter** and shall include, at a minimum, the following:

(a) Drawings. Include detailed drawings of each project component;

(b) Material specifications. List detailed material specifications for each project component;

(c) Construction specifications.

(i) List detailed construction specifications and assembly techniques for carrying out the project;

~~((d))~~ (ii) Testing. Identify testing criteria and procedures for each applicable portion of the project;

~~((e))~~ (iii) Disinfection. Identify specific disinfection procedures ~~((which must))~~ that shall conform with American Water Works Association (AWWA) standards or other standards acceptable ~~((by))~~ to the department;

~~((f))~~ (iv) Inspection. Identify provisions for inspection of the installation of each project component. See WAC 246-290-040 and subsection (5) of this section for construction reporting requirements; ~~((and~~

~~((g))~~ (d) Change orders. All significant changes ~~((except for minor field revisions must))~~ shall be submitted to and approved by the department in writing. The change order must identify who will be responsible for obtaining departmental approval and how change orders will be reported to the department. Significant means a change in materials used, deviations from original intent of project, or changes made to the physical capacity of the project;

~~((h))~~ (e) Record drawings. Record drawings provided to the purveyor following the completion of the project shall be maintained and available to the department upon request.

(5) Purveyors shall submit a construction completion report (departmental form) to the department within sixty

days of completion and before use of distribution-related projects in accordance with WAC 246-290-125 (3)(f), or other project approved for construction by the department. Exceptions to this requirement are projects listed in WAC 246-290-125(1). The form shall:

(a) Bear the seal, date, and signature of a professional engineer licensed in the state of Washington;

(b) State the project is constructed and is completed in accordance with department regulations and principles of standard engineering practice, including physical testing procedures, water quality tests, and disinfection practices; and

(c) Document system physical capacity to serve consumers if the project results in a change (increase or decrease) in physical capacity.

(6) The purveyor shall submit a new or updated water facilities inventory (WFI) form (departmental form) with the construction completion report (departmental form) for a new water system, whenever there are changes or additions to an existing water system that would change information of the WFI, or when required by the department.

(7) If the project results in an increase in the water system's physical capacity, the purveyor shall submit a water right assessment, unless such an assessment has previously been submitted in a project report, water system plan, or small water system management program, that has been approved by the department. The purveyor shall take any follow-up action, as directed by the department, to determine conformance with applicable state water rights laws.

(8) Approval of construction documents shall be in effect for two years unless the department determines a need to withdraw the approval. An extension of the approval may be obtained by submitting a status report and a written schedule for completion. Extensions may be subject to additional terms and conditions imposed by the department.

~~(((5) A department guideline titled *Planning Handbook* is available to assist the utility in meeting the planning-related requirements of this section.))~~

(9) The purveyor shall fulfill the requirements of this section before the use of any completed project.

(10) Purveyors of new water systems must meet the ownership requirements of WAC 246-290-035 and the water system planning requirements of WAC 246-290-100 or 246-290-105 before the department will review and approve the purveyors' construction documents.

NEW SECTION

WAC 246-290-125 Project report and construction document submittal exceptions. (1) The following projects do not require project reports in accordance with WAC 246-290-110 and construction documents in accordance with WAC 246-290-120 to be submitted to the department for review and approval prior to installation:

(a) Installation of valves, fittings, and meters, including backflow prevention assemblies;

(b) Installation of hydrants in accordance with WAC 246-290-230 (3) and (6);

(c) Repair of a system component or replacement with a component of a similar capacity and material in accordance

with the original construction specifications of the approved design; or

(d) Maintenance or painting of surfaces not contacting potable water.

(2) Purveyors may elect to not submit to the department for review and approval project reports in accordance with WAC 246-290-110 and construction documents in accordance with WAC 246-290-120 for new distribution mains providing:

(a) The purveyor water system has on file with the department a current department-approved water system plan that includes standard construction specifications for distribution mains; and

(b) The purveyor maintains on file a completed construction completion report (departmental form) in accordance with WAC 246-290-120(5) and makes it available for review upon request by the department.

(3) Purveyors may elect to not submit to the department for review and approval project reports in accordance with WAC 246-290-110 and construction documents in accordance with WAC 246-290-120 for review and approval of other distribution-related projects as defined in WAC 246-290-010 providing:

(a) The purveyor has on file with the department a current department-approved water system plan, in accordance with WAC 246-290-100(5);

(b) The purveyor submits a written request with a new water system plan or an amendment to a water system plan, and updates the request with each water system plan update. The written request should specifically identify the types of projects or facilities for which the submittal exception procedure is requested;

(c) The purveyor has documented that they have employed or hired under contract the services of a professional engineer licensed in the state of Washington to review distribution-related projects not submitted to the department for review and approval. The review engineer and design engineer shall not be the same individual. The purveyor shall provide written notification to the department whenever they proposed to change their designated review engineer;

(d) If the project is a new transmission main, storage tank, or booster pump station, it must be identified in the capital improvement program of the utility's water system plan. If not, either the project report must be submitted to the department for review and approval, or the water system plan must be amended;

(e) A project summary file is maintained by the purveyor for each project and made available for review upon request by the department, and includes:

(i) Descriptive project summary;

(ii) Anticipated completion schedule;

(iii) Consistency with utility's water system plan;

(iv) Water right assessment, where applicable;

(v) Change in system physical capacity;

(vi) Copies of original design and record drawings;

(vii) Engineering design review report (departmental form). The form shall:

(A) Bear the seal, date, and signature of a professional engineer licensed in the state of Washington prior to the start of construction;

(B) Provide a descriptive reference to completed project report and/or construction documents reviewed, including date of design engineer's seal and signature; and

(C) State the project report and/or construction documents have been reviewed, and the design is in accordance with department regulations and principles of standard engineering practice;

(f) The construction completion report is submitted to the department in accordance with WAC 246-290-120(5) for new storage tanks and booster pump stations, and maintained on file with the water system for all other distribution-related projects;

(g) A WFI is completed in accordance with WAC 246-290-120(6); and

(h) The purveyor meets the requirements of chapter 246-294 WAC to have a category "green" operating permit.

(4) Source of supply (including interties) and water quality treatment-related projects shall not be eligible for the submittal exception procedure.

(5) Purveyors not required to prepare a water system plan under WAC 246-290-100 shall be eligible for the submittal exception procedure provided that:

(a) They have a department-approved water system plan meeting the requirements of WAC 246-290-100; and

(b) They comply with all other requirements in this section.

(6) Purveyors shall ensure that all work required to be prepared under the direction of a professional engineer be accomplished per WAC 246-290-040 and chapter 18.43 RCW.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-130 Source approval. (1) ~~(No new source, previously unapproved source, or modification of an existing source shall be used as a public water supply without department approval.~~

~~(2) A party seeking approval shall provide the department:~~

~~(a) A copy of the water right permit, if required, obtained from the department of ecology for the source, quantity, type, and place of use;~~

~~(b) A hydrogeologic assessment of the proposed source along with a general description of the watershed, spring, and/or aquifer recharge area affecting the quantity or quality of flow. Seasonal variation shall also be included;~~

~~(c) Any information, in addition to (b) of this subsection, as requested by the department to determine whether a source is a GWI;~~

~~(d) For surface water and GWI sources, the watershed control program identified under WAC 246-290-135 and Part 6 of chapter 246-290 WAC;~~

~~(e) For wells and springs:~~

~~(i) A susceptibility assessment;~~

~~(ii) A preliminary WHPA designation using the calculated fixed radius method, with six month, one, five, and ten year time of travel criteria; and~~

~~(iii) An initial inventory of potential sources of ground water contamination located within the WHPA.~~

~~(f) Upstream water uses affecting either water quality or quantity;~~

~~(g) A map showing the project location and vicinity;~~

~~(h) A map depicting topography, distances to the surface water intake, well or spring from existing property lines, buildings, potential sources of contamination, ditches, drainage patterns, and any other natural or man-made features affecting the quality or quantity of water;~~

~~(i) The dimensions and location of the sanitary control area under WAC 246-290-135;~~

~~(j) Copies of the recorded legal documents for the sanitary control area under WAC 246-290-135;~~

~~(k) A copy of the on-site inspection approval made by the department or local health department representative;~~

~~(l) A copy of the water well report including the Washington well identification number, depth to open interval or top of screened interval, overall depth of well, and location (both plat location and latitude/longitude);~~

~~(m) Required construction documents in accordance with WAC 246-290-120;~~

~~(n) Documentation of source meter installation;~~

~~(o) Well source development data establishing the capacity of the source. Data shall include:~~

~~(i) Static water level;~~

~~(ii) Wellhead elevation;~~

~~(iii) Yield;~~

~~(iv) The amount of drawdown;~~

~~(v) Recovery rate;~~

~~(vi) Duration of pumping; and~~

~~(vii) Interference between existing sources and the source being tested.~~

~~The source shall be pump tested at no less than the maximum design rate to determine whether the well and aquifer are capable of supplying water at the rate desired and to provide information necessary to determine the proper pump settings in the well. A department guideline on pump testing is available to assist purveyors;~~

~~(p) An initial analysis result of source water quality, including as a minimum the following:~~

~~(i) Bacteriological;~~

~~(ii) Complete inorganic chemical and physical;~~

~~(iii) VOC;~~

~~(iv) Radionuclide (if source being approved is for a community system); and~~

~~(v) Any other information required by the department.~~

~~When source water quality is subject to variation, the department may require additional analyses to define the range of variation;~~

~~(q) If treatment is planned, refer to WAC 246-290-250(2) and Part 6 of chapter 246-290 WAC, if applicable; and~~

~~(r) Other department required information. Before initiating source development or modification, the purveyor shall contact the department to identify any such additional information:~~

~~(3) The department shall issue a written source approval when:~~

~~(a) The purveyor submits the necessary information to the satisfaction of the department; and~~

~~(b) The developed source provides water complying with this chapter.~~

~~(4) No new surface water or GWI sources with less than one hundred service connections shall be approved unless the system is owned and operated by an approved satellite management agency.)) Every purveyor shall obtain drinking water from the highest quality source feasible. No new source, previously unapproved source, or modification of an existing source shall be used as a public water supply without department approval. No intake or other connection shall be maintained between a public water system and a source of water not approved by the department.~~

~~(2) Before initiating source development or modification, the purveyor shall contact the department to identify submittal requirements.~~

~~(3) Any party seeking source approval shall provide the department sufficient documentation, in a project report, construction documents, or in supplemental documents, that the source:~~

~~(a) Is reasonable and feasible for the type and size of the system;~~

~~(b) May legally be used in conformance with state water rights laws;~~

~~(c) Supplies water that is physically and reliably available in the necessary quantities, as shown in:~~

~~(i) A hydrogeologic assessment of the proposed source;~~

~~(ii) A general description of the watershed, spring, and/or aquifer recharge area affecting the quantity or quality of flow, which includes seasonal variation and upstream water uses that may significantly affect the proposed source;~~

~~(iii) For ground water and spring sources, well source development data that are available from a pump test at the maximum design rate and duration, or are available from other sources of information, that establish pump settings (depth) in the well and demonstrate adequacy of water quantity to meet design criteria while not leading to water quality problems;~~

~~(iv) For ground water and spring sources, installation of a source meter or other equivalent device that reliably measures volume of flow into the system;~~

~~(d) Is, or is not, a GWI under WAC 246-290-640, and meets or can meet the applicable requirements for GWI sources as described in that section including treatment;~~

~~(e) Adequately provides for source protection, as shown in:~~

~~(i) For surface water and GWI sources, the watershed control program identified under WAC 246-290-135 and Part 6 of this chapter;~~

~~(ii) For wells, a preliminary department susceptibility assessment or equivalent information, and preliminary WHPA delineation and contaminant inventory, under the requirements for sanitary control and wellhead protection under WAC 246-290-135;~~

~~(f) Is designed and constructed in conformance with this chapter, and relevant requirements of chapter 173-160 WAC (department of ecology well construction standards);~~

~~(g) Meets water quality standards under WAC 246-290-310, as shown in an initial water quality analysis that includes, at a minimum, the following:~~

~~(i) Bacteriological;~~

~~(ii) Complete inorganic chemical and physical;~~

~~(iii) Complete VOC;~~

~~(iv) Radionuclides, if source approval is requested for a community system;~~

~~(v) SOC, except where waived or not required under WAC 246-290-310; and~~

~~(vi) Any other information required by the department relevant to the circumstances of the particular source.~~

~~Sources that otherwise would not meet water quality standards may be approved if treatment is provided.~~

~~(4) The required documentation under subsection (3) of this section shall include, at a minimum:~~

~~(a) A copy of the water right, or other written evidence of the existence of the right;~~

~~(b) A map showing the project location and vicinity;~~

~~(c) A map depicting topography, distances to the surface water intake, well or spring from existing property lines, buildings, potential sources of contamination, ditches, drainage patterns, and any other natural or man-made features affecting the quality or quantity of water;~~

~~(d) The dimensions, location, and legal documentation of the sanitary control area (SCA) under WAC 246-290-135;~~

~~(e) A copy of the on-site inspection form completed by the department or local health department representative;~~

~~(f) A copy of the water well report including the unique well identification tag number, depth to open interval or top of screened interval, overall depth of well from the top of the casing, vertical elevation, and location (both plat location and latitude/longitude); and~~

~~(g) Documentation of source meter installation. The purveyor may utilize other documents, such as a water system plan, susceptibility assessment, wellhead protection program, project report, or construction documents, to provide such documentation and information to the department, provided that such documents are current, and the purveyor indicates the location in the document of the relevant information.~~

~~(5) If treatment of a source is necessary to meet water quality standards, the purveyor may be required to meet the provisions of WAC 246-290-250 and Part 6 of this chapter, if applicable, prior to or as a condition of approval.~~

~~(6) An intertie must be adequately described in a written agreement between the purveyor and the supplier of the water, and otherwise meet the requirements of WAC 246-290-132.~~

~~(7) The purveyor shall not construct facilities for source development and use without prior approval of the department pursuant to the provisions of WAC 246-290-120.~~

~~(8) The purveyor shall receive a written source approval when:~~

~~(a) The purveyor has complied with the relevant provisions of subsections (1) through (7) of this section; and~~

~~(b) The developed source provides water complying with this chapter.~~

~~(9) The purveyor may receive a conditional source approval, such as one that sets limits on use or requires interim treatment, if further analysis of the quality of the source is required before final approval.~~

~~(10) For sources or supplies of water used by bottled water or ice plants to produce bottled water or ice:~~

(a) If the bottled water or ice plant is a Group A community water system and the plant uses the system's source for the water that is bottled or made into ice, the source and supply used for the bottled water and ice shall meet the applicable Group A requirements;

(b) If the bottled water or ice plant uses its own source for the water that is bottled or made into ice, and the plant is not a Group A community water system, the owner or operator shall obtain source approval from the department, and the source water shall meet the ongoing source water quality monitoring requirements for a Group A community system;

(c) If the bottled water or ice plant purchases the water for bottling or making ice from another source or supply, the water shall meet the minimum requirements for a Group A community water system, and the owner or operator of the plant shall ensure that the water meets such requirements;

(d) The source or supply for the water that is bottled or made into ice shall be protected from contamination prior to the bottling or ice making process; and

(e) In addition to the requirements imposed under this subsection, the processing of bottled water shall be subject to regulation by the state department of agriculture and the United States Food and Drug Administration.

NEW SECTION

WAC 246-290-132 Interties. (1) No interties shall be used and/or constructed as a public water supply without department approval.

(2) Interties shall not be eligible for submittal exceptions pursuant to WAC 246-290-125.

(3) Prior to department approval, purveyors proposing nonemergency interties shall ensure that the intertie is addressed:

(a) In an approved coordinated water system plan, water system plan, water system plan update, water system plan amendment, or small water system management program including:

- (i) Location of the proposed intertie;
- (ii) Date it is proposed to be utilized;
- (iii) The purpose, physical capacity, service area, and proposed usage of the intertie;
- (iv) Copy of the intertie agreement between purveyors;
- (v) Description of how the intertie:
 - (A) Improves overall system reliability;
 - (B) Enhances the manageability of the system;
 - (C) Provides opportunities for conjunctive use; or
 - (D) Delays or avoids the need to develop new water sources;

(vi) Identification of any potential public health or safety concerns;

(vii) Discussion of any water quality and treatment issues;

(viii) Demonstration of the source capacity and hydraulic capacity of the supplying and receiving systems at the designed flow rate through the intertie;

(ix) Water right assessment;

(x) Identification of alternative sources that will be utilized when the intertie agreement expires if the water is not being provided in perpetuity; and

(xi) Identification and comparison of alternatives if any.
(b) In construction documents in accordance with WAC 246-290-120 including:

(i) Demonstration of the installation of a source meter to measure water exchanged; and

(ii) Water right assessment, if not previously provided to the department. Where RCW 90.03.383 requires a water right or water right change to be issued by the department of ecology, construction work on the intertie shall not begin, notwithstanding any prior approval of the intertie by the department in a water system plan, until the department of ecology issues the required water right document.

(4) Emergency use interties are interconnections between public water systems permitting the temporary exchange or delivery of water between those systems only in cases of emergency that result in permanent supplies being unavailable for use. Prior to department approval, purveyors proposing emergency use interties shall ensure that the emergency intertie is addressed:

(a) In an approved coordinated water system plan, water system plan, water system plan update, water system plan amendment, or small water system management plan including:

(i) Description of the intended use of the emergency intertie;

(ii) Location of the proposed intertie;

(iii) Date the intertie is intended to be operational;

(iv) Copy of the intertie agreement between purveyors detailing the conditions and limitations of such intertie; and

(v) Hydraulic analysis conducted to identify the impacts upon each water system.

(b) In a project report in accordance with WAC 246-290-110 or in a construction document in accordance with WAC 246-290-120.

(5) Purveyors proposing interties shall apply to the department of ecology for water right changes as provided in RCW 90.03.383. Except as provided in RCW 90.03.383(7) and 90.03.390, no interties may be constructed without department of ecology action on the proposed change.

(6) The purveyor may be required to have emergency interties approved as nonemergency interties where such interties are used frequently or on a long-term basis. If the department makes such a determination, the intertie will require approval in accordance with subsection (3) of this section.

(7) Intertie agreements between purveyors shall include:

(a) Identification of specific time periods in which water will be provided;

(b) Identification of the volume of water available for use, including any seasonal or other restrictions; and

(c) Identification of how water conservation programs, data collection, water demand forecasting, and other operational matters will be coordinated.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-135 Source water protection. (1) ~~((The purveyor shall obtain drinking water from the highest quality source feasible. Existing and proposed sources of supply~~

shall conform to the water quality standards established in WAC 246-290-310.

(2)) The department may require monitoring and controls in addition to those specified in this section if, in the opinion of the department, a potential risk exists to the water quality of a source.

((3)) (2) Sanitary control area (SCA).

(a) The purveyor shall maintain ~~((a sanitary control area))~~ an SCA around all sources for the purpose of protecting them from existing and potential sources of contamination.

(b) For wells and springs, the minimum ~~((sanitary control area))~~ SCA shall have a radius of one hundred feet (thirty meters) and two hundred feet (sixty meters) respectively, unless engineering justification ~~((supports))~~ demonstrates that a smaller area can provide an adequate level of source water protection. The justification ~~((must))~~ shall address geological and hydrological data, well construction details, mitigation measures, and other relevant factors necessary to assure adequate sanitary control.

(c) The department may require a larger ~~((sanitary control area))~~ SCA than specified in (b) of this subsection, or additional mitigation measures if land use, geological, and/or hydrological data support such a decision. It shall be the purveyor's responsibility to obtain the protection needed.

(d) No source of contamination may be constructed, stored, disposed of, or applied within the ~~((sanitary control area))~~ SCA without the permission of the department and the purveyor.

(e) The ~~((sanitary control area))~~ SCA shall be owned by the purveyor in fee simple, or the purveyor shall have the right to exercise complete sanitary control of the land through other legal provisions.

(f) A purveyor, owning all or part of the ~~((sanitary control area))~~ SCA in fee simple or having possession and control, shall send to the department copies of legal documentation, such as a duly recorded declaration of covenant, restricting the use of the land. This legal documentation shall state:

(i) No source of contamination may be constructed, stored, disposed of, or applied without the permission of the department and the purveyor; and

(ii) If any change in ownership of the system or ~~((sanitary control area))~~ SCA is considered, all affected parties shall be informed of these requirements.

(g) Where portions of the control area are in the possession and control of another, the purveyor shall obtain a duly recorded restrictive covenant which shall run with the land, restricting the use of said land in accordance with ~~((these rules))~~ this chapter and provide the department with copies of the appropriate documentation.

((4)) (3) Wellhead protection.

(a) Purveyors of water systems using ground water or spring sources shall develop and implement a wellhead protection program.

(b) The wellhead protection program shall be part of the water system plan required under WAC 246-290-100 or the small water system management program required under WAC ~~((246-290-410))~~ 246-290-105.

(c) The purveyor's wellhead protection program shall contain, at a minimum, the following elements:

(i) A completed susceptibility assessment or equivalent information;

(ii) Wellhead protection area (WHPA) delineation for each well, wellfield, or spring with the six month, one, five and ten year time of travel boundaries marked, or boundaries established using alternate criteria approved by the department in those settings where ground water time of travel is not a reasonable delineation criteria. WHPA delineations shall be done in accordance with recognized methods such as those described in the following sources:

(A) ~~((Washington State))~~ Department guidance on wellhead protection ~~((Program))~~; or

(B) EPA ~~((Guidelines))~~ guidance for delineation of wellhead protection areas ~~((, EPA 440/6-87-010))~~;

(iii) ~~((A list of all actual and potential ground water contaminant))~~ An inventory, including identification of site locations and owners/operators, of all known and potential ground water contamination sources located within the defined WHPA(s) having the potential to contaminate the source water of the well(s) or spring(s). This list shall be updated every two years;

(iv) Documentation of purveyor's notification to all owners/ operators of ~~((actual and))~~ known or potential sources of ground water contamination ~~((within the WHPA boundaries))~~ listed in (c)(B)(iii) of this subsection;

(v) Documentation of purveyor's notification to regulatory agencies and local governments of the boundaries of the WHPA(s) and the findings of the WHPA inventory;

(vi) A contingency plan to ensure consumers have an adequate supply of potable water in the event that contamination results in the temporary or permanent loss of the principal source of supply (major well(s) or wellfield); and

(vii) Documentation of coordination with local emergency ~~((spill))~~ incident responders (including police, fire and health departments), including notification of WHPA boundaries, results of susceptibility assessment, inventory findings, and contingency plan.

~~((Sections in the department guidelines titled Planning Handbook, Washington State Wellhead Protection Program, and Inventory of Potential Sources of Ground Water Contamination in Washington's Wellhead Protection Areas address wellhead protection in more detail, and are available to purveyors establishing local wellhead protection programs.~~

((5)) (4) Watershed control program.

(a) Purveyors of water systems using surface water or GWI sources shall develop and implement a watershed control program in accordance with Part 6 of chapter 246-290 WAC as applicable.

(b) The watershed control program shall be part of the water system plan required in WAC 246-290-100 or the small water system management program required in WAC ~~((246-290-410))~~ 246-290-105.

(c) The purveyor's watershed control program shall contain, at a minimum, the following elements:

(i) Watershed description and inventory, including location, hydrology, land ownership and activities ~~((which))~~ that may adversely affect source water quality;

(ii) An inventory of all potential surface water contamination sources and activities, including identification of site locations and owner/operators, located within the watershed

and having the significant potential to contaminate the source water quality;

~~((iii))~~ (iii) Watershed control measures, including documentation of ownership and relevant written agreements, and monitoring of activities and water quality;

~~((iii))~~ (iv) System operation, including emergency provisions; and

~~((iv))~~ (v) Documentation of water quality trends.

~~((Sections in the department guideline titled *Planning Handbook* and in the *DOH SWTR Guidance Manual* address watershed control and are available to purveyors establishing watershed control programs.))~~

(d) The purveyor shall submit the watershed control program to the department for approval. Following departmental approval, the purveyor shall implement the watershed control program as approved.

(e) Purveyors of systems using unfiltered surface or GWI sources and meeting the criteria to remain unfiltered as specified in WAC 246-290-690 shall submit an annual report to the department ~~((which))~~ that summarizes the effectiveness of the watershed control program. Refer to WAC 246-290-690 for further information about this report.

(f) The purveyor shall update the watershed control program at least every six years, or more frequently if required by the department.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-140 Existing system as-built approval.

~~((1) When applying for approval, purveyors of existing public water systems without approved construction documents shall provide department-determined information:~~

~~(2) Information provided shall be consistent with chapter 248-54 WAC.~~

~~(3) Purveyors shall contact the department to obtain a list of specific requirements including, for wells and springs:~~

~~(a) A susceptibility assessment;~~

~~(b) A preliminary WHPA designation using the calculated fixed radius method, with six-month, one, five, and ten year time of travel criteria; and~~

~~(c) An initial inventory of potential sources of ground water contamination located within the WHPA.~~

~~(4) After receipt of the required data, the department shall review the information and either:~~

~~(a) Approve the as-built construction documents; or~~

~~(b) Indicate what additional actions the purveyor needs to complete before approval is granted.))~~ At the discretion of the department, owners of existing systems without approved construction documents shall provide information necessary to establish the extent of the water system's compliance with this chapter. At a minimum, this shall include submission and approval by the department of:

(1) A water system plan or small water system management program;

(2) As-built or record drawings; and

(3) Water quality analyses.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-200 Design standards. (1) Purveyors shall ensure that good engineering criteria and practices are used in the design and construction of all public water systems, such as those set out in:

(a) Department guidance on design for Group A public water systems;

(b) The most recent published edition of the Uniform Building Code (UBC) or the Uniform Plumbing Code (UPC);

(c) The most ~~((recently))~~ recent published edition of *Recommended Standards for Water Works, A Committee Report of the Great Lakes - Upper Mississippi River Board of State Public Health and Environmental Managers;*

~~((b) Department guideline titled *Sizing Guidelines for Public Water Supplies;*~~

~~(e))~~ (d) Standard specifications of the American Public Works Association (APWA), the American Society of Civil Engineers (ASCE), the American Water Works Association (AWWA), or the American Society for Testing and Materials (ASTM);

~~((d) Standard specifications of the American Water Works Association;))~~

(e) Design criteria, such as contained in current college texts and professional journal articles, acceptable to the department;

(f) Chapter 173-160 WAC *Minimum Standards for Construction and Maintenance of Water Wells;*

(g) ~~((Visseher, J.T., et. al., *Slow Sand Filtration for Community Water Supply, Planning, Design, Construction, Operation, and Maintenance. 1987.* Technical paper no. 24, The Hague, Netherlands: International Reference Center for Community Water Supply and Sanitation;~~

~~(h) Huisman, L. and W.E. Wood. 1974. *Slow Sand Filtration.* Geneva: World Health Organization;~~

~~(i) *Manual of Design for Slow Sand Filtration. 1991.* AWWA Research Foundation; and~~

~~(j) *Slow Sand Filtration. 1991.* American Society of Civil Engineers))~~ The latest edition of the PNWS-AWWA Cross-Connection Control Manual, or the University of Southern California (USC) Manual of Cross-Connection Control.

(2) In addition, purveyors of new or expanding public water systems shall ~~((use))~~ consider and use, as appropriate, the following design factors:

(a) Historical water use;

(b) Community versus recreational uses of water;

(c) Local conditions and/or regulations;

(d) Community expectations;

(e) Public Water System Coordination Act considerations where appropriate;

(f) Provisions for systems and component reliability in accordance with WAC 246-290-420;

(g) Wind pressures, seismic risk, snow loads, and flooding;

(h) Other risks from potential disasters, as feasible; and

~~((g))~~ (i) Other ~~((requirements))~~ information as ~~((determined))~~ required by the department.

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

WAC 246-290-220 (~~Lead-in~~) Drinking water materials and additives. (1) All materials shall conform to the ANSI/NSF Standard 61 if in substantial contact with potable water supplies. For the purposes of this section, "substantial contact" means the elevated degree that a material in contact with water may release leachable contaminants into the water such that levels of these contaminants may be unacceptable with respect to either public health or aesthetic concerns. It should take into consideration the total material/water interface area of exposure, volume of water exposed, length of time water is in contact with the material, and level of public health risk. Examples of water system components that would be considered to be in "substantial contact" with drinking water are filter media, storage tank interiors or liners, distribution piping, membranes, exchange or adsorption media, or other similar components that would have high potential for contacting the water. Materials associated with such components as valves, pipe fittings, debris screens, gaskets, or similar appurtenances would not be considered to be in substantial contact.

(2) Materials or additives in use prior to the effective date of these regulations that have not been listed under ANSI/NSF Standard 60 or 61 shall be allowed for their current applications until such time that the materials are scheduled for replacement, or that stocks of existing additives are depleted and scheduled for reorder.

(3) Any treatment chemicals, with the exception of commercially retailed hypochlorite compounds such as unscented Clorox, Purex, etc., added to water intended for potable use shall comply with ANSI/NSF Standard 60. The maximum application dosage recommendation for the product certified by the ANSI/NSF Standard 60 shall not be exceeded in practice.

(4) Any products used to coat, line, seal, patch water contact surfaces or that have substantial water contact within the collection, treatment, or distribution systems shall comply with the appropriate ANSI/NSF Standard 60 or 61. Application of these products shall comply with recommendations contained in the product certification.

(5) The department may accept continued use of, and proposals involving, certain noncertified chemicals or materials on a case-by-case basis, provided all of the following criteria are met:

(a) The chemical or material has an acknowledged and demonstrable history of use in the state for drinking water applications;

(b) There exists no substantial evidence that the use of the chemical or material has caused consumers to register complaints about aesthetic issues, or health related concerns, that could be associated with leachable residues from the material; and

(c) The chemical or material has undergone testing through a protocol acceptable to the department and has been found to not contribute leachable compounds into drinking water at levels that would be of public health concern.

(6) Any pipe, pipe fittings, solder, or flux used in the installation or repair of a public water system shall be lead-free((-):

(a) This prohibition shall not apply to leaded joints necessary for the repair of cast iron pipes((-):; and

((2)) (b) Within the context of this section, lead-free shall mean:

((a)) (i) No more than eight percent lead in pipes and pipe fittings((-):; and

((b)) (ii) No more than two-tenths of one percent lead in solder and flux.

NEW SECTION

WAC 246-290-221 Water demand design criteria. (1) Except as provided in this section, expanding systems shall use water demand design for average day demand (ADD), and peak periods of demand such as maximum day demand (MDD), and peak hourly demand (PHD) that are based upon actual metered water use records. The data collected shall be sufficient to account for seasonal or other cyclic changes in water demand, and shall correlate to the maximum number of full-time or part-time equivalent residential units in service at any time.

(2) For seasonally used, transitory noncommunity, or recreational developments the design for ADD, MDD, and PHD shall be based upon metered water uses whenever such data is available. The data must account for the daily population using the water over the time that records are collected, and must reflect the uses associated with maximum occupancy for the development. The design demands for these developments apply only to part-time uses, and may not be applied to structures or dwellings that can be permanently occupied.

(3) In the absence of metered use or other comparable information, the following sources of design information may be used:

(a) Comparable metered water use data from analogous water systems. Analogous systems are those with similar characteristics, such as demographics, housing sizes, income levels, lot sizes, climate, water pricing structure, conservation practices, use restrictions, and soils and landscaping; or

(b) Design criteria or guidelines in the most recent edition of the department manual for design of Group A public water systems.

(4) The design for water systems based upon metered water use records shall have an MDD no lower than three hundred fifty gallons per day per equivalent residential unit (ERU), except for the design of any expansion to an existing water system that has a minimum of two years of meter records that clearly demonstrate that a lower design value for MDD may be used without significant risk of pressure loss. The meter records must correlate the demand data to the actual level of occupancy for the periods covered by the records.

(5) The minimum water demand and duration required for fire flow and/or fire suppression storage shall be determined by the local fire control authority, or chapter 246-293 WAC for systems within the boundaries of a designated critical water supply service area (CWSSA). Public water sys-

tems that are not required to comply with minimum fire flow standards shall coordinate with the local fire control authorities to ensure that any hydrants on the system, if they can possibly be used in the course of fire suppression activities, do not create adverse pressure problems within the water system as a result of fire control actions.

NEW SECTION

WAC 246-290-222 Water system physical capacity.

(1) The water system physical capacity shall be established by evaluating the capacity of each system component such as source, treatment, storage, transmission, or distribution, individually and in combination with each other. The evaluation shall identify any limitations on the ability of the system to provide service to all consumers.

(2) The water system physical capacity shall be:

(a) Reported in terms of total equivalent residential units (ERUs) and the number of residential and nonresidential connections with the number of ERUs they represent; and

(b) Compared to the existing number of residential and nonresidential connections currently served and the ERUs they represent.

(3) Total source capacity calculations shall not include emergency sources as defined in WAC 246-290-010.

(4) Total daily source capacity, in conjunction with any storage that is designed to accommodate peak use periods on a daily or longer basis, shall be sufficient to provide a reliable supply of water equal to or exceeding the MDD.

(5) Treatment capacity, in conjunction with any storage designed to accommodate peak demand periods on a daily or longer basis, shall be sufficient to provide a reliable supply of treated water equal to or exceeding the MDD while meeting the water quality parameters set forth in Part 4 and Part 6 as applicable, of this chapter.

(6) Water storage shall be sufficient to meet expected system service demands by providing sufficient operational, equalizing, standby, and where applicable, fire suppression storage volumes in accordance with WAC 246-290-235.

(7) Distribution system capacity shall provide for PHD, or MDD plus required fire flow, as required in each pressure zone while maintaining minimum design pressures established under this chapter.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-230 Distribution systems. (1) ~~((Distribution reservoirs completed after June 1, 1975, shall have suitable watertight roofs or covers preventing entry by birds, animals, insects, and dust and shall include appropriate provisions to safeguard against trespass, vandalism, and sabotage. Purveyors with uncovered distribution reservoirs in use before June 2, 1975, shall comply with the provisions of WAC 246-290-470 until suitable watertight roofs or covers are installed. Purveyors with uncovered distribution reservoirs shall submit a plan and schedule to cover all reservoirs to the department for approval before January 1, 1996.~~

~~((2))~~ The purveyor shall size and evaluate ~~((the))~~ new or expansions to existing distribution systems using a hydraulic analysis acceptable to the department.

~~((3))~~ (2) The minimum diameter of all distribution mains shall be six inches (150 mm) unless smaller mains can be justified by hydraulic analysis.

(3) Systems designed to provide fire flows shall have a minimum distribution main size of six inches (150 mm).

(4) Installation of new standard fire hydrants shall not be allowed on mains less than six inches (150 mm) in diameter. Existing fire hydrants on currently active mains less than six inches (150 mm) in diameter shall be allowed to remain provided:

((4)) (a) The existing distribution system consists of mains at least four inches (101.6 mm) in diameter, and the fire flow available from existing four-inch (101.6 mm) mains within the proximity of the fire hydrant exceeds the minimum fire flow standard adopted by the local fire protection authority; and

(b) The location and installation of the fire hydrants on the four-inch (101.6 mm) main have received approval by the local fire protection authority.

(5) New public water systems or additions to existing systems shall ~~((provide a design))~~ be designed with the capacity to deliver the design PHD quantity of water at ~~((a positive pressure of at least))~~ 30 psi ~~((200))~~ 210 kPa under ~~((peak hourly design))~~ PHD flow conditions measured at ~~((any customer's))~~ all existing and proposed service water meters or ~~((at the))~~ along property lines adjacent to mains if no meter exists, and under the condition where all equalizing storage has been depleted.

((5)) (6) If fire flow is to be provided, the distribution system shall ~~((be designed to))~~ also provide maximum day demand (MDD) plus the required fire flow at a pressure of at least 20 psi ~~((during peak hourly design flow conditions.~~

(6) Booster pumps needed for individual services shall be subject to review and approval by the department. Installation shall be made under the supervision of the purveyor to assure cross connection control requirements are met) (140 kPa) at all points throughout the distribution system, and under the condition where the designed volume of fire suppression and equalizing storage has been depleted.

(7) Booster pumps shall be designed in accordance with good engineering criteria and practices as listed in WAC 246-290-200.

(8) On existing systems, or for additions to existing systems, that are unable to meet the pressure requirements of this section, booster pumps for individual services may be used in the interim until system improvements are made to resolve pressure deficiencies. In this situation, the individual booster pumps shall be under the management and control of the purveyor.

(9) Transmission lines as defined in WAC 246-290-010 shall be designed to maintain greater than or equal to five psi (35 kPa) during normal operations, except when directly adjacent to storage tanks, and shall be sized according to a hydraulic analysis. Transmission mains designed to operate at velocities greater than ten feet per second shall include a hydraulic transient (water hammer) analysis in conjunction with the hydraulic analysis.

NEW SECTION

WAC 246-290-235 Distribution reservoirs. (1) Distribution reservoirs shall be designed to:

(a) Prevent entry by birds, animals, insects, excessive dust, and other potential sources of external contamination. The design shall include provisions for a lockable weather-tight roof, a screened roof vent, an overflow pipe with atmospheric discharge or other suitable means to prevent a cross-connection, sample collection capability, a drain to daylight (or an approved alternative that is adequate to protect against cross-connection), a provision for tank isolation in order to perform maintenance procedures, and other appurtenances appropriate to the protection of stored water from contamination;

(b) Maintain water circulation, prevent water stagnation, and provide adequate disinfection contact time; and

(c) Be accessible for routine maintenance and water quality monitoring.

(2) Equalizing storage, as defined in WAC 246-290-010, shall be provided to meet peak periods of demand, either daily or longer, when determined to be necessary based on available, or designed, source pumping capacity.

(3) Operational, standby, and fire suppression storage volumes as defined in WAC 246-290-010 shall be provided, as applicable, for all pressure zones to meet both normal as well as abnormal demands of the system.

(4) Standby and fire suppression storage volumes may be nested with the larger of the two volumes being the minimum available, provided the local fire protection authority does not require them to be additive.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-250 Treatment design. (1) ~~((Purveyors shall))~~ Treatment systems or devices shall be piloted and designed to ensure finished water quality (from existing and proposed sources of supply) conforms to ((the minimum) water quality standards established in WAC 246-290-310.

(2) ~~((Purveyors using))~~ Treatment systems or devices for surface water or GWI sources shall ((design, install, and operate treatment facilities to ensure at least:

~~(a) 99.9 percent (3 log) removal and/or inactivation of *Giardia lamblia* cysts; and~~

~~(b) 99.99 percent (4 log) removal and/or inactivation of viruses.~~

~~Part 6 of chapter 246-290 WAC contains specific requirements for filtered and unfiltered surface water and GWI systems, including treatment technique, monitoring and reporting requirements))~~ be designed in accordance with the provisions of Part 6 of this chapter and the applicable provisions herein.

(3) Pre-design studies, including pilot studies as appropriate, shall be required for proposed surface water and GWI sources and those ground water sources requiring treatment. The goal of the pre-design study shall be to establish the most effective method, considering economics, to produce satisfactory finished water quality meeting the requirements of this chapter and complying with the treatment technique

requirements in Part 6 of chapter 246-290 WAC. The pre-design study shall be included as part of the project report under WAC 246-290-110. Refer to WAC 246-290-676 for requirements relating specifically to the filtration facility pilot study. The purveyor shall not establish nor maintain a bypass to divert water around any feature of a treatment process, except by written permission of the department.

~~(4) ((The minimum level of treatment for))~~ All well ((sources)) and spring sources not ((classified as)) ~~deter-~~ mined to be GWI's shall ~~((be))~~ have continuous ~~((and effective))~~ disinfection ((as determined by the department)) that meets the operational requirements of WAC 246-290-451 (3) and (4). The department may ~~((reduce))~~ modify the requirement for disinfection for public water systems ~~((with:~~

~~(a) Well sources not classified as GWI's:~~

~~(i) Having a satisfactory bacteriological history at the source and within the distribution system as determined by the department; and~~

~~(ii) Drawing from a protected aquifer as determined by the department.~~

~~(b) Spring sources not classified as GWI's:~~

~~(i) Having a satisfactory bacteriological history at the source and within the distribution system as determined by the department;~~

~~(ii) Having evidence to demonstrate, to the satisfaction of the department, the spring originates in a stratum not subject to contamination; and~~

~~(iii) Where the water is collected by a method precluding contamination.~~

~~(5) The minimum level of treatment for surface water supplies shall be coagulation, flocculation, filtration, and disinfection. In certain cases, alternative treatment designs followed by disinfection may be acceptable to the department, provided there is adequate engineering justification. Group A systems with surface water sources and GWI sources shall provide treatment as specified under WAC 246-290-630.~~

~~(6) Disinfection methods, other than chlorination, such as ozonation, ultraviolet radiation, and iodination, may be approved by the department with appropriate engineering justification))~~ that demonstrate the well or spring sources (not confirmed as GWI's) have satisfactory bacteriological histories at the source and have SCAs in accordance with WAC 246-290-135.

(5) Purveyors shall use appropriate treatment technologies, such as those outlined in department guidance on water treatment, and shall address water treatment facilities in their water system plans pursuant to WAC 246-290-100.

(6) Project reports for the design of treatment facilities shall meet the requirements of WAC 246-290-110.

(7) Construction specifications for treatment facilities shall meet the requirements of WAC 246-290-120.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-300 Monitoring requirements. (1) General.

(a) The monitoring requirements specified in this section are minimums. The department may require additional monitoring when:

(i) Contamination is present or suspected in the water system;

~~((The department determines))~~ A ground water source ((may)) is determined to be a potential GWI;

~~((The department determines the))~~ degree of source protection is not satisfactory;

~~((The department determines))~~ Additional monitoring is needed to verify source vulnerability for a requested monitoring waiver; ((or))

Under other circumstances as identified in a departmental order; or

(vi) Additional monitoring is needed to evaluate continuing effectiveness of a treatment process where problems with the treatment process may exist.

(b) Special purpose samples collected by the purveyor shall not count toward fulfillment of the monitoring requirements of this chapter unless ~~((both))~~ the quality of data and method of sampling and analysis are acceptable to the department.

(c) The purveyor shall ensure samples required by this chapter are collected, transported, and submitted for analysis according to department-approved methods. The analyses shall be performed by the state public health laboratory or another laboratory certified by the department. Qualified water utility, certified laboratory, or health department personnel may conduct measurements for pH, temperature, residual disinfectant concentration and turbidity as required by this chapter, provided, these measurements are made in accordance with "standard methods."

(d) Compliance samples required by this chapter shall be taken at locations listed in Table 3 of this section.

~~((When one public water system sells water to another public water system, the purveyor of the selling system, regardless of size, shall conduct at least the minimum source monitoring required by this chapter for community systems:~~

~~((When one public water system receives completely treated water, as determined by the department, from another public water system, the purveyor of the receiving system shall))~~ Purveyors failing to comply with a monitoring requirement shall notify:

(i) The department in accordance with WAC 246-290-480; and

(ii) The water system users in accordance with WAC 246-290-495.

(2) Selling and receiving water.

(a) Source monitoring. Purveyors, with the exception of those that "wheel" water to their consumers (i.e., sell water that has passed through another purchasing purveyor's distribution system), shall conduct source monitoring in accordance with this chapter for the sources under their control. The level of monitoring shall satisfy the monitoring requirements associated with the total population served by the source.

(b) Distribution system monitoring. The purveyor of a system that receives and distributes water shall perform distribution-related monitoring requirements. Monitoring shall include, but not be limited to, the following:

(i) Collect coliform samples in accordance with subsection ((2)) (3) of this section;

(ii) Collect trihalomethane samples in accordance with subsection ((5)) (6) of this section;

(iii) Perform the distribution system residual disinfectant concentration monitoring required under WAC ((246-290-440)) 246-290-451 or 246-290-694;

(iv) Perform lead and copper monitoring required under 40 CFR 141.86, 141.87, and 141.88; ((and))

(v) Perform the distribution system monitoring in accordance with 40 CFR 141.23(b) for asbestos if applicable;

(vi) Other monitoring as required by the department.

~~((The department may reduce))~~ (c) Reduced monitoring for regional programs. The receiving purveyor may receive reductions in the coliform, lead and copper, THM and distribution system disinfectant residual concentration monitoring requirements ((of the receiving system)), provided the receiving system:

(i) Has a satisfactory water quality history as determined by the department;

(ii) Operates in a satisfactory manner consistent with this chapter;

(iii) Purchases water from a purveyor ((which)) that has a department-approved regional monitoring program; and

(iv) Has a written agreement with the supplying system or regional water supplier that is acceptable to the department, and which identifies the responsibilities of both the supplying and receiving system(s) with regards to monitoring, reporting and maintenance of the distribution system.

~~((The))~~ (d) Periodic review of regional programs. The department may periodically review ((both)) the ((selling and receiving system's)) sampling records of public water systems participating in a department-approved monitoring program to determine if continued reduced monitoring is appropriate. If the department determines a change in the monitoring requirements of the receiving system is appropriate:

(i) The department shall notify the purveyor of the change in monitoring requirements; and

(ii) The purveyor shall conduct monitoring as directed by the department.

~~((The))~~ Purveyors failing to comply with a monitoring requirement shall notify:

~~((The))~~ (i) The department in accordance with WAC 246-290-480; and

~~((The))~~ (ii) The water system users in accordance with WAC 246-290-330.

~~((2))~~ (3) Bacteriological.

(a) The purveyor shall be responsible for collection and submittal of coliform samples from representative points throughout the distribution system. Samples shall be collected after the first service and at regular time intervals ((at least once per calendar month unless otherwise specified in this subsection,)) each month the system provides water to consumers. Samples shall be collected that represent normal system operating conditions.

(i) Systems providing disinfection treatment shall, when taking a routine or repeat sample, measure residual disinfectant concentration within the distribution system at the same time and location and comply with the residual disinfection monitoring requirements under WAC 246-290-451.

(ii) Systems providing disinfection treatment shall assure that disinfectant residual concentrations are measured and

recorded on all coliform sample report forms submitted for compliance purposes.

(b) Coliform monitoring plan.

(i) The purveyor shall prepare a written coliform monitoring plan and base routine monitoring upon the plan. ~~((A department guideline titled *Preparation of a Coliform Monitoring Plan* is available to assist the purveyor in preparing this plan.))~~ The plan shall include coliform sample collection sites and a sampling schedule.

(ii) ~~((The plan shall include at a minimum:~~

~~(A) A system map or diagram showing the locations of:~~

~~(I) Water sources;~~

~~(II) Storage, treatment, and pressure regulation facilities;~~

~~(III) Distribution systems;~~

~~(IV) Pressure zones;~~

~~(V) Interconnections; and~~

~~(VI) Coliform sample collection sites.~~

~~(B) A narrative which includes the following information:~~

~~(I) Public water system identification number;~~

~~(II) Population served and services;~~

~~(III) Water sources;~~

~~(IV) System facilities and processes for storage, treatment, and pressure regulation;~~

~~(V) Coliform sample collection sites; and~~

~~(VI) Sampling schedules.~~

~~((iii)) The purveyor shall:~~

~~(A) Keep the coliform monitoring plan on file with the system and make it available to the department for inspection upon request;~~

~~(B) Revise or expand the plan at any time the plan no longer ensures representative monitoring of the system, or as directed by the department; and~~

~~(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.~~

(c) Monitoring frequency. The number of required routine coliform samples is based on total population served.

(i) Purveyors of **community** systems shall collect and submit for analysis no less than the number of routine samples listed in Table 2 during each calendar month of operation;

(ii) Unless directed otherwise by the department, purveyors of **noncommunity** systems shall collect and submit for analysis no less than the number of samples required in Table 2, and no less than required under 40 CFR 141.21. Each month's population shall be based on the average daily population and shall include all residents and nonresidents served during that month. During months when the average daily population served is less than twenty-five, routine sample collection is not required when:

(A) Using only protected ground water sources;

(B) No coliform((s)) were detected in samples during the previous month; and

(C) One routine sample has been collected and submitted for analysis during one of the previous two months.

(iii) Purveyors of systems serving both a resident and a nonresident population shall base their minimum sampling requirement on the total of monthly populations served, both resident and nonresident ~~((and on))~~ as determined by the

department, but no less than the minimum required in Table 2; and

(iv) Purveyors of systems with a nonresident population lasting two weeks or less during a month shall sample as directed by the department. Sampling shall be initiated at least two weeks prior to the time service is provided to consumers.

(v) Purveyors of TNC systems shall not be required to collect routine samples in months where the population served is zero or the system has notified the department of an unscheduled closure.

~~((Surface water or ground water under the direct influence of surface water (GWI) sources. A purveyor using unfiltered surface water or unfiltered GWI sources shall:~~

~~(i) Collect and submit for analysis, at least one coliform sample at the first service connection during each day in which source water turbidity exceeds 1.0 NTU; or~~

~~(ii) Collect samples as directed by the department when logistical problems beyond the purveyor's control make analysis of the coliform samples impractical because the time between sample collection and analysis exceeds thirty hours. If the department extends the time limits, the purveyor shall collect the required samples as directed by the department.~~

~~(e) Comprehensive system evaluations (CSEs):~~

~~(i) Purveyors of systems with less than four thousand one hundred one population served shall:~~

~~(A) Submit to a CSE conducted by the department; or~~

~~(B) Collect and submit for analysis five or more routine samples each month.~~

~~(ii) Purveyors electing to have CSEs conducted shall be evaluated by the department based on the following schedule:~~

~~(A) **Community** water systems, every five years. The initial CSE shall be conducted by June 29, 1994; and~~

~~(B) **Noncommunity** systems, every five years unless the system uses only disinfected and protected ground water as determined by the department, in which case the evaluation need only be repeated every ten years. The initial CSE shall be conducted by June 29, 1999.~~

~~((iii)) The department may substitute source of contamination information from the wellhead protection program for CSE information if the information was collected since the last CSE; and~~

~~(iv) Purveyors collecting less than five routine samples per month shall be responsible for:~~

~~(A) Ensuring full cooperation in scheduling CSEs; and~~

~~(B) Making all facilities and records available to the department for the CSE.~~

~~((f)) Invalid samples. When a coliform sample is determined invalid under WAC 246-290-320 (2)(d), the purveyor shall:~~

~~(i) Not include the sample in the determination of monitoring compliance; and~~

~~((ii)) ((Collect and submit for coliform analysis, an additional drinking water sample from the same location as each invalid sample within twenty-four hours of notification by the laboratory of the invalid sample))~~ Take follow-up action as defined in WAC 246-290-320 (2)(d).

~~((g))~~ (e) The purveyor using a surface water or GWI source shall collect representative source water samples for

bacteriological density analysis in accordance with WAC 246-290-664 and 246-290-694 as applicable.

TABLE 2

MINIMUM MONTHLY ROUTINE COLIFORM SAMPLING REQUIREMENTS

Population Served ¹	Minimum Number of Routine Samples/Calendar Month	Minimum Number of Routine Samples/Calendar Month	
		When NO samples with a coliform presence were collected during the previous month	When ANY samples with a coliform presence were collected during the previous month
During Month			
1 - 1,000	1 ⁽²⁾	5	5
1,001 - 2,500	2 ²	5	5
2,501 - 3,300	3 ²	5	5
3,301 - 4,100	4 ²	5	5
4,101 - 4,900	5	5	5
4,901 - 5,800	6	6	6
5,801 - 6,700	7	7	7
6,701 - 7,600	8	8	8
7,601 - 8,500	9	9	9
8,501 - 12,900	10	10	10
12,901 - 17,200	15	15	15
17,201 - 21,500	20	20	20
21,501 - 25,000	25	25	25
25,001 - 33,000	30	30	30
33,001 - 41,000	40	40	40
41,001 - 50,000	50	50	50
50,001 - 59,000	60	60	60
59,001 - 70,000	70	70	70
70,001 - 83,000	80	80	80
83,001 - 96,000	90	90	90
96,001 - 130,000	100	100	100
130,001 - 220,000	120	120	120
220,001 - 320,000	150	150	150
320,001 - 450,000	180	180	180
450,001 - 600,000	210	210	210
600,001 - 780,000	240	240	240
780,001 - 970,000	270	270	270
970,001 - 1,230,000 ³	300	300	300

¹ Does not include the population of ~~(utilities purchasing water)~~ a consecutive system that purchases water. The sampling requirement for consecutive systems is a separate determination based upon the population of that system.

² Noncommunity systems using only protected ground water sources and serving less than 25 individuals, may collect and submit for analysis, one sample every three months.

³ Systems serving populations larger than 1,230,000 shall contact the department for the minimum number of samples required per month.

⁴ In addition to the provisions of subsection (1)(a) of this section, if a system of this size cannot show evidence of having been subject to a sanitary survey on file with the department, or has been determined to be at risk to bacteriological concerns following a survey, the minimum number of samples required per month may be increased by the department after additional con-

sideration of such factors as monitoring history, compliance record, operational problems, and water quality concerns for the system.

~~((3))~~ (4) Inorganic chemical and physical.

(a) A complete inorganic chemical and physical analysis shall consist of the primary and secondary chemical and physical substances.

(i) Primary chemical and physical substances are antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate (as N), nitrite (as N), selenium, sodium, thallium, and for unfiltered surface water, turbidity.

(ii) Secondary chemical and physical substances are chloride, color, hardness, iron, manganese, specific conductivity, silver, sulfate, total dissolved solids*, and zinc.

* Required only when specific conductivity exceeds seven hundred micromhos/centimeter.

(b) Purveyors shall monitor for all primary and secondary chemical and physical substances identified in Table 4 and Table 5. Samples shall be collected in accordance with the monitoring requirements referenced in 40 CFR 141.23(a) through 141.23(j) and 40 CFR 143.4, except for composite samples for systems serving less than ~~((3,300))~~ three thousand three hundred one persons. For these systems, compositing among different systems may be allowed if the systems are owned or operated by a department-approved satellite management agency. ~~((A department guideline titled Inorganic and Organic Chemical Monitoring Plans is available on request.))~~

(c) Samples required by this subsection shall be taken at designated locations in accordance with 40 CFR 141.23(a) through 141.23(j), and 40 CFR 143.4, and Table 3 herein.

(i) Wellfield samples shall be allowed from department designated wellfields; and

(ii) In accordance with 40 CFR 141.23 (a)(3), alternate sampling locations may be ~~((allowed))~~ used if approved by the department. The process for determining these alternate sites ((are)) is described in ((the)) department ((guideline titled Inorganic and Organic Chemical Monitoring Plans)) guidance. Purveyors of community and NTNC systems may ask the department to approve an alternate sampling location for multiple sources within a single system ~~((which))~~ that are blended prior to entry to the distribution system. ~~((Department approval))~~ Alternate sampling plans shall ((consider)) address the following:

(A) Source vulnerability;

(B) ~~((Updated inorganic monitoring plan showing location of all sources with current and proposed sampling locations;~~

~~((C))~~ Individual source characteristics;

~~((D))~~ (C) Previous water quality information;

~~((E))~~ (D) Status of monitoring waiver applications; and

~~((F))~~ (E) Other information deemed necessary by the department.

(d) Composite samples:

(i) In accordance with CFR 141.23 (a)(4), purveyors may ask the certified lab to composite samples representing as many as five individual samples from within one system. Sampling procedures and protocols are outlined in ~~((the))~~

PERMANENT

department (~~(guideline titled *Inorganic and Organic Chemical Monitoring Plans*)~~) guidance; and

(ii) For systems serving a population of less than three thousand three hundred one, the department may approve composite sampling between systems when those systems are part of an approved satellite management agency.

(e) When the purveyor provides treatment for one or more inorganic chemical or physical contaminants, the department may require the purveyor to sample before and after treatment. The department shall notify the purveyor if and when this additional source sampling is required.

(f) Inorganic monitoring plans.

(i) Purveyors of community and NTNC systems shall prepare an inorganic chemical monitoring plan and ~~(conduct)~~ base routine monitoring ~~(in accordance with)~~ on the plan. ~~(A department guideline titled *Inorganic and Organic Chemical Monitoring Plans* is available to assist the purveyor in preparing this plan.)~~

(ii) ~~(The plan shall include, at a minimum:~~

(A) A system map or diagram showing the location of:

(I) Water sources;

(II) Storage, treatment, and distribution system; and

(III) Inorganic sample collection locations.

(B) A narrative which includes the following information:

(I) The system's public water system identification number;

(II) Population served and number of services;

(III) Water sources;

(IV) Storage, treatment, and distribution system;

(V) Inorganic sampling locations (including asbestos if applicable);

(VI) Source vulnerability ratings and status of monitoring waiver applications; and

(VII) Sampling schedule.

(iii)) The purveyor shall:

(A) Keep the monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer reflects the monitoring requirements, procedures or sampling locations, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(g) Monitoring waivers.

(i) Purveyors may request in writing, a monitoring waiver from the department for any nonnitrate/nitrite inorganic chemical and physical monitoring requirements identified in this chapter.

(ii) Purveyors requesting a monitoring waiver shall comply with applicable subsections of 40 CFR 141.23 (b)(3), 141.23 (c)(3), and 141.40 (n)(4). ~~(A department guideline titled *Source Vulnerability and Monitoring Waivers* is available to assist purveyors.)~~

(iii) Purveyors shall update and resubmit requests for waiver renewals as applicable during each compliance cycle or period or more frequently as directed by the department.

(iv) Failure to provide complete and accurate information in the waiver application shall be grounds for denial of the monitoring waiver.

(h) The department may require the purveyor to repeat sample for confirmation of results.

(i) Purveyors with emergency and seasonal sources shall monitor those sources when they are in use.

~~((4))~~ (5) Lead and copper. Monitoring for lead and copper shall be conducted in accordance with 40 CFR 141.86, 141.87, and 141.88.

~~((5))~~ Turbidity:

~~(a) Purveyors of systems with surface water or GWI sources and installing filtration, and other water systems as directed by the department, shall monitor turbidity a minimum of once per day at the entry to the distribution system.~~

~~(b) For purveyors of systems installing filtration, the monitoring requirement of (a) of this subsection is effective between written department notification of the filtration requirement and installation of filtration. Once filtration is installed, the purveyor shall monitor turbidity in accordance with WAC 246-290-664.~~

~~(c) Purveyors of systems with surface water or GWI sources not subject to the requirements specified in (a) of this subsection, shall monitor turbidity in accordance with Subpart B or Subpart D of Part 6 of chapter 246-290 WAC, whichever is applicable.~~

~~(d) Purveyors conducting turbidity measurements shall ensure that analytical requirements are met, in accordance with WAC 246-290-638, at all times the system serves water to the public.)~~

(6) Trihalomethanes (THMs).

(a) Purveyors of community systems serving a population of ten thousand or more and providing water treated with chlorine or other halogenated disinfectant shall monitor as follows:

(i) Ground water sources. The purveyor shall collect one sample from each treated ~~((spring, well, or well field))~~ ground water source every twelve months. This sample shall be taken at the source before treatment ~~((or at the extreme end of the distribution system. The sample shall be))~~ and analyzed for maximum total trihalomethane potential (MTTP)((; or)). The purveyor may receive approval from the department for an alternate sample location if it would provide essentially the same information as an MTTP analysis regarding the levels of THMs that the consumers are, or could potentially be, exposed to in the drinking water.

(ii) Surface water sources. The purveyor shall collect four samples per treated source every three months. The samples shall be taken within a twenty-four-hour period. The purveyor shall take one of the samples from the extreme end of the distribution system, the farthest point possible from the source of supply, and three samples from representative intermediate locations in the distribution system. The samples shall be analyzed for ~~((total trihalomethanes (-)))~~ TTHM ~~((;))~~ (i.e., the sum of trichloromethane, bromodichloromethane, dibromochloromethane, and tribromomethane). After one year of monitoring, the department may reduce the monitoring frequency to one sample every three months per treatment plant if the TTHM levels are less than 0.10 mg/L. The

purveyor shall take the sample at the extreme end of the distribution system; or

(iii) Purchased surface water sources. The purveyor of a consecutive system shall collect one water sample per each purchased (~~surface~~) source originating from a surface supply or confirmed GWI every three months. The sample shall be taken at the extreme end of the distribution system and analyzed for TTHM.

(b) Purveyors of **community** systems shall monitor for TTHM when serving a population less than ten thousand and providing surface water treated with chlorine or other halogenated disinfectant. The purveyor shall collect one water sample per treated source every three months for one year. The sample shall be taken at the extreme end of the distribution system and analyzed for TTHM. After the first year, the purveyor shall monitor surface water sources every thirty-six months.

(c) Purveyors of **community** systems shall monitor for TTHM when serving less than ten thousand people and purchasing surface water treated with chlorine or other halogenated disinfectant or adding a halogenated disinfectant after purchase. The purveyor shall collect one water sample every three months at the extreme end of the distribution system or at a department-acceptable location. The sample shall be analyzed for TTHM. After the first year, the purveyor shall monitor every thirty-six months.

(7) Organic chemicals.

(a) Purveyors of community and NTNC water systems shall comply with monitoring requirements in accordance with 40 CFR 141.24(a), 141.24(f), 141.24(g), 141.24(h), 141.40(a), 141.40(d), and 141.40(e).

(b) Sampling locations shall be as defined in 40 CFR 141.24(f), 141.24(g), 141.24(h), 141.40(b) and 141.40(c).

(i) Wellfield samples shall be allowed from department designated wellfields; and

(ii) In accordance with 40 CFR 141.24 (f)(3) and 141.24 (h)(3), alternate sampling locations may be allowed if approved by the department. These alternate locations are described in ~~((the departmental guideline titled *Inorganic and Organic Chemical Monitoring Plans*))~~ department guidance. Purveyors may ask the department to approve an alternate sampling location for multiple sources within a single system ~~((which))~~ that are blended prior to entry to the distribution system. ~~((Department approval))~~ The alternate sampling location shall consider the following:

(A) Source vulnerability;

(B) An updated organic monitoring plan showing location of all sources with current and proposed sampling locations;

~~((e))~~ (C) Individual source characteristics;

(D) Previous water quality information;

(E) Status of monitoring waiver applications; and

(F) Other information deemed necessary by the department.

(c) Composite samples:

(i) Purveyors may ask the certified lab to composite samples representing as many as five individual samples from within one system. Sampling procedures and protocols are outlined in ~~((the department guideline titled *Inorganic and Organic Chemical Monitoring Plans*))~~ department guidance;

(ii) For systems serving a population of less than three thousand three hundred one, the department may approve composite sampling between systems when those systems are part of an approved satellite management agency.

(d) The department may require the purveyor to sample both before and after treatment for one or more organic contaminants. The department shall notify the purveyor if and when this additional source sampling is required.

(e) Organic chemical monitoring plans.

(i) Purveyors of community and NTNC systems shall prepare an organic chemical monitoring plan and ~~((conduct))~~ base routine monitoring ((in accordance with)) on the plan. ~~((A department guideline titled *Inorganic and Organic Chemical Monitoring Plans* is available to assist the purveyor in preparing this plan.))~~

(ii) ~~((The plan shall include at a minimum:~~

(A) A system map or diagram showing the location of:

(I) Water sources;

(II) Storage, treatment, and distribution system; and

(III) Organic sample collection locations;

(B) A narrative which includes the following information:

(I) The system's public water system identification number;

(II) Population served and number of services;

(III) Water sources;

(IV) Storage, treatment, and distribution system;

(V) Organic sampling locations;

~~((VI) Source vulnerability ratings and status of monitoring waiver applications; and~~

~~((VII) Sampling schedule.~~

~~((iii))~~ The purveyor shall:

(A) Keep the monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer reflects the monitoring requirements, procedures or sampling locations, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(f) Monitoring waivers.

(i) Purveyors may request in writing, a monitoring waiver from the department for any organic monitoring requirement except those relating to unregulated VOCs;

(ii) Purveyors requesting a monitoring waiver shall comply with 40 CFR 141.24 (f)(7), 141.24 (f)(10), 141.24 (h)(6), 141.24 (h)(7) or 141.40 (n)(4) ~~((A department guideline titled *Source Vulnerability and Monitoring Waivers* is available to assist purveyors))~~;

(iii) Purveyors shall update and resubmit requests for waiver renewals as directed by the department; and

(iv) Failure to provide complete and accurate information in the waiver application shall be grounds for denial of the monitoring waiver.

(g) Purveyors with emergency and seasonal sources shall monitor those sources under the applicable requirements of this section when they are ~~((in use))~~ actively providing water to consumers.

(8) Unregulated chemicals.

(a) Unregulated inorganic contaminants. Purveyors of community and NTNC systems shall:

(i) Monitor for the unregulated inorganic chemicals listed in 40 CFR 141.40 (n)(12); ~~((and))~~

(ii) Comply with monitoring methods, frequencies, and sampling locations in accordance with 40 CFR 141.40 (n)(2) through 141.40 (n)(9) and 141.40 (n)(12)(~~); and~~

(iii) Apply in writing for a monitoring waiver according to the conditions outlined in 40 CFR 141.40 (n)(3), and the departmental procedures described in subsection (7)(f) of this section.

~~((iv) Request the department to defer this monitoring if they are a system with less than one hundred fifty service connections.))~~

(b) Unregulated VOCs. Purveyors shall:

(i) Monitor in accordance with 40 CFR 141.40(e) and 141.40(j);

(ii) Comply with monitoring methods, frequency and sampling locations in accordance with 40 CFR 141.40(a) through 141.40(d), 141.40(g) and 141.40(i); and

(iii) Perform repeat monitoring for these compounds in accordance with 40 CFR 141.40(l).

(c) Unregulated SOCs. Purveyors shall:

(i) Monitor for the unregulated SOCs listed in 40 CFR 141.40 (n)(11); and

(ii) Comply with monitoring methods, frequencies, and sampling locations in accordance with 40 CFR 141.40 (n)(1) through 141.40 (n)(9).

Purveyors may request that the department defer this monitoring if a system has less than one hundred fifty service connections.

(d) Purveyors with emergency and seasonal sources shall monitor those sources ~~((when they are in use))~~ under the applicable requirements of this section whenever they are actively providing water to consumers.

(9) Radionuclides.

(a) The purveyor's monitoring requirements for gross alpha particle activity, radium-226 and radium-228 shall be:

(i) **Community** systems shall monitor once every forty-eight months. Compliance shall be based on the analysis of an annual composite of four consecutive quarterly samples or the average of the analyses of four samples obtained at quarterly intervals;

(ii) The purveyor may omit analysis for radium-226 and radium-228 if the gross alpha particle activity is less than five pCi/L; and

(iii) If the results of the initial analysis are less than half of the established MCL, the department may allow compliance with the monitoring requirements based on analysis of a single sample collected every forty-eight months.

(b) The purveyor's monitoring requirements for man-made radioactivity shall be:

(i) Purveyors of **community** systems using surface water sources and serving more than one hundred thousand persons and other department-designated water systems shall monitor for man-made radioactivity (beta particle and photon) every forty-eight months. Compliance shall be based on the analysis of a composite of four consecutive quarterly samples or the analysis of four quarterly samples; and

(ii) The purveyor of a water system located downstream from a nuclear facility as determined by the department, shall monitor once every three months for gross beta and iodine-131, and monitor once every twelve months for strontium-90 and tritium. The department may allow the substitution of environmental surveillance data taken in conjunction with a nuclear facility for direct monitoring of man-made radioactivity if the department determines that such data is applicable to a particular public water system.

(10) Other substances.

On the basis of public health concerns, the department may require the purveyor to monitor for additional substances.

TABLE 3

MONITORING LOCATION

Sample Type	Sample Location
Asbestos	One sample from distribution system or if required by department, from the source.
Bacteriological	From representative points throughout distribution system.
Complete Inorganic Chemical & Physical	From a point representative of the source, after treatment, and prior to entry to the distribution system.
Lead/Copper	From the distribution system at targeted sample tap locations.
Nitrate/Nitrite	From a point representative of the source, after treatment, and prior to entry to the distribution system.
((Turbidity—Surface Water	From a location at or before the entry point to the distribution system.))
Total Trihalomethanes -Surface Water	From ((representative)) points <u>at extreme end, and at intermediate locations</u> , in the distribution system <u>from the source after treatment</u> .
Potential Trihalomethanes -Ground Water	From the source before treatment.
Radionuclides	From the source.
Organic Chemicals (VOCs & SOCs)	From a point representative of the source, after treatment and prior to entry to distribution system.
Other Substances (unregulated chemicals)	From a point representative of the source, after treatment, and prior to entry to the distribution system, or as directed by the department.

PERMANENT

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-310 Maximum contaminant levels (MCLs). (1) General.

(a) The purveyor shall be responsible for complying with the standards of water quality identified in this section. If a substance exceeds its maximum contaminant level (MCL), the purveyor shall take follow-up action in accordance with WAC 246-290-320.

(b) When enforcing the standards described under this section, the department shall enforce compliance with the primary standards as its first priority.

(2) Bacteriological.

(a) MCLs under this subsection shall be considered primary standards.

(b) Notwithstanding subsection (1) of this section, if coliform presence is detected in any sample, the purveyor shall take follow-up action in accordance with WAC 246-290-320(2).

(c) Acute MCL. An acute MCL for coliform bacteria occurs when there is:

- (i) Fecal coliform presence in a repeat sample;
- (ii) *E. coli* presence in a repeat sample; or
- (iii) Coliform presence in ~~((a set of))~~ any repeat samples collected as a follow-up to a sample with fecal coliform or *E. coli* presence.

(d) Nonacute MCL. A nonacute MCL for coliform bacteria occurs when:

- (i) Systems taking less than forty routine samples during the month have more than one sample with coliform presence; or
- (ii) Systems taking forty or more routine samples during the month have more than 5.0 percent with coliform presence.

(e) MCL compliance. The purveyor shall determine compliance with the coliform MCL for each month the system provides drinking water to the public. In determining MCL compliance, the purveyor shall:

- (i) Include:
 - (A) Routine samples; and
 - (B) Repeat samples ~~((and~~
 - ~~(C) Samples collected under WAC 246-290-300~~
 - ~~((2)(d)))~~
- (ii) Not include:
 - (A) Samples invalidated under WAC ~~((246-290-320~~
 - ~~((2)(d)))~~ 246-290-694 (1)(c); and
 - (B) Special purpose samples.
- (3) Inorganic chemical and physical.

The primary and secondary MCLs are listed in Table 4 and 5:

TABLE 4
INORGANIC CHEMICAL CHARACTERISTICS

Substance	Primary MCLs (mg/L)
Antimony (Sb)	0.006
Arsenic (As)	0.05

Substance	Primary MCLs (mg/L)
Asbestos	7 million fibers/liter (longer than 10 microns)
Barium (Ba)	2.0
Beryllium (Be)	0.004
Cadmium (Cd)	0.005
Chromium (Cr)	0.1
Copper (Cu)	*
Cyanide (HCN)	0.2
Fluoride (F)	4.0
Lead (Pb)	*
Mercury (Hg)	0.002
Nickel (Ni)	0.1
Nitrate (as N)	10.0
Nitrite (as N)	1.0
Selenium (Se)	0.05
Sodium (Na)	*
Thallium (Tl)	0.002

Substance	Secondary MCLs (mg/L)
Chloride (Cl)	250.0
Fluoride (F)	2.0
Iron (Fe)	0.3
Manganese (Mn)	0.05
Silver (Ag)	0.1
Sulfate (SO ₄)	250.0
Zinc (Zn)	5.0

* Although the state board of health has not established MCLs for copper, lead, and sodium, there is ~~((enough))~~ sufficient public health significance connected with copper, lead, and sodium levels to require inclusion in inorganic chemical and physical source monitoring. For lead and copper, the EPA has established distribution system related levels at which a system is required to consider corrosion control. These levels, called "action levels," are 0.015 mg/L for lead and 1.3 mg/L for copper and are applied to the highest concentration in ten percent of all samples collected from the distribution system. The EPA has also established a recommended level of twenty mg/L for sodium as a level of concern for those consumers that may be restricted for daily sodium intake in their diets.

TABLE 5
PHYSICAL CHARACTERISTICS

Substance	Primary MCL
Turbidity	1 NTU

PERMANENT

TABLE 5
PHYSICAL CHARACTERISTICS

(Substance	Primary MCL
Substance	Secondary MCLs
Color	15 Color Units
(Hardness	None established)
Specific Conductivity	700 umhos/cm
Total Dissolved Solids (TDS)	500 mg/L

- (4) ~~(Turbidity:~~
 (a) ~~The department shall consider standards under this subsection primary standards.~~
 (b) ~~The MCL for turbidity is in effect for systems using surface water or GWI sources until the treatment technique requirements of Part 6 of chapter 246-290 WAC become effective as listed in Table 9, 12, 13, or 14, whichever is applicable.~~
 (c) ~~The MCLs for turbidity are:~~
 (i) ~~1.0 NTU, as determined by a monthly average of the daily turbidity, where the daily turbidity is defined as the average of the:~~
 (A) ~~Highest two hourly readings over a twenty-four hour period when continuous monitoring is used; or~~
 (B) ~~Daily grab samples taken the same hour every day when daily monitoring is used.~~
 The department may increase the MCL to five NTUs if the purveyor can show the source is within a controlled watershed and the source meets the requirements under WAC 246-290-135.
 (ii) ~~5.0 NTUs based on an average of the maximum daily turbidity for two consecutive days.~~
 (5) ~~Trihalomethanes.~~
 (a) The department shall consider standards under this subsection primary standards.
 (b) The MCL for total trihalomethanes (TTHM) is 0.10 mg/L calculated on the basis of a running annual average of quarterly samples. The concentrations of each of the trihalomethane compounds (trichloromethane, dibromochloromethane, bromodichloromethane, and tribromomethane) are ~~(added together)~~ totaled to determine the TTHM level.
 (c) There is no MCL for maximum total trihalomethane potential (MTTP). When the MTTP value exceeds 0.10 mg/L, the purveyor shall follow up as described under WAC 246-290-320 ~~((5))~~ (6).
 ((6)) (5) Radionuclides.
 (a) The department shall consider standards under this subsection primary standards.
 (b) The MCLs for radium-226, radium-228, and gross alpha particle radioactivity are:

TABLE 6

Substance	MCL (pCi/L)
Radium-226	3
Combined Radium-226 and Radium-228	5

TABLE 6

Substance	MCL (pCi/L)
Gross alpha particle activity (excluding uranium)	15

(c) The MCL for beta particle and photon radioactivity from man-made radionuclides is: The average annual concentration shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirem/year.

NOTE: The department shall assume compliance with the four millirem/year dose limitation if the average annual concentration for gross beta activity, tritium, and strontium-90 are less than 50 pCi/L, 20,000 pCi/L, and 8 pCi/L respectively. When both tritium and strontium-90 are present, the sum of their annual dose equivalents to bone marrow shall not exceed four millirem/year.

~~((7))~~ (6) Organic chemicals.

(a) The department shall consider standards under this subsection primary standards.

(b) VOCs.

(i) The MCLs for VOCs shall be as listed in 40 CFR ~~((141-61))~~ 141.61(a).

(ii) The department shall determine compliance with this subsection based on compliance with 40 CFR 141.24(f).

(c) SOCs.

(i) MCLs for SOCs shall be as listed in 40 CFR 141.61(c).

(ii) The department shall determine compliance with this subsection based on compliance with 40 CFR 141.24(h).

~~((8))~~ (7) Other chemicals.

(a) The state board of health shall determine maximum contaminant levels for any additional substances.

(b) Purveyors may be directed by the department to comply with state advisory levels (SALs) for contaminants that do not have a MCL established in chapter 246-290 WAC. SALs shall be:

(i) MCLs ~~(which)~~ that have been promulgated by the EPA, but which have not yet been adopted by the state board of health; or

(ii) State board of health adopted levels for substances recommended by the department and not having an EPA established MCL. A listing of these may be found in the department document titled *Procedures and References for the Determination of State Advisory Levels for Drinking Water Contaminants* dated ~~((March 1991, which))~~ June 1996, that has been approved by the state board of health and is available ~~((on request))~~.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-320 Follow-up action. (1) General.

(a) When an MCL violation occurs, the purveyor shall take follow-up action as described in this section.

(b) When a primary standard violation occurs, the purveyor shall:

PERMANENT

- (i) Notify the department in accordance with WAC 246-290-480;
 - (ii) Notify the consumers served by the system in accordance with WAC ~~((246-290-330))~~ 246-290-495;
 - (iii) Determine the cause of the contamination; and
 - (iv) Take action as directed by the department.
- (c) When a secondary standard violation occurs, the purveyor shall notify the department and take action as directed by the department.

(d) The department may require additional sampling for confirmation of results. ~~((A department guideline on confirmation sampling titled Inorganic and Organic Monitoring Plans is available on request.))~~

(2) Bacteriological.

(a) When coliform bacteria are present in any sample and the sample is not invalidated under (d) of this subsection, the purveyor shall ensure the following actions are taken:

(i) The sample is analyzed for fecal coliform or E. coli. When a sample with a coliform presence is not analyzed for E. coli or fecal coliforms, the sample shall be considered as having a fecal coliform presence for MCL compliance purposes;

(ii) Repeat samples are collected in accordance with (b) of this subsection;

(iii) The department is notified in accordance with WAC 246-290-480; and

(iv) The cause of the coliform presence is determined and corrected.

(b) Repeat samples.

(i) The purveyor shall collect repeat samples in order to confirm the original sample results and to determine the cause of the coliform presence. Additional treatment, such as batch or shock chlorination, shall not be instituted prior to the collection of repeat samples unless prior authorization is given by the department. Following collection of repeat samples, and before the analytical results are known, there may be a need to provide interim precautionary treatment or other means to insure public health protection. The purveyor shall contact the department to determine the best interim approach in this situation.

(ii) The purveyor shall collect and submit for analysis a set of repeat samples for every sample in which the presence of coliforms is detected. A set of repeat coliform samples consists of:

(A) Four repeat samples for systems collecting one routine coliform sample each month; or

(B) Three repeat samples for all systems collecting more than one routine coliform sample each month.

~~((i))~~ (iii) The purveyor shall collect repeat sample sets according to Table 7;

~~((iii))~~ (iv) The purveyor shall collect one set of repeat samples for each sample with a coliform presence. All samples in a set of repeat samples shall be collected on the same day and submitted for analysis within twenty-four hours after notification by the laboratory of a coliform presence. ~~((If the purveyor can demonstrate to the satisfaction of the department, that logistical problems beyond the purveyor's control make analysis of the samples in the repeat sample set impractical because the time between sample collection and analysis will exceed thirty hours, then the purveyor shall collect the~~

~~required set of repeat samples)), or as directed by the department.~~

~~((iv))~~ (v) When repeat samples have coliform presence, the purveyor shall:

(A) Contact the department and collect a minimum of one additional set of repeat samples as directed by the department; or

(B) Collect one additional set of repeat samples for each sample where coliform presence was detected.

~~((v))~~ (vi) The purveyor of a system providing water to consumers via a single service shall collect repeat samples from the same location as the sample with a coliform presence. The set of repeat samples shall be collected:

(A) On the same collection date; ~~((e))~~

(B) Over consecutive days with one sample collected each day until the required samples in the set of repeat samples are collected; or

(C) As directed by the department.

~~((vi))~~ (vii) If a sample with a coliform presence was collected from the first two or last two active services, the purveyor shall monitor as directed by the department;

~~((vii))~~ (viii) The purveyor may change a previously submitted routine sample to a sample in a set of repeat samples when the purveyor:

(A) Collects the sample within five adjacent service connections of the location from which the initial sample with a coliform presence was collected;

(B) Collects the sample after the initial sample with a coliform presence was submitted for analysis;

(C) Collects the sample on the same day as other samples in the set of repeat samples, except under (b)~~((iii))~~ (iv) of this subsection; and

(D) ~~((Notifies))~~ Requests and receives approval from the department ~~((e))~~ for the change.

~~((viii))~~ (ix) The department may determine that sets of repeat samples specified under this subsection are not necessary during a month when a nonacute coliform MCL violation is determined for the system.

Table 7
REPEAT SAMPLE REQUIREMENTS

((SYSTEM GROUP (e))) # OF ROUTINE SAMPLES COLLECTED EACH MONTH ((e)))	# OF SAMPLES IN A SET OF REPEAT SAMPLES	LOCATIONS FOR REPEAT SAMPLES (COLLECT AT LEAST ONE SAMPLE PER SITE)
((GROUP A (e))) 1 ((routine sam- ple each month)))	4	<ul style="list-style-type: none"> ◆ Site of previous sample with a coliform presence ◆ Within 5 active services upstream of site of sample with a coliform presence ◆ Within 5 active services downstream of site of sample with a coliform presence ◆ At any other active service or from a location most susceptible to contamination (i.e., well or reservoir)

PERMANENT

(((SYSTEM GROUP (A))) # OF ROUTINE SAMPLES COLLECTED EACH MONTH(((A))))	# OF SAMPLES IN A SET OF REPEAT SAMPLES	LOCATIONS FOR REPEAT SAMPLES (COLLECT AT LEAST ONE SAMPLE PER SITE)
(((GROUP A (A))) more than 1 (((routine sample each month))))	3	<ul style="list-style-type: none"> ◆ Site of previous sample with a coliform presence ◆ Within 5 active services upstream of site of sample with a coliform presence ◆ Within 5 active services downstream of site of sample with a coliform presence
(((GROUP B (A)))	2	<ul style="list-style-type: none"> ◆ Site of the previous sample with a coliform presence ◆ From active service other than the site of the previous sample with a coliform presence

(c) Monitoring frequency following a coliform presence. Systems having one or more coliform presence samples that were not invalidated during the previous month shall collect and submit for analysis the minimum number of samples shown in the last column of Table 2.

(i) The ~~((department may reduce))~~ purveyor may obtain a reduction in the monitoring frequency requirement when one or more samples with a coliform presence were collected during the previous month, if the purveyor proves to the satisfaction of the department;

(A) The cause of the sample with a coliform presence; and

(B) The problem is corrected before the end of the next month the system provides water to the public.

(ii) If the ~~((department reduces this))~~ monitoring frequency requirement ~~((:~~

(A)) is reduced, the purveyor shall collect and submit at least the minimum number of samples required when no samples with a coliform presence were collected during the previous month ~~((; and~~

~~(B) The department shall make available a written description explaining:~~

~~(I) The specific cause of the coliform presence; and~~

~~(II) Action taken by the purveyor to correct the cause of coliform presence).~~

(d) Invalid samples. Coliform samples may be determined to be invalid under any of the following conditions:

(i) ~~((The department shall consider coliform samples with no coliform presence detected invalid when))~~ a certified laboratory determines that the sample results show:

(A) Multiple tube technique cultures that are turbid without appropriate gas production;

(B) Presence-absence technique cultures that are turbid in the absence of an acid reaction;

(C) ~~((There are))~~ Occurrence of confluent growth patterns or growth of TNTC (too numerous to count) colonies without a surface sheen using a membrane filter analytic technique; ((or

~~(D))~~ (ii) The analyzing laboratory determines there is excess debris in the sample.

~~((ii) The department may invalidate a coliform sample when:~~

~~(A))~~ (iii) The analyzing laboratory establishes that improper sample collection or analysis occurred;

~~((B))~~ (iv) The department determines that a ((domestic or) nondistribution system problem ((is) has occurred as indicated by:

~~((C))~~ (A) All samples in the set of repeat samples collected at the same location, including households, as the original coliform presence sample also are coliform presence; and

~~((D))~~ (B) All other samples from different locations (households, etc.) in the set of repeat samples are free of coliform.

~~((E))~~ (v) The department determines a coliform presence result is due to a circumstance or condition ((which) that does not reflect water quality in the distribution system. ((In this case, when the department invalidates a sample:

~~(I) The purveyor shall collect a set of repeat samples following the sample invalidation in accordance with Table 7; and~~

~~(II) The department's rationale for invalidating the sample shall be documented in writing and made available to the public. The documentation shall state the specific cause of the coliform presence, and what action the purveyor has taken, or will take.~~

~~(iii) When a coliform sample is determined invalid, the purveyor shall collect and submit for analysis:~~

~~(A))~~ (e) Follow-up action when an invalid sample is determined. The purveyor shall take the following action when a coliform sample is determined to be invalid:

(i) Collect and submit for analysis an additional coliform sample from the same location as each invalid sample within twenty-four hours of notification of the invalid sample; or

~~((B) Additional coliform))~~ (ii) In the event that it is determined that the invalid sample resulted from circumstances or conditions not reflective of distribution system water quality, collect a set of samples in accordance with Table 7; and

(iii) Collect and submit for analysis samples as directed by the department.

~~((iv) When the department or laboratory invalidates a sample, the sample shall not count towards the purveyor's minimum coliform monitoring requirements;))~~

(f) Invalidated samples shall not be included in determination of the sample collection requirement for compliance with this chapter.

(3) Inorganic chemical and physical follow-up monitoring shall be conducted in accordance with the following:

(a) For nonnitrate/nitrite primary inorganic chemicals, 40 CFR 141.23 (a)(4), 141.23 (b)(8), 141.23 (c)(7), 141.23 (f)(1), 141.23(g), 141.23(m) and 141.23(n);

(b) For nitrate, 40 CFR 141.23 (a)(4), 141.23 (d)(2), 141.23 (d)(3), 141.23 (f)(2), 141.23(g), 141.23(m), 141.23(n), and 141.23(o); ~~((or~~

(c) For nitrite, 40 CFR 141.23 (a)(4), 141.23 (e)(3), 141.23 (f)(2), and 141.23(g); or

(d) The purveyor of any public water system providing service that has secondary inorganic MCL exceedances shall take follow-up action as required by the department. Fol-

PERMANENT

low-up action shall be commensurate with the degree of consumer acceptance of the water quality and their willingness to bear the costs of meeting the secondary standard. For new community water systems and new nontransient noncommunity water systems without active consumers, treatment for secondary contaminant MCL exceedances will be required.

(4) Lead and copper follow-up monitoring shall be conducted in accordance with 40 CFR 141.85(d), 141.86 (d)(2), 141.86 (d)(3), 141.87(d) and 141.88(b) through 141.88(d).

(5) Turbidity.

~~((a) Purveyors using sources not subject to Part 6 of chapter 246-290 WAC and monitoring turbidity in accordance with WAC 246-290-300(4), shall notify the department as soon as possible, but in no case later than the end of the next business day, when:~~

~~(i) The turbidity is monitored continuously, and exceeds 1.0 NTU for longer than one hour; or~~

~~(ii) The results of turbidity analysis of grab samples exceeds 1.0 NTU, and a repeat sample taken within one hour also exceeds 1.0 NTU.~~

~~(b)) Purveyors monitoring turbidity in accordance with Part 6 of this chapter ((246-290 WAC)) shall provide follow-up in accordance with WAC 246-290-634.~~

(6) Trihalomethanes. When the average of all samples taken during any twelve-month period exceeds the MCL for total trihalomethanes, the violation is confirmed and the purveyor shall take corrective action as required by the department, and consistent with 40 CFR 141.30 (b)(3). When the maximum trihalomethane potential (MTTP) result is equal to or greater than 0.10 mg/L and the result is confirmed by a promptly collected repeat sample, the purveyor shall ~~((monitor according to WAC 246-290-300(5) for one year or more))~~ provide for additional monitoring and take action as directed by the department.

(7) Organic chemicals. Follow-up monitoring shall be conducted in accordance with the following:

(a) For VOCs, 40 CFR 141.24 (f)(11) through 141.24 (f)(15); or

(b) For SOCs, 40 CFR 141.24(b), 141.24(c) and 141.24 (h)(7) through 141.24 (h)(11).

(8) Unregulated inorganic and organic chemicals.

(a) Follow-up monitoring shall be conducted in accordance with 40 CFR 141.40 (n)(8) and 141.40 (n)(9).

(b) When an unregulated chemical is verified at a concentration above the detection limit, the purveyor shall:

(i) Submit the sample analysis results to the department within seven days of receipt from the laboratory; and

(ii) Sample the source a minimum of once every three months for one year and then annually thereafter during the three-month period when the highest previous measurement occurred.

(c) If the department determines that an unregulated chemical is verified at a level greater than a SAL, the department shall notify the purveyor in writing. The purveyor shall repeat sample the source as soon as possible after initial department notice that a SAL has been exceeded. The purveyor shall submit the analysis results to the department within seven days of receipt from the laboratory. If any repeat sample confirms that a SAL has been exceeded, the purveyor shall:

(i) Provide consumer information in accordance with WAC ((246-290-330 (5)(b))) 246-290-495;

(ii) Investigate the cause of the contamination; and

(iii) Take follow-up or corrective action as required by the department.

(d) The department may reduce the purveyor's monitoring requirement for a source detecting an unregulated chemical if the source has been monitored annually for at least three years, and all analysis results are less than the SAL.

(9) The department shall determine the purveyor's follow-up action when a substance not included in this chapter is detected.

NEW SECTION

WAC 246-290-415 Operations and maintenance. (1)

The purveyor shall ensure that the system is operated in accordance with the operations and maintenance program as established in the approved water system plan required under WAC 246-290-100 or the small water system management program under WAC 246-290-105.

(2) The operations and maintenance program shall include the following elements as applicable:

(a) Water system management and personnel;

(b) Operator certification;

(c) Comprehensive monitoring plan for all contaminants under WAC 246-290-300;

(d) Emergency response program;

(e) Cross-connection control program; and

(f) Maintenance of service reliability in accordance with WAC 246-290-420.

(3) The purveyor shall ensure that the system is operated in accordance with good operations procedures such as those available in texts, handbooks, and manuals available from the following sources:

(a) American Water Works Association (AWWA), 6666 West Quincy Avenue, Denver, Colorado 80235;

(b) American Society of Civil Engineers (ASCE), 345 East 47th Street, New York, New York 10017-2398;

(c) Ontario Ministry of the Environment, 135 St. Clair Avenue West, Toronto, Ontario M4V1B5, Canada;

(d) The Chlorine Institute, 2001 "L" Street NW, Washington, D.C. 20036;

(e) California State University, 600 "J" Street, Sacramento, California 95819;

(f) Health Research Inc., Health Education Services Division, P.O. Box 7126, Albany, New York 12224; and

(g) Any other standards acceptable to the department.

(4) The purveyor shall not establish or maintain a bypass to divert water around any feature of a treatment process, except by written approval from the department.

(5) The purveyor shall take preventive or corrective action as directed by the department when results of an inspection conducted by the department indicate conditions which are currently or may become a detriment to system operation.

(6) The purveyor of a system using surface water or GWI shall meet operational requirements specified in Part 6 of this chapter.

(7) The purveyor shall have a certified operator if required under chapter 70.119 RCW and chapter 246-292 WAC.

(8) The purveyor shall at all times employ reasonable security measures to assure the raw water intake facilities, water treatment processes, water storage facilities, and the distribution system are protected from possible damage or compromise by unauthorized persons, animals, vegetation, or similar intruding agents. Such measures include elements such as locks on hatches, fencing of facilities, screening of reservoir vents or openings, and other recommendations as may be found in the current edition of the *Recommended Standards for Water Works, A Committee Report of the Great Lakes - Upper Mississippi River Board of State Public Health and Environmental Managers*.

(9) All purveyors utilizing ground water wells shall monitor well levels from ground level to the static water level on a seasonal basis, including low demand and high demand periods, to document the continuing availability of the source to meet projected, long-term demands. Purveyors shall maintain this data and provide it to the department upon request.

(10) All operation and maintenance practices shall conform to Part 5 of this chapter.

NEW SECTION

WAC 246-290-416 Sanitary surveys. (1) All public water systems shall submit to a sanitary survey conducted by the department, or the department's designee, based upon the following schedule:

(a) For community and nontransient noncommunity water systems, every five years, or more frequently as determined by the department. The sanitary surveys shall be consistent with the schedules presented in 40 CFR 141.21; and

(b) For transient noncommunity water systems, every five years unless the system uses only disinfected ground water and has an approved wellhead protection program, in which case the survey shall be every ten years. The sanitary surveys shall be conducted consistent with schedules presented in 40 CFR 141.21.

(2) All public water system purveyors shall be responsible for:

(a) Ensuring cooperation in scheduling sanitary surveys with the department, or its designee; and

(b) Ensuring the unrestricted availability of all facilities and records at the time of the sanitary survey.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-420 Reliability and emergency response. (1) All public water systems shall provide an adequate quantity and quality of water in a reliable manner at all times consistent with the requirements of this chapter.

~~((a) In determining whether a proposed public water system or an expansion or modification of an existing system is capable of providing an adequate quantity of water, the department shall consider the immediate as well as the reasonably anticipated future needs of the system's consumers.~~

~~(b) In determining whether an existing public water system is providing an adequate quantity of water, the department shall consider the needs of the system's existing consumers exclusively, unless, in the department's discretion, consideration of the needs of potential consumers is in the public interest.~~

~~(2) The purveyor shall ensure the system is constructed, operated, and maintained to protect against failures of the power supply, treatment process, equipment, or structure with appropriate back-up facilities. Security measures shall be employed to assure the water source, water treatment processes, water storage facilities, and the distribution system are under the strict control of the purveyor.))~~

(2) During normal operating conditions, for both average and peak demand periods, water pressure at the consumer's service meter, or property line if a meter is not used, shall be maintained at the approved design pressure, but in no case be less than 20 psi (140 kPa). Water quality shall be maintained as required in Part 4 and Part 6 of this chapter.

(3) ((Where)) When fire flow is required, ((a)) 20 psi (140 Kpa) at the operating hydrant and at least positive pressure ((at the water meter or property line)) shall be maintained throughout the system under fire flow conditions.

(4) ((Water pressure at the customer's service meter or property line if a meter is not used shall be maintained at the approved design pressure under peak hourly design flow conditions. In no case shall the pressure be less than twenty psi.

(5) Water use restrictions as a designed operation practice shall not be allowed. However, water use restrictions may be allowed in times of drought.

(6) No intake or other connection shall be maintained between a public water system and a source of water not approved by the department.

(7)) The purveyor shall address abnormal operating conditions, such as those associated with fires, floods, unscheduled power outages, facility failures, and system maintenance, by using measures consistent with applicable regulations and industry standards to ensure the system is constructed, maintained, and operated to protect against the risk of contamination by cross-connections as a result of loss of system pressure.

(5) For operations during abnormal conditions, the purveyor shall establish the level of reliability, in accordance with consumer expectations, to ensure prevention of loss of pressure or prompt restoration of pressure when a loss of pressure has occurred. Consumer expectations may be established by a simple majority of the affected consumers within the system's service area, or within specific, definable pressure zones when different levels of service may be encountered. A simple majority of consumers can be associated with either a vote of the consumers for privately owned and operated systems, or of the system's governing body, such as council, board, or commission, for publicly governed systems. Consumer expectations shall not be used by a purveyor to justify a failure to address routine or repeated loss of pressure within the system, or within specific, definable pressure zones, because of the purveyor's failure to properly construct, maintain, or operate the system. The level of reliability established under this subsection, and measures for achieving such reliability, shall be identified in the operations and

maintenance program and incorporated into the water system design, and shall be approved by the department. The level of reliability shall not affect the purveyor's obligations under subsections (1) through (4) of this section.

(6) The purveyor shall implement all appropriate measures necessary to meet the identified level of reliability for normal and abnormal operating conditions. Procedures for system operation during normal and abnormal operating conditions shall be documented in an operations and maintenance and emergency response program in accordance with WAC 246-290-415 and shall be implemented in a timely and reasonable manner.

(7) If a purveyor is unable to satisfactorily address departmental concerns or consumer complaints regarding the level of reliability associated with normal or abnormal operating conditions, the purveyor may be required to prepare a project report pursuant to WAC 246-290-110 that addresses an evaluation of the problem, impacts on affected consumers, and recommended corrective action. Unless the department determines that public health protection requires otherwise, improvements related to abnormal operating conditions described under subsection (5) of this section will be required commensurate with the established level of reliability for abnormal operating conditions.

(8) Restrictions on designed, or historically documented, normal water uses shall not be allowed except under the following conditions:

(a) Whenever there is clear evidence that, unless limitations are imposed, water use at normal levels will lead to a relatively rapid depletion of water source reserves, such as in drought situations or when significant facility failures occur;

(b) Whenever a water system observes that demands for water exceed the available supply, as a result of such events as miscalculated planning, inattentive operation, or unforeseen problems with sources and that limitations would be necessary to insure basic levels of service while additional sources were being sought or developed, or the situation was being otherwise remedied; or

(c) Whenever the water system institutes restrictions as part of a water conservation program which has been accepted by the system consumers through appropriate public decision-making processes within existing governance mechanisms, or has been mandated under state regulatory authority.

(9) A purveyor shall provide the department with the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system, including any changes to this information. The purveyor shall also maintain twenty-four-hour phone availability and shall respond to ((customer)) consumer concerns and service complaints in a timely manner.

NEW SECTION

WAC 246-290-451 Disinfection of drinking water. (1) No portion of a public water system containing potable water shall be put into service, nor shall service be resumed until the facility has been effectively disinfected.

(a) In cases of new construction, drinking water shall not be furnished to the consumer until satisfactory bacteriologi-

cal samples have been analyzed by a laboratory certified by the state; and

(b) In cases of existing water mains, when the integrity of the main is lost resulting in a significant loss of pressure that places the main at risk to cross-connection contamination, the purveyor shall use standard industry practices such as flushing, disinfection, and/or bacteriological sampling to ensure adequate and safe water quality prior to the return of the line to service;

(c) If a cross-connection is confirmed, the purveyor shall satisfy the reporting requirements as described under WAC 246-290-490(8).

(2) The procedure used for disinfection shall conform to standards published by the American Water Works Association, or other industry standards acceptable to the department.

(3) The purveyor of a system using ground water and required to disinfect, shall meet the following disinfection requirements, unless otherwise directed by the department:

(a) Minimum contact time at a point at or before the first consumer of:

(i) Thirty minutes if 0.2 mg/L free chlorine residual is maintained;

(ii) Ten minutes if 0.6 mg/L free chlorine residual is maintained; or

(iii) Any combination of free chlorine residual concentration (C), measured in mg/L, and contact time (T), measured in minutes, that results in a CT product (C X T) of greater than or equal to six; or

(iv) Contact time (T) for surface water or GWI sources shall be determined in accordance with WAC 246-290-636.

(b) Detectable residual disinfectant concentration in all active parts of the distribution system, measured as total chlorine, free chlorine, combined chlorine, or chlorine dioxide;

(c) Water in the distribution system with an HPC level less than or equal to 500 organisms/mL is considered to have a detectable residual disinfectant concentration.

(4) The department may require the purveyor to provide longer contact times, higher chlorine residuals, or additional treatment to protect the health of consumers served by the public water system.

(5) The purveyor of a system using surface water or GWI shall meet disinfection requirements specified in Part 6 of this chapter.

(6) The purveyor of a system providing ground water disinfection shall monitor residual disinfectant concentration at representative points in the system on a daily basis, and at the same time and location of routine and repeat coliform sample collection. Frequency of disinfection residual monitoring may be reduced upon written request to the department if it can be shown that disinfection residuals can be maintained on a reliable basis without the provision of daily monitoring.

(7) The analyses shall be conducted in accordance with "standard methods." To assure adequate monitoring of chlorine residual, the department may require the use of continuous chlorine residual analyzers and recorders.

NEW SECTION

WAC 246-290-455 Operation of chemical contaminant treatment facilities. (1) Purveyors shall ensure finished drinking water from chemical contaminant treatment facilities complies with the minimum water quality standards established in WAC 246-290-310. This section does not apply to facilities used only for corrosion control treatment purposes.

(2) The purveyor shall collect finished drinking water samples at a point directly downstream of the treatment system prior to the first consumer on a monthly basis.

(a) Finished drinking water samples from treatment systems utilized for removal of contaminants with established primary MCLs shall be submitted to a certified laboratory for analysis of the specific contaminant(s) of concern.

(b) Finished drinking water samples from treatment systems utilized for removal of contaminants with established secondary MCLs shall be submitted to a certified laboratory for analysis or analyzed for the specific contaminant(s) of concern by the purveyor through department-approved on-site methods.

(c) Additional finished drinking water monitoring may be required by the department based on the complexity or size of the water system.

(3) If primary MCLs following treatment are exceeded in four or more months of a consecutive twelve-month compliance period, the purveyor shall submit a project report to the department that addresses the failure to maintain compliance. The project report shall include methods and schedules to correct the treatment deficiency and/or indicate schedules for implementing an alternate source of supply or an effective treatment technology.

(4) If secondary MCLs following treatment are exceeded in four or more months of a consecutive twelve-month compliance period, the purveyor shall take action per WAC 246-290-320 (3)(d).

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

WAC 246-290-460 Fluoridation of drinking water.

(1) Purveyors shall obtain written department approval of fluoridation treatment facilities before placing them in service.

(2) Where fluoridation is practiced, ~~((the concentration of fluoride shall be maintained))~~ purveyors shall maintain fluoride concentrations in the range 0.8 through 1.3 mg/L. ~~(Determination of fluoride concentration shall be made daily, and reports of such analyses shall be submitted to the department, in a format acceptable to the department, within ten days of the end of the reporting month. Such analyses shall be made in accordance with procedures listed in the most recently published edition of *Standard Methods for the Examination of Water and Waste Water*.~~

~~(2) Monthly check samples shall be taken downstream, at the first sample tap where adequate mixing has taken place, from each fluoride injection point. These samples should be taken at the same place and time as the routine daily check samples. The samples along with a completed form shall be sent to the state public health laboratory, or a laboratory cer-~~

~~ified by the state, to test fluoride. A comparison of the results should then be made between samples analyzed in the field and the appropriate monthly check sample to assure the results are equivalent and field equipment is operating properly. An increased sampling schedule may be applied by the department if necessary to assure the adequacy and consistency of fluoridation)) throughout the distribution system.~~

~~(3) Where fluoridation is practiced, purveyors shall take the following actions to ensure that concentrations remain at optimal levels and that fluoridation facilities and monitoring equipment are operating properly:~~

~~(a) Daily monitoring.~~

~~(i) Take daily monitoring samples for each point of fluoride addition and analyze the fluoride concentration. Samples must be taken downstream from each fluoride injection point at the first sample tap where adequate mixing has occurred.~~

~~(ii) Record the results of daily analyses in a monthly report format acceptable to the department. A report must be made for each point of fluoride addition.~~

~~(iii) Submit monthly monitoring reports to the department within the first ten days of the month following the month in which the samples were collected.~~

~~(b) Monthly split sampling.~~

~~(i) Take a monthly split sample at the same location where routine daily monitoring samples are taken. A monthly split sample must be taken for each point of fluoride addition.~~

~~(ii) Analyze a portion of the sample and record the results on the lab sample submittal form and on the monthly report form.~~

~~(iii) Forward the remainder of the sample, along with the completed sample form to the state public health laboratory, or other state-certified laboratory, for fluoride analysis.~~

~~(iv) If a split sample is found by the certified lab to be:~~

~~(A) Not within the range of 0.8 to 1.3 mg/l, the purveyor's fluoridation process shall be considered out of compliance.~~

~~(B) Differing by more than 0.30 mg/l from the purveyor's analytical result, the purveyor's fluoride testing shall be considered out of control.~~

~~(4) Purveyors shall conduct analyses prescribed in subsection (3) of this section in accordance with procedures listed in the most recent edition of *Standard Methods for the Examination of Water and Wastewater*.~~

~~(5) The purveyor may be required by the department to increase the frequency, and/or change the location of sampling prescribed in subsection (3) of this section to ensure the adequacy and consistency of fluoridation.~~

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-470 Uncovered distribution reservoirs. (1) Existing uncovered distribution reservoirs shall be operated based on a plan of operation approved by the department.

(2) Purveyors with uncovered distribution reservoirs shall have a department-approved plan and schedule to cover all reservoirs on file with the department.

PERMANENT

(3) The plan of operation shall address the following elements as a minimum:

~~((1))~~ (a) Assurance of the means and levels associated with the provision of continuous disinfection at all times water is being delivered to the public, including the reliability provisions outlined in WAC 246-290-420;

~~((2))~~ (b) Description of the means for control of debris ~~((and undesirable growths of algae or other aquatic organisms;~~

~~(3) Control of surface water runoff;~~

~~(4) Control of airborne contamination (atmospheric or avian-borne);~~

~~(5))~~, algal, or other aquatic organism growths, surface water runoff, and atmospheric or avian-borne airborne contamination;

(c) Procedures for ensuring that construction will not lead to reservoir contamination;

~~((6))~~ (d) Provisions for ensuring adequate security measures are provided; and

~~((7))~~ (e) Any required, or department-directed, monitoring and reporting.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-480 Recordkeeping and reporting. (1) Records. The purveyor shall keep the following records of operation and water quality analyses:

(a) Bacteriological and turbidity analysis results shall be kept for five years. Chemical analysis results shall be kept for as long as the system is in operation. Records of daily source meter readings shall be kept for ten years. Other records of operation and analyses required by the department shall be kept for three years. All records shall bear the signature of the operator in responsible charge of the water system or his or her representative. Systems shall keep these records available for inspection by the department and shall send the records to the department if requested. Actual laboratory reports may be kept or data may be transferred to tabular summaries, provided the following information is included:

(i) The date, place, and time of sampling, and the name of the person collecting the sample;

(ii) Identification of the sample type (routine distribution system sample, repeat sample, source or finished water sample, or other special purpose sample);

(iii) Date of analysis;

(iv) Laboratory and person responsible for performing analysis;

(v) The analytical method used; and

(vi) The results of the analysis.

(b) Records of action taken by the system to correct violations of primary drinking water standards. For each violation, records of actions taken to correct the violation, and copies of public notifications shall be kept for no less than three years after the last corrective action taken.

(c) Copies of any written reports, summaries, or communications~~(:)~~ relating to ~~((CSEs))~~ sanitary surveys or SPIs of the system conducted by system personnel, by a consultant or by any local, state, or federal agency, shall be kept for ten

years after completion of the ~~((CSE))~~ sanitary survey or SPI involved.

(d) Copies of project reports, construction documents~~(:)~~ and related drawings, inspection reports and approvals shall be kept for the life of the facility.

(e) Where applicable, daily records ~~((including))~~ of the following shall be kept for a minimum of three years:

(i) Chlorine residual;

(ii) Fluoride level;

(iii) Water treatment plant performance including, but not limited to:

(A) Type of chemicals used and quantity~~(:)~~;

(B) Amount of water treated~~(:)~~; and

(C) Results of analyses.

(iv) Turbidity;

(v) Source meter readings; and

(vi) Other information as specified by the department.

(2) Reporting.

(a) Unless otherwise specified in this chapter, the purveyor shall report to the department within forty-eight hours:

(i) The failure to comply with the primary standards or treatment technique requirements under this chapter;

(ii) The failure to comply with the monitoring requirements under this chapter; and

(iii) The violation of a primary MCL.

(b) The purveyor shall submit to the department reports required by this chapter, including tests, measurements, and analytic reports. Monthly reports are due before the tenth day of the following month, unless otherwise specified in this chapter.

~~((Daily))~~ (c) The purveyor shall submit to the department copies of any written summaries or communications relating to the status of monitoring waivers during each monitoring cycle or as directed by the department.

(d) Source meter readings shall be made available to the department ~~((on request)).~~

~~((d))~~ (e) Water facilities inventory ~~((and report))~~ form (WFI).

(i) Purveyors of **community and NTNC** systems shall submit an annual WFI update to the department;

(ii) Purveyors of ~~((NTNC and))~~ TNC systems shall submit an updated WFI to the department as requested;

(iii) Purveyors shall submit an updated WFI to the department within thirty days of any change in name, category, ownership, or responsibility for management of the water system, or addition of source or storage facilities; and

(iv) At a minimum the completed WFI shall provide the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system.

~~((e))~~ (v) Purveyors shall provide in the WFI total annual water production~~((Purveyors shall report total annual water production for each source to the department upon request:~~

~~(f))~~ and use, including:

(i) Total annual water production for each source;

(ii) Monthly and annual totals for water purchased from or sold to other purveyors; and

(iii) For purveyors with more than one thousand service connections, monthly and annual totals for purveyor con-

sumer classes. Monthly data may be estimated if the water system bills less frequently than monthly.

(f) Bacteriological.

(i) The purveyor shall notify the department of the presence of:

(A) Coliform in a sample, within ten days of notification by the laboratory; and

(B) Fecal coliform or E. coli in a sample, by the end of the business day in which the purveyor is notified by the laboratory. If the purveyor is notified of the results after normal close of business, then the purveyor shall notify the department before the end of the next business day.

(ii) When a coliform MCL violation is determined, the purveyor shall:

(A) Notify the department within twenty-four hours of determining acute coliform MCL violations; and

(B) Notify the department before the end of the next business day when a nonacute coliform MCL is determined(~~(; and~~

~~(C) Notify water system users in accordance with WAC 246-290-330.~~

~~(iii) When a monitoring violation occurs, including invalid or expired CSEs, the purveyor shall:~~

~~(A) Notify the department of the violation within ten days; and~~

~~(B) Notify water system users in accordance with WAC 246-290-330).~~

(g) Systems monitoring for unregulated VOCs in accordance with WAC 246-290-300 (8)(b), shall send a copy of the results of such monitoring and any public notice to the department within thirty days of receipt of analytical results.

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

WAC 246-290-490 Cross-connection control. (~~((1)~~ General:

~~(a) Purveyors have the responsibility to protect public water systems from contamination due to cross-connections. Cross-connections which can be eliminated shall be eliminated. The purveyor shall work cooperatively with local authorities to eliminate or control potential cross-connections:~~

~~(b) The purveyor shall develop and implement a cross-connection control program acceptable to the department. The scope and complexity of the program shall be directly related to the size of the system and the potential public health risk. A department guideline titled *Planning Handbook* is available to assist the utility in developing this program. The most recently published edition of the manual titled *Accepted Procedure and Practice in Cross-Connection Control—Pacific Northwest Section—American Waterworks Association* shall be used as a resource to establish:~~

~~(i) Minimum cross-connection control operating policies;~~

~~(ii) Backflow prevention assembly installation practices;~~

~~(iii) Backflow prevention assembly testing procedures; and~~

~~(iv) Enforcement authority.~~

~~Purveyors and local authorities shall have the option of establishing more stringent requirements:~~

~~(c) The purpose of a cross-connection control program is to protect the health of water consumers and the potability of the public water system by assuring:~~

~~(i) The inspection and regulation of plumbing in existing and proposed piping networks; and~~

~~(ii) The proper installation and surveillance of backflow prevention assemblies when actual or potential cross-connections exist and cannot be eliminated.~~

~~(d) The cross-connection control program shall be included in the water system's plan under WAC 248-54-065 or small water system management program as outlined under WAC 248-54-196, whichever is appropriate.~~

~~(e) When an existing cross-connection poses a potential health or system hazard, the purveyor shall shut off water service to the premises until the cross-connection has been eliminated or controlled by the installation of a proper backflow prevention assembly. The cross-connection control program manager for the department shall be notified when a service has been shut off.~~

~~(2) Backflow prevention assembly installation and testing:~~

~~(a) If a cross-connection cannot be eliminated, then:~~

~~(i) An air gap separation, reduced pressure principle backflow prevention assembly (RPBA) or a reduced pressure principle detector backflow prevention assembly (RPDA) shall be installed if the cross-connection creates an actual or potential health or system hazard.~~

~~(ii) An air gap separation, RPBA, RPDA, double-check valve backflow prevention assembly (DCVA), or double-check detector backflow prevention assembly (DCDA) shall be installed if the cross-connection is objectionable, but does not pose an unreasonable risk to health.~~

~~(iii) A pressure vacuum breaker assembly (PVBA) or an atmospheric vacuum breaker may be installed where the substance which could backflow is objectionable but does not pose an unreasonable risk to health and where there is no possibility of backpressure in the downstream piping.~~

~~(iv) Backflow prevention assemblies, appropriate for the degree of hazard or air gaps and in some cases both, shall be installed at the service connection or within the following facilities, unless in the judgment of the water purveyor and the department, no hazard exists: Hospitals, mortuaries, clinics, laboratories, piers and docks, sewage treatment plants, food and beverage processing plants, chemical plants using water process, metal plating industries, petroleum processing or storage plants, radioactive material processing plants or nuclear reactors, car washes, facilities having a nonpotable auxiliary water supply, and others specified by the department.~~

~~(b) All installed RPBA's, RPDA's, DCVA's, DCDA's, and PVBA's shall be models included on the current list of backflow assemblies, approved for installation in Washington state, and maintained and published by the department. Backflow prevention assemblies in service, but not listed, shall remain in service provided the backflow prevention assemblies:~~

~~(i) Are listed on the current Washington state approved cross-connection control assembly list at the time of installation;~~

~~(ii) Are properly maintained;~~

~~(iii) Are of a type appropriate for the degree of hazard; and~~

~~(iv) Are tested and successfully pass the test annually.~~

~~When unlisted assemblies are moved or require more than minimum maintenance, the unlisted assemblies shall be replaced by an assembly listed on the current approved model list.~~

~~(e) All air gaps and backflow prevention assemblies shall be installed in accordance with the cross-connection control manual referenced under WAC 248-54-285 (1)(b) of this section.~~

~~(d) The purveyor may permit the substitution of a properly installed air gap in lieu of an approved backflow prevention assembly. All such air gap substitutions shall be inspected annually by a Washington state certified backflow assembly tester.~~

~~(e) A Washington state certified backflow assembly tester shall inspect and test all:~~

~~(i) RPBA's;~~

~~(ii) RPDA's;~~

~~(iii) DCVA's;~~

~~(iv) DCDA's;~~

~~(v) New PVBA installations; and~~

~~(vi) Existing PVBA's discovered through routine inspections.~~

~~(f) Tests and/or inspections shall be conducted:~~

~~(i) At the time of initial installation;~~

~~(ii) Annually after initial installation, or more frequently if tests indicate repeated failures; and~~

~~(iii) After the assembly is repaired.~~

~~(g) The assemblies shall be repaired, overhauled, or replaced whenever found to be defective. The purveyor shall require that improperly installed or altered air gaps be replumbed or replaced by an approved RPBA at their discretion. Inspections, tests, and repairs shall be made under the purveyor's supervision and records thereof kept as required by the purveyor.~~

~~(h) The purveyor shall deny or discontinue water service to any customer failing to cooperate in the installation, maintenance, testing, or inspection of backflow prevention assemblies required by the regulations of this chapter.~~

~~(3) Washington state certified backflow assembly testers:~~

~~(a) A backflow assembly tester shall become certified and maintain certification per department backflow assembly tester certification program guidelines.~~

~~(b) The department shall maintain a list of persons certified to test backflow prevention assemblies.)) (1) Applicability, purpose, and responsibility.~~

~~(a) All community water systems shall comply with the cross-connection control requirements specified in this section.~~

~~(b) All noncommunity water systems shall apply the principles and provisions of this section, including subsection (4)(b) of this section, as applicable to protect the public water system from contamination via cross-connections. Noncom-~~

munity systems that comply with subsection (4)(b) of this section and the provisions of WAC 51-46-0603 of the UPC (which addresses the installation of backflow preventers at points of water use within the potable water system) shall be considered in compliance with the requirements of this section.

(c) The purpose of the purveyor's cross-connection control program shall be to protect the public water system, as defined in WAC 246-290-010, from contamination via cross-connections.

(d) The purveyor's responsibility for cross-connection control shall begin at the water supply source, include all the public water treatment, storage, and distribution facilities, and end at the point of delivery to the consumer's water system, which begins at the downstream end of the service connection or water meter located on the public right-of-way or utility-held easement.

(e) Under the provisions of this section, purveyors are not responsible for eliminating or controlling cross-connections within the consumer's water system. Under chapter 19.27 RCW, the responsibility for cross-connection control within the consumer's water system, i.e., within the property lines of the consumer's premises, falls under the jurisdiction of the local administrative authority.

(2) General program requirements.

(a) The purveyor shall develop and implement a cross-connection control program that meets the requirements of this section, but may establish a more stringent program through local ordinances, resolutions, codes, bylaws, or operating rules.

(b) Purveyors shall ensure that good engineering and public health protection practices are used in the development and implementation of cross-connection control programs. Department publications and the most recently published editions of references, such as, but not limited to, those listed below, may be used as guidance for cross-connection program development and implementation:

(i) *Manual of Cross-Connection Control* published by the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California (USC Manual); or

(ii) *Cross-Connection Control Manual, Accepted Procedure and Practice* published by the Pacific Northwest Section of the American Water Works Association (PNWS-AWWA Manual).

(c) The purveyor may implement the cross-connection control program, or any portion thereof, directly or by means of a contract with another agency or party acceptable to the department.

(d) The purveyor shall coordinate with the local administrative authority in all matters concerning cross-connection control. The purveyor shall document and describe such coordination, including delineation of responsibilities, in the written cross-connection control program required in (e) of this subsection.

(e) The purveyor shall include a written description of the cross-connection control program in the water system plan required under WAC 246-290-100 or the small water system management program required under WAC 246-290-105. The cross-connection control program shall

include the minimum program elements described in subsection (3) of this section.

(f) The purveyor shall ensure that cross-connections between the distribution system and a consumer's water system are eliminated or controlled by the installation of an approved backflow preventer commensurate with the degree of hazard. This can be accomplished by implementation of a cross-connection program that relies on:

(i) Premises isolation as defined in WAC 246-290-010;
or

(ii) Premises isolation and in-premises protection as defined in WAC 246-290-010.

(g) Purveyors with cross-connection control programs that rely both on premises isolation and in-premises protection:

(i) Shall comply with the premises isolation requirements specified in subsection (4)(b) of this section; and

(ii) May reduce premises isolation requirements and rely on in-premises protection for premises other than the type not addressed in subsection (4)(b) of this section, if the conditions in (h) of this subsection are met.

(h) Purveyors may rely on in-premises protection only when the following conditions are met:

(i) The in-premises backflow preventers provide a level of protection commensurate with the purveyor's assessed degree of hazard;

(ii) Backflow preventers which provide the in-premises backflow protection meet the definition of approved backflow preventers as described in WAC 246-290-010;

(iii) The approved backflow preventers are installed, inspected, tested (if applicable), maintained, and repaired in accordance with subsections (6) and (7) of this section;

(iv) Records of such backflow preventers are maintained in accordance with subsections (3)(j) and (8) of this section; and

(v) The purveyor has reasonable access to the consumer's premises to conduct an initial hazard evaluation and periodic reevaluations to determine whether the in-premises protection is adequate to protect the purveyor's distribution system.

(i) The purveyor shall take appropriate corrective action within its authority if:

(i) A cross-connection exists that is not controlled commensurate to the degree of hazard assessed by the purveyor;
or

(ii) A consumer fails to comply with the purveyor's requirements regarding the installation, inspection, testing, maintenance or repair of approved backflow preventers required by this chapter.

(j) The purveyor's corrective action may include, but is not limited to:

(i) Denying or discontinuing water service to a consumer's premises until the cross-connection hazard is eliminated or controlled to the satisfaction of the purveyor;

(ii) Requiring the consumer to install an approved backflow preventer for premises isolation commensurate with the degree of hazard; or

(iii) The purveyor installing an approved backflow preventer for premises isolation commensurate with the degree of hazard.

(k) Purveyors denying or discontinuing water service to a consumer's premises for one or more of the reasons listed in (i) of this subsection shall notify the local administrative authority prior to taking such action except in the event of an emergency.

(l) The purveyor shall prohibit the intentional return of used water to the purveyor's distribution system. Such water would include, but is not limited to, water used for heating, cooling, or other purposes within the consumer's water system.

(3) Minimum elements of a cross-connection control program.

(a) To be acceptable to the department, the purveyor's cross-connection control program shall include the minimum elements identified in this subsection.

(b) Element 1: The purveyor shall adopt a local ordinance, resolution, code, bylaw, or other written legal instrument that:

(i) Establishes the purveyor's legal authority to implement a cross-connection control program;

(ii) Describes the operating policies and technical provisions of the purveyor's cross-connection control program; and

(iii) Describes the corrective actions used to ensure that consumers comply with the purveyor's cross-connection control requirements.

(c) Element 2: The purveyor shall develop and implement procedures and schedules for evaluating new and existing service connections to assess the degree of hazard posed by the consumer's premises to the purveyor's distribution system and notifying the consumer within a reasonable time frame of the hazard evaluation results. At a minimum, the program shall meet the following:

(i) For new connections made on or after the effective date of these regulations, procedures shall ensure that an initial evaluation is conducted before service is provided;

(ii) For existing connections made prior to the effective date of these regulations, procedures shall ensure that an initial evaluation is conducted in accordance with a schedule acceptable to the department; and

(iii) For all service connections, once an initial evaluation has been conducted, procedures shall ensure that periodic reevaluations are conducted in accordance with a schedule acceptable to the department and whenever there is a change in the use of the premises.

(d) Element 3: The purveyor shall develop and implement procedures and schedules for ensuring that:

(i) Cross-connections are eliminated whenever possible;

(ii) When cross-connections cannot be eliminated, they are controlled by installation of approved backflow preventers commensurate with the degree of hazard; and

(iii) Approved backflow preventers are installed in accordance with the requirements of subsection (6) of this section.

(e) Element 4: The purveyor shall ensure that personnel, including at least one person certified as a CCS, are provided to develop and implement the cross-connection control program.

(f) Element 5: The purveyor shall develop and implement procedures to ensure that approved backflow preventers

are inspected and/or tested (as applicable) in accordance with subsection (7) of this section.

(g) Element 6: The purveyor shall develop and implement a backflow prevention assembly testing quality control assurance program, including, but not limited to, documentation of tester certification and test kit calibration, test report contents, and time frames for submitting completed test reports.

(h) Element 7: The purveyor shall develop and implement (when appropriate) procedures for responding to backflow incidents.

(i) Element 8: The purveyor shall include information on cross-connection control in the purveyor's existing program for educating consumers about water system operation. Such a program may include periodic bill inserts, public service announcements, pamphlet distribution, notification of new consumers and consumer confidence reports.

(j) Element 9: The purveyor shall develop and maintain cross-connection control records including, but not limited to, the following:

(i) A master list of service connections and/or consumer's premises where the purveyor relies upon approved backflow preventers to protect the public water system from contamination, the assessed hazard level of each, and the required backflow preventer(s);

(ii) Inventory information on:

(A) Approved air gaps installed in lieu of approved assemblies including exact air gap location, assessed degree of hazard, installation date, history of inspections, inspection results, and person conducting inspections;

(B) Approved backflow assemblies including exact assembly location, assembly description (type, manufacturer, model, size, and serial number), assessed degree of hazard, installation date, history of inspections, tests and repairs, test results, and person performing tests; and

(C) Approved AVBs used for irrigation system applications including location, description (manufacturer, model, and size), installation date, history of inspection(s), and person performing inspection(s).

(iii) Cross-connection program summary reports and backflow incident reports required under subsection (8) of this section.

(k) Element 10: Purveyors who distribute and/or have facilities that receive reclaimed water within their water service area shall meet any additional cross-connection control requirements imposed by the department under a permit issued in accordance with chapter 90.46 RCW.

(4) Approved backflow preventer selection.

(a) The purveyor shall ensure that a CCS:

(i) Assesses the degree of hazard posed by the consumer's water system upon the purveyor's distribution system; and

(ii) Determines the appropriate method of backflow protection for premises isolation in accordance with Table 8.

TABLE 8
APPROPRIATE METHODS OF BACKFLOW PROTECTION FOR PREMISES ISOLATION

Degree of Hazard	Application Condition	Appropriate Approved Backflow Preventer
High health cross-connection hazard	Backsiphonage or backpressure backflow	AG, RPBA, or RPDA
Low health cross-connection hazard	Backsiphonage or backpressure backflow	AG, RPBA, RPDA, DCVA, or DCDA

(b) Premises isolation requirements.

(i) For service connections with remises posing a high health cross-connection hazard including, but not limited to, those premises listed in Table 9, the purveyor shall ensure that an approved air gap or RPBA is installed for premises isolation.

(ii) If the purveyor's CCS determines that no hazard exists for a connection serving premises of the type listed in Table 9, the requirements of (b)(i) of this subsection do not apply.

(iii) The purveyor shall document, on a case-by-case basis, the reasons for not applying the requirements of (b)(i) of this subsection to a connection serving premises of the type listed in Table 9 and include such documentation in the cross-connection control program summary report required in subsection (8) of this section.

TABLE 9
HIGH HEALTH CROSS-CONNECTION HAZARD PREMISES REQUIRING PREMISES ISOLATION BY AG OR RPBA

- Agricultural (farms and dairies)
- Beverage bottling plants
- Car washes
- Chemical plants
- Commercial laundries and dry cleaners
- Premises where both reclaimed water and potable water are provided
- Film processing facilities
- Food processing plants
- Hospitals, medical centers, nursing homes, veterinary, medical and dental clinics, and blood plasma centers
- Premises with separate irrigation systems using the purveyor's water supply and with chemical addition²
- Laboratories
- Metal plating industries
- Mortuaries
- Petroleum processing or storage plants
- Piers and docks

PERMANENT

Radioactive material processing plants or nuclear reactors:Survey access denied or restrictedWastewater lift stations and pumping stationsWastewater treatment plants:Premises with an unapproved auxiliary water supply interconnected with the potable water supply

- + For example, parks, playgrounds, golf courses, cemeteries, estates, etc.
- * RPBAs for connections serving these premises are acceptable only when used in combination with an in-plant approved air gap; otherwise, the purveyor shall require an approved air gap at the service connection.

(c) Backflow protection for single-family residences.(i) For single-family residential service connections, the purveyor shall comply with the requirements of (b) of this subsection when applicable.(ii) If the requirements of (b) of this subsection do not apply and the requirements specified in subsection (2)(h) of this section are met, the purveyor may rely on backflow protection provided at the point of hazard in accordance with WAC 51-46-0603 of the UPC for hazards such as, but not limited to:

- (A) Irrigation systems;
- (B) Swimming pools or spas;
- (C) Ponds; and
- (D) Boilers.

For example, the purveyor may accept an approved AVB on a residential irrigation system, if the AVB is properly installed in accordance with the UPC.(d) Backflow protection for fire protection systems.(i) Backflow protection is not required for residential flow-through or combination fire protection systems constructed of potable water piping and materials.(ii) For service connections with fire protection systems other than flow-through or combination systems, the purveyor shall ensure that backflow protection consistent with WAC 51-46-0603 of the UPC is installed. The UPC requires minimum protection as follows:(A) An RPBA or RPDA for fire protection systems with chemical addition or using unapproved auxiliary water supply; and(B) A DCVA or DCDA for all other fire protection systems.(iii) For new connections made on or after the effective date of these regulations, the purveyor shall ensure that backflow protection is installed before water service is provided.(iv) For existing fire protection systems:(A) With chemical addition or using unapproved auxiliary supplies, the purveyor shall ensure that backflow protection is installed within ninety days of the purveyor notifying the consumer of the high health cross-connection hazard or in accordance with an alternate schedule acceptable to the purveyor.(B) Without chemical addition, without on-site storage, and using only the purveyor's water (i.e., no unapproved auxiliary supplies on or available to the premises), the purveyor shall ensure that backflow protection is installed in accordancewith a schedule acceptable to the purveyor or at an earlier date if required by the agency administering the Uniform Building Code as adopted under chapter 19.27 RCW.(C) When establishing backflow protection retrofitting schedules for fire protection systems that have the characteristics listed in (d)(iv)(B) of this subsection, the purveyor may consider factors such as, but not limited to, impacts of assembly installation on sprinkler performance, costs of retrofitting, and difficulty of assembly installation.(e) Purveyors may require backflow preventers commensurate with the degree of hazard determined by the purveyor to be installed for premises isolation for connections serving premises that have characteristics such as, but not limited to, the following:(i) Complex plumbing arrangements or plumbing potentially subject to frequent changes that make it impracticable to assess whether cross-connection hazards exist;(ii) A repeated history of cross-connections being established or reestablished; or(iii) Cross-connection hazards are unavoidable or not correctable, such as, but not limited to, tall buildings.(5) Approved backflow preventers.(a) The purveyor shall ensure that all backflow prevention assemblies relied upon by the purveyor are models included on the current list of backflow prevention assemblies approved for use in Washington state. The current approved assemblies list is available from the department upon request.(b) The purveyor may rely on testable backflow prevention assemblies that are not currently approved by the department, if the assemblies:(i) Were included on the department and/or USC list of approved backflow prevention assemblies at the time of installation;(ii) Have been properly maintained;(iii) Are commensurate with the purveyor's assessed degree of hazard; and(iv) Have been inspected and tested at least annually and have successfully passed the annual tests.(c) The purveyor shall ensure that an unlisted backflow prevention assembly is replaced by an approved assembly commensurate with the degree of hazard, when the unlisted assembly:(i) Does not meet the conditions specified in (b)(i) through (iv) of this subsection;(ii) Is moved; or(iii) Cannot be repaired using spare parts from the original manufacturer.(d) The purveyor shall ensure that AVBs meet the definition of approved atmospheric vacuum breakers as described in WAC 246-290-010.(6) Approved backflow preventer installation.(a) The purveyor shall ensure that approved backflow preventers are installed in the orientation for which they are approved (if applicable).(b) The purveyor shall ensure that approved backflow preventers are installed in a manner that:(i) Facilitates their proper operation, maintenance, inspection, and/or in-line testing (as applicable) using stan-

standard installation procedures acceptable to the department such as those in the USC Manual or PNWS-AWWA Manual:

(ii) Ensures that the assembly will not become submerged due to weather-related conditions such as flooding; and

(iii) Ensures compliance with all applicable safety regulations.

(c) The purveyor shall ensure that approved backflow assemblies for premises isolation are installed at a location adjacent to the meter or property line or an alternate location acceptable to the purveyor.

(d) When premises isolation assemblies are installed at an alternate location acceptable to the purveyor, the purveyor shall ensure that there are no connections between the point of delivery from the public water system and the approved backflow assembly, unless the installation of such a connection meets the purveyor's cross-connection control requirements and is specifically approved by the purveyor.

(e) The purveyor shall ensure that approved backflow preventers are installed in accordance with the following time frames:

(i) For new connections made on or after the effective date of these regulations, the following conditions shall be met before service is provided:

(A) The provisions of subsection (3)(d)(ii) of this section; and

(B) Satisfactory completion of a test by a BAT in accordance with subsection (7) of this section.

(ii) For existing connections where the purveyor identifies a high health cross-connection hazard, the provisions of (3)(d)(ii) of this section shall be met:

(A) Within ninety days of the purveyor notifying the consumer of the high health cross-connection hazard; or

(B) In accordance with an alternate schedule acceptable to the purveyor.

(iii) For existing connections where the purveyor identifies a low health cross-connection hazard, the provisions of subsection (3)(d)(ii) of this section shall be met in accordance with a schedule acceptable to the purveyor.

(f) The purveyor shall ensure that bypass piping installed around any approved backflow preventer is equipped with an approved backflow preventer that:

(i) Affords at least the same level of protection as the approved backflow preventer that is being bypassed; and

(ii) Complies with all applicable requirements of this section.

(7) Approved backflow preventer inspection and testing.

(a) The purveyor shall ensure that:

(i) A CCS inspects backflow preventer installations to ensure that protection is provided commensurate with the assessed degree of hazard;

(ii) Either a BAT or CCS inspects:

(A) Air gaps installed in lieu of approved backflow prevention assemblies for compliance with the approved air gap definition; and

(B) Backflow prevention assemblies for correct installation and approval status.

(iii) A BAT tests approved backflow prevention assemblies for proper operation.

(b) The purveyor shall ensure that inspections and/or tests of approved air gaps and approved backflow assemblies are conducted:

(i) At the time of installation;

(ii) Annually after installation, or more frequently, if required by the purveyor for connections serving premises or systems that pose a high health cross-connection hazard or for assemblies that repeatedly fail;

(iii) After a backflow incident; and

(iv) After an assembly is repaired, reinstalled, or relocated or an air gap is replumbed.

(c) The purveyor shall ensure that inspections of AVBs installed on irrigation systems are conducted:

(i) At the time of installation;

(ii) After a backflow incident; and

(iii) After repair, reinstallation, or relocation.

(d) The purveyor shall ensure that approved backflow prevention assemblies are tested using procedures acceptable to the department, such as those specified in the most recently published edition of the USC Manual. When circumstances, such as, but not limited to, configuration or location of the assembly, preclude the use of USC test procedures, the purveyor may allow, on a case-by-case basis, the use of alternate (non-USC) test procedures acceptable to the department.

(e) The purveyor shall ensure that results of backflow prevention assembly inspections and tests are documented and reported in a manner acceptable to the purveyor.

(f) The purveyor shall ensure that an approved backflow prevention assembly or AVB, whenever found to be improperly installed, defective, not commensurate with the degree of hazard, or failing a test (if applicable) is properly reinstalled, repaired, overhauled, or replaced.

(g) The purveyor shall ensure that an approved air gap, whenever found to be altered or improperly installed, is properly replumbed or, if commensurate with the degree of hazard, is replaced by an approved RPBA.

(8) Recordkeeping and reporting.

(a) Purveyors shall keep cross-connection control records for the following time frames:

(i) Records pertaining to the master list of service connections and/or consumer's premises required in subsection (3)(j)(i) of this section shall be kept as long as the premises pose a cross-connection hazard to the purveyor's distribution system;

(ii) Records regarding inventory information required in subsection (3)(j)(ii) of this section shall be kept for five years or for the life of the approved backflow preventer whichever is shorter; and

(iii) Records regarding backflow incidents and annual summary reports required in subsection (3)(j)(iii) of this section shall be kept for five years.

(b) Purveyors may maintain cross-connection control records in original form or transfer data to tabular summaries.

(c) Purveyors may maintain records or data in any media, such as paper, film, or electronic format.

(d) The purveyor shall complete the cross-connection control program summary report annually. Report forms and guidance on completing the report are available from the department.

(e) The purveyor shall make all records and reports required in subsection (3)(j) of this section available to the department or its representative upon request.

(f) The purveyor shall notify the department, local administrative authority, and local health jurisdiction as soon as possible, but no later than the end of the next business day, when a backflow incident is known by the purveyor to have:

(i) Contaminated the public water system; or

(ii) Occurred within the premises of a consumer served by the purveyor.

(g) The purveyor shall:

(i) Document details of backflow incidents on a form acceptable to the department such as the backflow incident report form included in the most recent edition of the PNWS-AWWA Manual; and

(ii) Include all backflow incident report(s) in the annual cross-connection program summary report referenced in (d) of this subsection, unless otherwise requested by the department.

NEW SECTION

WAC 246-290-495 Public notification. (1) Required notification. The purveyor shall notify the water system users when the system:

(a) Has an MCL violation of a primary standard as described under WAC 246-290-310;

(b) Fails to comply with:

(i) Treatment technique requirements under Part 6 of this chapter or 40 CFR 141.80(d);

(ii) Monitoring requirements under WAC 246-290-300, 246-290-664, 246-290-674, or 246-290-694;

(iii) Analytical requirements of WAC 246-290-638 or chapter 246-390 WAC;

(iv) A departmental order; or

(v) A variance or exemption schedule prescribed by the state board of health;

(c) Is identified as a source of waterborne disease outbreak as determined by the department;

(d) Is issued a category red operating permit;

(e) Is issued a departmental order; or

(f) Is operating under a variance or exemption.

(2) Content. Notices shall provide:

(a) A clear, concise, and simple explanation of the violation;

(b) Discussion of potential adverse health effects and any segments of the population that may be at higher risk;

(c) Mandatory health effects information in accordance with subsection (4) of this section;

(d) A list of steps the purveyor has taken or is planning to take to remedy the situation;

(e) A list of steps the consumer should take, including advice on seeking an alternative water supply if necessary;

(f) The purveyor's name and phone number; and

(g) When appropriate, notices shall be bilingual or multilingual.

The purveyor may provide additional information to further explain the situation.

(3) Distribution.

(a) Purveyors of community and NTNC systems with violations of a primary MCL, treatment technique, or variance or exemption schedule shall provide:

(i) Newspaper notice to water system users as defined in (e) of this subsection, within fourteen days of violation;

(ii) Direct mail notice or hand delivery to all consumers served by the system within forty-five days of the violation. The department may waive the purveyor's mail or hand delivery if the violation is corrected within forty-five days. The waiver shall be in writing and made within the forty-five day period;

(iii) Notice to radio and television stations serving the area within seventy-two hours of violation of an acute coliform MCL under WAC 246-290-310 (2)(c), a nitrate MCL under WAC 246-290-310(3), occurrence of a waterborne disease outbreak or other acute violation as determined by the department; and

(iv) Repeat mail or hand delivery every three months until the violation is corrected.

(b) Purveyors of community and NTNC systems shall provide newspaper notice as defined in (e) of this subsection, to water system users within three months of the following:

(i) Violation of a monitoring requirement or testing procedure;

(ii) Receipt of a departmental order;

(iii) Receipt of a category red operating permit; or

(iv) Granting of a variance or exemption.

Purveyors shall also provide repeat notice by mail or hand delivery to all consumers served by the system every three months until the situation is corrected or for as long as the variance or exemption remains in effect.

(c) Purveyors of TNC systems shall post a notice or notify consumers by other methods authorized by the department within fourteen days of the following:

(i) Violation of a primary MCL;

(ii) Violation of a treatment technique requirement; or

(iii) Violation of a variance or exemption schedule. If the violation is acute, the department shall require posting within seventy-two hours.

(d) Purveyors of TNC systems shall post a notice or notify consumers by other methods authorized by the department within three months of the following:

(i) Violation of a monitoring requirement or testing procedure;

(ii) Receipt of a category red operating permit; or

(iii) Granting of a variance or exemption.

(e) "Newspaper notice," as used in this section, means publication in a daily newspaper of general circulation or in a weekly newspaper of general circulation if a daily newspaper does not serve the area. The purveyor may substitute a community or homeowner's association newsletter or similar periodical publication if the newsletter reaches all affected consumers within the specified time.

(f) The purveyor shall substitute a posted notice in the absence of a newspaper of general circulation or homeowner's association newsletter or similar periodical publication. The purveyor shall post the notice within the time frame specified in this subsection.

(g) The purveyor shall place posted notices in conspicuous locations and present the notices in a manner making

them easy to read. Notices shall remain posted until the violation is corrected or for as long as the variance or exemption remains in effect.

(h) The purveyor of a community or NTNC water system shall give a copy of the most recent public notice for all outstanding violations to all new billing units or new hookups before or at the time water service begins.

(i) The purveyor shall provide the department with a copy of the public notification at the time the purveyor notifies the public.

(4) Mandatory language.

(a) The purveyor shall provide specific health effects language in the notice when a violation involves:

(i) A violation of a primary organic or inorganic chemical or physical MCL;

(ii) A violation of a secondary fluoride MCL;

(iii) A violation of an acute coliform MCL;

(iv) A violation of a nonacute coliform MCL;

(v) A treatment technique requirement;

(vi) Granting or continuation of exemption or variance;

or

(vii) Failure to comply with a variance or exemption schedule.

(b) The purveyor shall provide specific mandatory language in its notification when the purveyor receives a category red operating permit.

(c) Required specific language is contained in department guidance.

(5) Procedure for notification of organic chemical and unregulated chemical sample results.

(a) Availability of results. After receipt of the first analysis results, the purveyor of a community or NTNC water system shall notify persons served by the system of the availability of the results and shall supply the name and telephone number of a contact person. Purveyors with surface water sources shall include a statement that additional monitoring will be conducted for three more quarters.

(i) The purveyor shall initiate notification within three months of the purveyors receipt of the first analysis results. This notification is only required one time.

(ii) Notification shall occur by any of the following methods:

(A) Inclusion in the first set of water bills issued after receipt of the results;

(B) Newspaper notice that shall run at least one day each month for three consecutive months;

(C) Direct mail;

(D) Posting for at least one week if an NTNC system; or

(E) Any other method approved by the department.

(iii) Within three months of receipt of analysis results, purveyors selling water to other public water systems shall provide copies of the analysis results to the purchasing system.

(iv) Within thirty days of receipt of analysis results, purveyors purchasing water shall make results available to their consumers. The purveyor's notification shall occur by the method outlined under (a)(ii) of this subsection.

(b) Consumer information.

(i) The purveyor shall provide consumer information within twenty-one days of receipt of confirmation sample results when:

(A) A regulated chemical is confirmed at a concentration greater than an MCL, and the level will not cause the running annual average to exceed the MCL; or

(B) The department determines that an unregulated chemical is confirmed at a level greater than a SAL.

(ii) Consumer information shall include:

(A) Name and level of chemical detected;

(B) Location where the chemical was detected;

(C) Any health effects that the chemical could cause at its present concentration;

(D) Plans for follow-up activities; and

(E) Phone number to call for further information.

(iii) Consumer information shall be distributed by any of the following methods:

(A) Notice placed in the major newspaper in the affected area;

(B) Direct mail to consumers;

(C) Posting for at least one week if an NTNC system; or

(D) Any other method approved by the department.

(6) Fluoride notification procedure.

When a primary or secondary MCL violation occurs or a variance or exemption is issued or a variance or exemption schedule is violated, the purveyor of a community water system shall send notice, including mandatory language, to:

(a) The department annually;

(b) Water system users annually; and

(c) New billing units added while the violation exists.

(7) When circumstances dictate the purveyor give a broader or more immediate notice to protect public health, the department may require the purveyor's notification by whatever means necessary.

(8) When the state board of health grants a public water system a waiver, the purveyor shall notify consumers and new billing units or new hookups before water service begins. The purveyor shall provide a notice annually and send a copy to the department.

(9) The department may give notice to the water system users as required by this section on behalf of the water purveyor. However, the purveyor remains responsible for ensuring the department's requirements are met.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-601 Purpose of surface water treatment. (1) Part 6 of chapter 246-290 WAC establishes filtration and disinfection as treatment technique requirements for water systems using surface or GWI sources. The Part 6 treatment technique requirements are established in lieu of maximum contaminant levels (MCLs) for the following contaminants:

(a) *Giardia lamblia*;

(b) Viruses;

(c) Heterotrophic plate count bacteria;

(d) *Legionella*; and

(e) Turbidity.

(2) ~~((Turbidity MCLs found in WAC 246-290-310 shall remain in effect for systems using surface or GWI sources until applicable Part 6 treatment technique requirements become effective. The effective dates are indicated in Tables 9, 12, 13, or 14, whichever is applicable.)) For water systems using unfiltered surface sources, in whole or part, and that have been required to install, but have yet to complete the installation and operation of, filtration facilities, the turbidity levels at entry points to distribution and sampling/analytical requirements shall be in accordance with 40 CFR 141.13 and 40 CFR 141.22, respectively.~~

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-620 Applicability of surface water treatment requirements. (1) The requirements of Part 6 of this chapter ~~((246-290 WAC))~~ apply to ~~((Group A))~~ water systems ~~((which))~~ that:

(a) Use surface sources or ground water sources under the direct influence of surface water (GWI); or

(b) Purchase surface or GWI water from an approved public water system or other entity acceptable to the department.

(2) The requirements of Part 6 of this chapter ~~((246-290 WAC))~~ do not apply to ~~((Group A))~~ water systems ~~((which))~~ that use unfiltered surface or GWI sources as emergency sources, ~~((if))~~ provided the source is physically disconnected from the system at all times until it is needed, and the purveyor meets the following conditions:

(a) Has a department-approved emergency response plan; and

(b) Provides disinfection treatment ~~((which))~~ that meets the requirements under WAC 246-290-662 (2) ~~((e))~~ (d).

(3) The requirements of WAC 246-290-640 apply to Group A systems that use sources potentially under the influence of surface water as determined by the department.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-630 General requirements. (1) The purveyor shall ensure that treatment is provided for surface and GWI sources consistent with the treatment technique requirements specified in Part 6 of chapter 246-290 WAC.

(2) The purveyor shall install and properly operate water treatment processes to ensure at least:

(a) 99.9 percent (3 log) removal and/or inactivation of *Giardia lamblia* cysts; and

(b) 99.99 percent (4 log) removal and/or inactivation of viruses.

(3) The purveyor shall ensure that the requirements of subsection (2) of this section are met between a point where the source water is not subject to contamination by untreated surface water and a point at or before the first ~~((customer))~~ consumer.

(4) The department may require higher levels of removal and/or inactivation of *Giardia lamblia* cysts and viruses than specified in subsection (2) of this section if deemed necessary to protect the health of consumers served by the system.

(5) The purveyor shall ensure that personnel operating a system subject to Part 6 of chapter 246-290 WAC meet the requirements under chapter 70.119 RCW and chapter 246-292 WAC.

(6) The purveyor of a **Group A community** system serving water from a surface or GWI source to the public before January 1, 1991, shall comply with applicable minimum treatment requirements. The purveyor shall meet either ~~((the))~~:

(a) The filtration and disinfection requirements under WAC 246-290-660 and 246-290-662 respectively; ~~((or))~~

(b) The criteria to remain unfiltered under WAC 246-290-690 and the disinfection requirements under WAC 246-290-692; or

(c) The criteria to provide a limited alternative to filtration under WAC 246-290-691 and the disinfection requirements under WAC 246-290-692.

(7) The purveyor of a **Group A noncommunity** system serving water ~~((to the public before January 1, 1991))~~ from a surface or GWI source, shall ~~((install filtration and))~~ meet either:

(a) The filtration and disinfection requirements under WAC 246-290-660 and 246-290-662, respectively; or

(b) The criteria to provide a limited alternative to filtration under WAC 246-290-691 and the disinfection requirements under WAC 246-290-692.

(8) The purveyor of a **Group A** system first serving water from a surface or GWI source to the public after December 31, 1990, shall meet either:

(a) The filtration and disinfection requirements under WAC 246-290-660 and 246-290-662, respectively; or

(b) The criteria to provide a limited alternative to filtration under WAC 246-290-691 and the disinfection requirements under WAC 246-290-692.

(9) ~~((The department shall provide notification to the purveyor of the requirement to install filtration.))~~ The purveyor of a system required to install filtration may choose to provide a limited alternative to filtration or abandon the surface or GWI source as a permanent or seasonal source and develop an alternate, department-approved source. Purveyors that ~~((choose this option and))~~ develop alternate ground water sources or purchase water from a department-approved public water system using a ground water source shall no longer be subject to Part 6 of chapter 246-290 WAC, once the alternate source is approved by the department and is on line.

(10) ~~((Part 6 compliance options are summarized in Table 8.))~~

**Table 8
COMPLIANCE OPTIONS FOR GROUP A SYSTEMS
USING SURFACE OR GWI SOURCES**

SYSTEM TYPE	SURFACE WATER OPTIONS (system subject to Part 6)	ALTERNATE GROUND WATER SOURCE OPTIONS (system not subject to Part 6)
Community systems serving water to the public before January 1, 1994	<ul style="list-style-type: none"> • Provide filtration and disinfection; • Remain unfiltered, meet all criteria to remain unfiltered, and provide disinfection; or • Purchase from a system using a surface or GWI source. 	Existing systems may abandon surface or GWI sources and develop alternate department-approved ground water sources.
All other Group A systems using surface or GWI sources	<ul style="list-style-type: none"> • Provide filtration and disinfection; or • Purchase completely treated surface water or GWI water from an approved public water system.) 	Existing systems which develop ground water sources or purchase ground water from a department approved public water system shall not be subject to the requirements of Part 6, once the alternate source is approved by the department and is on-line.

A purveyor that chooses to provide a limited alternative to filtration shall submit an application to the department that contains the information necessary to determine whether the source can meet the criteria.

(1) If a limited alternative to filtration is provided, then the purveyor shall install and properly operate treatment processes to ensure greater removal and/or inactivation efficiencies of *Giardia lamblia* cysts, viruses, or other pathogenic organisms of public health concern that would be achieved by the combination of filtration and chlorine disinfection.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-632 Treatment technique violations.

(1) A treatment technique violation shall be considered a violation of a primary drinking water standard and in the case of an unfiltered system, may result in the purveyor of an unfiltered system being required to install filtration.

(2) A treatment technique violation occurs when a system using a surface or GWI source is identified by the department as the source of a waterborne disease outbreak or any of the following occur as applicable:

(a) The purveyor providing filtration delivers unfiltered water or fails to meet one or more of the following requirements ((on June 29, 1993, or thereafter)):

(i) Filtration treatment in accordance with WAC 246-290-660; or

(ii) Disinfection treatment in accordance with WAC 246-290-662.

(b) The purveyor required to install filtration:

(i) Fails to meet the interim disinfection requirements in accordance with WAC 246-290-672 or as otherwise directed by the department; or

(ii) Fails to install filtration or develop an alternate source by the applicable ((dates)) time lines specified in WAC 246-290-670.

(c) The purveyor of an unfiltered surface water, or GWI source, meeting the criteria to remain unfiltered:

(i) Delivers water with a turbidity level exceeding 5.0 NTU measured at a point immediately prior to the point of primary disinfection; or

(ii) Fails to meet one or more of the disinfection requirements in accordance with WAC 246-290-692 after the dates specified in WAC 246-290-686.

(d) The purveyor of an unfiltered source meeting the criteria to provide a limited alternative to filtration:

(i) Delivers water with a turbidity level exceeding 5.0 NTU measured at a point immediately prior to the point of primary disinfection; or

(ii) Fails to meet one or more of the disinfection requirements in accordance with WAC 246-290-692.

(e) A purveyor supplies water from an unfiltered source that has not been previously approved by the department.

(f) A purveyor of a department approved unfiltered source that fails to meet the on-going criteria to remain unfiltered:

(i) Delivers water with a turbidity level exceeding 5.0 NTU measured at a point immediately prior to the point of primary disinfection; or

(ii) Fails to meet one or more of the disinfection requirements in accordance with WAC 246-290-692.

(g) A purveyor of a department approved unfiltered source that has failed to meet the criteria to provide a limited alternative to filtration:

(i) Delivers water with a turbidity level exceeding 5.0 NTU measured at a point immediately prior to the point of primary disinfection; or

(ii) Fails to meet one or more of the disinfection requirements in accordance with WAC 246-290-692.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-634 Follow-up to treatment technique violations. When a treatment technique violation occurs, the purveyor:

(1) Shall report to the department in accordance with:

(a) WAC 246-290-666 for purveyors providing filtration or required to filter;

(b) WAC 246-290-674 for purveyors installing filtration;

or

(c) WAC 246-290-696 for purveyors (~~(not)~~) meeting the criteria to remain unfiltered or providing a limited alternative to filtration;

(2) Shall notify the public in accordance with WAC ~~((246-290-330))~~ 246-290-495;

(3) Shall determine the cause of the violation;

(4) Shall take action as directed by the department; and

(5) May be subject to enforcement under WAC 246-290-050.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-636 Determination of disinfectant contact time (T). (1) The purveyor shall calculate T at peak hourly flow for each surface or GWI source.

(2) For pipelines, the purveyor shall calculate T by dividing the internal volume of the pipe by the peak hourly flow rate through that pipe.

(3) For all other system components used for inactivation of *Giardia lamblia* cysts ((and virus inactivation)), viruses, and other microorganisms of public health concern, the purveyor shall use tracer studies or empirical methods to determine T.

(4) The purveyor shall use the T10 value determined by tracer studies or other methods acceptable to the department as T in all CT calculations.

~~((a) For existing water treatment facilities, the purveyor shall ensure that the T10 value is determined by June 29, 1993; and~~

~~(b) For unfiltered systems, the purveyor shall ensure that the T10 value is determined before the purveyor begins conducting the monitoring under WAC 246-290-694 to demonstrate that the system meets the criteria to avoid filtration.))~~

(5) Tracer studies.

(a) The purveyor shall conduct field tracer studies on all system components with configurations (geometry and/or baffling) for which analogous contact times are not documented.

(b) Before conducting tracer studies, the purveyor shall obtain the department's approval of a tracer study plan. The plan shall identify at a minimum:

(i) How the purveyor will conduct the study;

(ii) The tracer material to be used;

(iii) Flow rates to be used; and

(iv) The names, titles, and qualifications of the persons conducting the study.

(c) A professional engineer registered in the state of Washington shall direct the conduct of all tracer studies.

(d) Tracer studies shall be conducted in accordance with good engineering practices using methods acceptable to the department such as those described in ~~((the DOH SWTR Guidance Manual))~~ department guidance on surface water treatment.

(e) The department may require the purveyor to conduct additional tracer studies when:

(i) Modifications impacting flow distribution or T are made; or

(ii) Increases in flow exceed the conditions of the previous tracer studies.

(6) Empirical methods.

(a) Empirical methods may be used to calculate T10, if the purveyor demonstrates to the department's satisfaction that system components have configurations analogous to components on which tracer studies have been conducted and results have been documented.

(b) The purveyor shall submit to the department for review and approval engineering justification for determining T10 using empirical methods. As-built drawings of system components in their current configurations shall be submitted with the engineering justification.

(c) A professional engineer registered in the state of Washington shall prepare the engineering justification for determining T10 using empirical methods.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-638 Analytical requirements. (1) The purveyor shall ensure that only qualified persons conduct measurements for pH, temperature, turbidity, and residual disinfectant concentrations. In this section, qualified shall mean:

(a) A person certified under chapter 246-292 WAC;

(b) An analyst, with experience conducting these measurements, from the state public health laboratory or another laboratory certified by the department; or

(c) A state or local health agency professional experienced in conducting these measurements.

(2) The purveyor shall ensure that measurements for temperature, turbidity, pH, and residual disinfectant concentration are made in accordance with "standard methods."

(3) The purveyor shall ensure that samples for coliform and HPC analysis are:

(a) Collected and transported in accordance with department-approved methods; and

(b) Submitted to the state public health laboratory or another laboratory certified by the department to conduct such analyses.

(4) Turbidity monitoring.

(a) The purveyor shall equip the system's water treatment facility laboratory with a:

(i) Bench model turbidimeter; and

(ii) Continuous turbidimeter and recorder if required under WAC 246-290-664 or 246-290-694.

(b) The purveyor shall ensure that bench model and continuous turbidimeters are:

(i) Designed to meet the criteria in "standard methods"; and

(ii) Properly operated, calibrated, and maintained at all times in accordance with the manufacturer's recommendations.

(c) The purveyor shall validate continuous turbidity measurements for accuracy as follows:

(i) Calibrate turbidity equipment based upon a primary standard in the expected range of measurements; and

(ii) Verify continuous turbidimeter performance on a weekly basis, not on consecutive days, with grab sample measurements made using a properly calibrated bench model turbidimeter.

(d) When continuous turbidity monitoring equipment fails, the purveyor shall measure turbidity on grab samples collected at least every four hours while the system serves water to the public and the equipment is being repaired or replaced. The purveyor shall have continuous monitoring equipment on-line within five working days of failure.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-640 Determination of GWI sources.

(1) ~~((For Group A systems, the department shall notify the purveyor when a source has been identified as a potential GWI source.))~~ Until the department has made a source GWI determination, the purveyor shall monitor in accordance with the requirements for ground water sources in WAC 246-290-300 or as directed by the department and provide follow-up in accordance with WAC 246-290-320.

(2) The purveyor, after being notified by the department that one or more of the system sources have been classified as potential GWI, may elect to seek approval from the department to modify the potential GWI source to mitigate surface water influences prior to compliance with subsection (3) of this section, and if so, shall:

(a) Complete a project report, for departmental approval, that describes the proposed source-related modifications, including the schedule for their completion and an explanation of why the source should be reclassified upon completion of the source modifications; and

(b) Demonstrate compliance, if directed by the department, with the requirements of subsection (3) of this section upon completion of the source-related modifications.

(3) The purveyor using a source identified as a potential GWI shall provide to the department all information necessary to determine whether the source is under direct surface water influence. Information shall include, but not be limited to:

(a) Site-specific source water quality data, including temperature, conductivity, and/or other appropriate parameters as determined by the department;

(b) Documentation of source construction characteristics;

(c) Documentation of hydrogeology;

(d) Distance to surface water; and

(e) Water quality results from nearby surface water(s) ((if requested)), including temperature, conductivity, and/or other appropriate parameters as determined by the department.

~~((3) Based on information provided by the purveyor, the department shall determine which ground water sources are under the direct influence of surface water and notify the purveyor of the source determination.))~~

(4) Upon a determination by the department that one or more potential GWI source(s) being used are in hydraulic connection to a surface water, the purveyor shall:

(a) Secure the services of a professional engineer to direct further evaluation and actions regarding the source;

(b) Provide disinfection treatment of the source in accordance with WAC 246-290-451; and

(c) Provide microscopic particulate analyses (MPA) results for review by the department based upon a sampling plan approved by the department.

(5) A purveyor notified by the department that one or more GWI sources are in use shall:

(a) Within ninety days of notification submit a project report to the department that includes an implementation schedule for compliance with the treatment techniques specified in Part 6 of this chapter;

(b) Notify consumers served by the system; and

(c) Comply with the applicable requirements of WAC 246-290-670.

(6) After completion of the requirements in subsection (3) of this section, the purveyor may modify a ((department-determined)) GWI source to ((eliminate)) mitigate direct surface influence. In such cases, the purveyor shall((, at a minimum)):

(a) ~~((Submit a proposed))~~ Include in a project report, for submittal to the department for approval, a description of the proposed approaches and schedule for source modification ((to the department for review and approval)); and

(b) ~~((Provide disinfection treatment and conduct monitoring and reporting as directed by the department to protect the health of consumers served by the water system until:~~

(i) ~~Modification is complete; and~~

(ii) ~~The department determines the source is no longer subject to direct surface influence.~~

(e)) Comply again with subsection ((2)) (3) of this section upon completion of source modifications to be considered for source reclassification.

~~((5))~~ (7) The department may reevaluate a ground water source for direct surface influence, if conditions impacting source classification have changed.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-650 Compliance requirements for filtered systems. (1) In addition to the requirements of Parts 1 through 5 of chapter 246-290 WAC, Subpart B of Part 6 of chapter 246-290 WAC applies to purveyors of systems using surface or GWI sources and providing filtration, including:

(a) Systems with water treatment facilities ((which)) that produced water served to the public before January 1, 1991;

(b) Unfiltered systems installing filtration, once the new water treatment facilities are on-line; and

(c) New systems using surface or GWI sources. For the purpose of the Part 6 chapter 246-290 WAC requirements, new systems are defined as systems first serving water to the public after December 31, 1990.

(2) ~~((The purveyor shall be subject to the effective dates, compliance requirements and violations specified in Table 9.~~

(3)) The purveyor of a new system using a surface or GWI source shall comply with the requirements of Part 6 subparts A and B chapter 246-290 WAC and be subject to the treatment technique violations specified in WAC 246-290-632 beginning when the system first serves water to the public and thereafter.

(Table 9)

PART 6 COMPLIANCE REQUIREMENTS FOR SYSTEMS WITH EXISTING WATER TREATMENT FACILITIES

REQUIREMENTS-EFFECTIVE FROM	APPLICABLE PART 6 REQUIREMENTS	VIOLATION TYPE	
		Turbidity-MCL	Treatment-Technique
Date specified in written department notification through June 28, 1993	Subpart A Analytical, Subpart B Monitoring and Reporting requirements only	Still in effect	Not in effect yet
June 29, 1993 and thereafter	Subparts A and B	No longer in effect	In effect))

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-652 Filtration technology and design criteria for existing filtered systems. (1) The purveyor shall treat all surface and GWI sources using one of the following filtration technologies unless another technology is acceptable to the department:

- (a) Conventional;
- (b) Direct;
- (c) Diatomaceous earth; or
- (d) Slow sand.

(2) Purveyors not using one of the filtration technologies in subsection (1) of this section or not complying with the design criteria specified in WAC 246-290-676 shall submit a project report to the department ((which demonstrate's)) that demonstrates to the department's satisfaction that the existing water treatment facility can be operated to reliably produce, by June 29, 1993, water meeting the operating and performance requirements of WAC 246-290-654 and 246-290-660, respectively. The project report shall comply with the requirements of WAC 246-290-110.

(3) The purveyor shall make the demonstration required under subsection (2) of this section using the latest twelve months of operating data, results of special studies conducted to test the performance of the water treatment facility under adverse water quality conditions or other means acceptable to the department.

(4) For water treatment facilities currently unable to meet the performance and operation requirements, the project report shall specify the modifications needed to upgrade the facility. Purveyors upgrading existing water treatment facilities shall comply with the design and reliability requirements under WAC 246-290-676 and 246-290-678, respectively.

(5) The purveyor of a new system using a surface or GWI source shall be subject to the:

- (a) Design and reliability requirements under WAC 246-290-676 and 246-290-678, respectively; and
- (b) Operating criteria for new water treatment facilities under WAC ((246-290-680)) 246-290-654.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-654 Treatment criteria for filtered systems. (1) The purveyor shall operate filters such that max-

imum flow rates do not exceed those specified in Table 10. The purveyor may operate filters at higher flow rates, if the purveyor demonstrates to the department's satisfaction that filtration at the higher rate consistently achieves at least 99 percent (2 log) removal of *Giardia lamblia* cysts and meets the turbidity performance requirements of Table 11.

Table 10
FILTRATION OPERATION CRITERIA

FILTRATION TECHNOLOGY/MEDIA	MAXIMUM FILTRATION RATE (gpm/ft ³)
Conventional, Direct and In-Line	
Gravity Filters with Single Media	3
Gravity Filters with Deep Bed, Dual or Mixed Media	6
Pressure Filters with Single Media	2
Pressure Filters with Deep Bed, Dual or Mixed Media	3
Slow Sand	0.1
Diatomaceous Earth	1.0

(2) The purveyor using conventional, direct or in-line filtration shall ensure that effective coagulation is in use at all times the water treatment facility produces water served to the public.

(3) The purveyor using conventional, direct, or in-line filtration shall demonstrate treatment effectiveness for *Giardia lamblia* cyst removal by one of the following methods:

(a) Turbidity reduction method where source and filtered water turbidity measurements are made in accordance with WAC 246-290-664 (2) and (3) respectively:

(i) When source turbidity is greater than or equal to 2.5 NTU, the purveyor shall achieve the turbidity performance requirements specified in WAC 246-290-660(1); or

(ii) When source turbidity is less than 2.5 NTU, the purveyor shall achieve:

(A) An ((80%)) eighty percent reduction in source turbidity based on an average of the daily turbidity reductions measured in a calendar month; or

(B) ((A)) An average daily filtered water turbidity less than or equal to 0.1 NTU((;)),

(b) Particle counting method. The purveyor shall:

(i) Use a particle counting protocol acceptable to the department; and

(ii) Demonstrate at a frequency acceptable to the department at least the following log reduction of particles in the size range of five to fifteen microns (Giardia lamblia cyst-sized particles) as applicable((;));

(A) 2.5 log reduction for systems using conventional filtration((;)); or

(B) 2.0 log reduction for systems using direct or in-line filtration((;)),

(c) Microscopic particulate analysis method. The purveyor shall:

(i) Use a protocol acceptable to the department; and

(ii) Demonstrate at a frequency acceptable to the department at least the following log reduction of *Giardia lamblia* cysts and/or *Giardia lamblia* cyst surrogate indicators as applicable((;));

PERMANENT

(A) 2.5 log reduction for systems using conventional filtration; and

(B) 2.0 log reduction for systems using direct or in-line filtration.

(d) Other methods acceptable to the department.

(4) The purveyor shall ensure continuous disinfection of all water delivered to the public and shall:

(a) Maintain an adequate supply of disinfection chemicals and keep back-up system components and spare parts on hand;

(b) Develop, maintain, and post at the water treatment facility a plan detailing:

(i) How water delivered to the public will be continuously and adequately disinfected; and

(ii) The elements of an emergency notification plan to be implemented whenever the residual disinfectant concentration at entry to distribution falls below 0.2 mg/L for more than one hour.

(c) Implement such plan during an emergency affecting disinfection.

(5) Operations ~~((plan))~~ program.

(a) For each water treatment facility treating a surface or GWI source, the purveyor shall develop an operations ~~((plan))~~ program and make it available to the department for review upon request.

(b) The ~~((plan))~~ program shall be submitted to the department as an addendum to the purveyor's water system plan (WAC 246-290-100) or small water system management program (WAC ~~((246-290-410))~~ 246-290-105).

(c) The ~~((plan))~~ program shall detail how the purveyor will produce optimal filtered water quality at all times the water treatment facility produces water to be served to the public.

(d) The purveyor shall operate the water treatment facility in accordance with the operations ~~((plan))~~ program.

(e) The operations ~~((plan))~~ program shall include, but not be limited to, a description of:

(i) For conventional, direct or in-line filtration, procedures used to determine and maintain optimized coagulation as demonstrated by meeting the requirements of WAC 246-290-654(3);

(ii) Procedures used to determine chemical dose rates;

(iii) How and when each unit process is operated;

(iv) Unit process equipment maintenance program;

(v) Treatment plant performance monitoring program;

(vi) Laboratory procedures;

(vii) Records;

(viii) Reliability features; and

(ix) Response plans for water treatment facility emergencies, including disinfection failure and watershed emergencies.

(f) The purveyor shall ensure the operations ~~((plan))~~ program is:

(i) Readily available at the water treatment facility for use by operators and for department inspection;

(ii) Consistent with department guidelines for operations procedures such as those described in ~~((the DOH-SWTR Guidance Manual and Planning Handbook))~~ department guidance on surface water treatment and water system planning; and

(iii) Updated as needed to reflect current water treatment facility operations.

(6) Pressure filters. Purveyors using pressure filters shall:

(a) Inspect and evaluate the filters, at least every six months, for conditions that would reduce their effectiveness in removing *Giardia lamblia* cysts;

(b) Maintain, and make available for department review, a written record of pressure filter inspections; and

(c) Be prepared to conduct filter inspections in the presence of a department representative, if requested.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-660 Filtration. (1) Turbidity performance requirements.

(a) The purveyor shall ensure that the turbidity level of representative filtered water samples:

(i) Complies with the performance standards in Table 11; and

(ii) Never exceeds 5.0 NTU.

Table 11
TURBIDITY PERFORMANCE REQUIREMENTS

Filtration Technology	Filtered water turbidity (in NTUs) shall be less than or equal to this value in at least 95% of the measurements made each calendar month
Conventional, Direct and In-line	0.50
Slow Sand	1.0
Diatomaceous Earth	1.0
Alternate Technology	((4.0)) as determined by the department

(b) The department may allow the turbidity of filtered water from a system using slow sand filtration to exceed 1.0 NTU, but never 5.0 NTU, if the system demonstrates to the department's satisfaction that the higher turbidity level will not endanger the health of consumers served by the system. As a condition of being allowed to produce filtered water with a turbidity exceeding 1.0 NTU, the purveyor may be required to monitor one or more parameters in addition to the parameters specified under WAC 246-290-664. The department shall notify the purveyor of the type and frequency of monitoring to be conducted.

(2) *Giardia lamblia* and virus removal credit.

(a) The department shall notify the purveyor of the removal credit granted for the system's filtration process. The department shall specify removal credit for:

(i) Existing filtration facilities based on periodic evaluations of performance and operation; and

(ii) New or modified filtration facilities based on results of pilot plant studies or full scale operation.

(b) Conventional, direct, and in-line filtration.

(i) The removal credit the department may grant to a system using conventional, direct, or in-line filtration and demonstrating effective treatment is as follows:

PERMANENT

Percent Removal Credit
(log)

<u>Filtration Technology</u>	<u>Giardia</u>	<u>Virus</u>
Conventional	99.7 (2.5)	99 (2.0)
Direct and in-line	99 (2.0)	90 (1.0)

(ii) A system using conventional, direct, or in-line filtration shall be considered to provide effective treatment, if the purveyor demonstrates to the satisfaction of the department that the system meets the:

(A) Turbidity performance requirements under subsection (1) of this section; and

(B) Operations requirements of WAC 246-290-654.

(iii) The department may grant a higher level of *Giardia lamblia* and virus removal credit than listed under (b)(i) of this subsection, if the purveyor demonstrates to the department's satisfaction that the higher level can be consistently achieved.

(iv) As a condition of maintaining the maximum removal credit, purveyors may be required to periodically monitor one or more parameters not routinely monitored under WAC 246-290-664. The department shall notify the purveyor of the type and frequency of monitoring to be conducted.

(v) The department shall not grant removal credit to a system using conventional, direct, or in-line filtration ~~((which)) that:~~

(A) Fails to meet the minimum turbidity performance requirements under subsection (1) of this section; or

(B) Fails to meet the operating requirements under WAC 246-290-654.

(c) Slow sand filtration.

The department may grant a system using slow sand filtration 99 percent (2 log) *Giardia lamblia* cyst removal credit and 99 percent (2 log) virus removal credit, if the system meets the department design requirements under WAC 246-290-676 and meets the minimum turbidity performance requirements in subsection (1) of this section.

(d) Diatomaceous earth filtration.

The department may grant a system using diatomaceous earth filtration 99 percent (2 log) *Giardia lamblia* cyst removal credit and 90 percent (1 log) virus removal credit, if the system meets the department design requirements under WAC 246-290-676 and meets the minimum turbidity performance requirements in subsection (1) of this section.

(e) Alternate filtration technology.

The department shall grant, on a case-by-case basis, *Giardia lamblia* cyst and virus removal credit for systems using alternate filtration technology based on results of product testing acceptable to the department.

(f) The purveyor granted no removal credit shall:

(i) Provide treatment in accordance with WAC 246-290-662 ~~(2)((e))~~ **(d)**; and

(ii) Within ninety days of department notification regarding removal credit, submit an action plan to the department for review and approval. The plan shall:

(A) Detail how the purveyor plans to comply with the turbidity performance requirements in subsection (1) of this section and operating requirements of WAC 246-290-654; and

(B) Identify the proposed schedule for implementation.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-662 Disinfection for filtered systems.

(1) General requirements.

(a) The purveyor shall provide continuous disinfection to ensure that filtration and disinfection together achieve, at all times the system serves water to the public, at least the following:

(i) 99.9 percent (3 log) inactivation and removal of *Giardia lamblia* cysts; and

(ii) 99.99 percent (4 log) inactivation and/or removal of viruses.

(b) Where sources receive sewage discharges and/or agricultural runoff, purveyors may be required to provide greater levels of removal and inactivation of *Giardia lamblia* cysts and viruses to protect the health of consumers served by the system.

(c) Regardless of the removal credit granted for filtration, purveyors shall, at a minimum, provide continuous disinfection to achieve at least 68 percent (0.5 log) inactivation of *Giardia lamblia* cysts and 99 percent (2 log) inactivation of viruses.

(2) Establishing the level of inactivation.

(a) The department shall establish the level of disinfection (log inactivation) to be provided by the purveyor.

(b) The required level of inactivation shall be based on source quality and expected levels of *Giardia lamblia* cyst and virus removal achieved by the system's filtration process.

(c) Based on ~~((period))~~ periodic reviews, the department may adjust, as necessary, the level of disinfection the purveyor shall provide to protect the health of consumers served by the system.

~~(d) ((The purveyor using alternate filtration technology shall ensure that disinfection achieves at least the following at all times water is served to the public:~~

~~(i) 90 percent (1 log) inactivation of *Giardia lamblia* cysts when granted 99 percent (2 log) *Giardia lamblia* cyst removal credit, or 99.9 percent (3 log) inactivation of cysts when granted less than 99 percent (2 log) *Giardia lamblia* cyst removal credit; and~~

~~(ii) 99.9 percent (3 log) inactivation of viruses when granted 90 percent (1 log) virus removal credit, or 99.99 percent (4 log) inactivation of viruses when granted no virus removal credit.~~

~~(e))~~ Systems granted no *Giardia lamblia* cyst removal credit.

(i) Unless directed otherwise by the department, the purveyor of a system granted no *Giardia lamblia* cyst removal credit shall provide interim disinfection:

(A) To ensure compliance with the monthly coliform MCL under WAC 246-290-310;

(B) Achieve at least 99.9 percent (3 log) inactivation of *Giardia lamblia* cysts; and

(C) Maintain a detectable residual disinfectant concentration, or an HPC level less than 500 organisms/ml, within the distribution system in accordance with subsection (6) of this section.

PERMANENT

(ii) The purveyor shall comply with the interim disinfection requirements until the system can demonstrate to the department's satisfaction that it complies with the operating requirements and turbidity performance requirements under WAC 246-290-654 and 246-290-660(1), respectively.

(3) Determining the level of inactivation.

(a) Unless the department has approved a reduced CT monitoring schedule for the system, each day the system serves water to the public, the purveyor, using procedures and CT values acceptable to the department such as those presented in ~~((the DOH SWTR Guidance Manual))~~ department guidance of surface water treatment, shall determine:

(i) CTcalc values using the system's treatment parameters and calculate the total inactivation ratio achieved by disinfection; and

(ii) Whether the system's disinfection process is achieving the minimum levels of inactivation of *Giardia lamblia* cysts and viruses required by the department.

(b) The department may allow a purveyor to determine the level of inactivation using lower CT values than those specified in (a) of this subsection, provided the purveyor demonstrates to the department's satisfaction that the required levels of inactivation of *Giardia lamblia* cysts and viruses can be achieved.

(4) Determining compliance with the required level of inactivation.

(a) A purveyor shall be considered in compliance with the inactivation requirement when a total inactivation ratio equal to or greater than 1.0 is achieved.

(b) Failure to provide the required level of inactivation on more than one day in any calendar month shall be considered a treatment technique violation.

(5) Residual disinfectant concentration entering the distribution system.

(a) The purveyor shall ensure that all water entering the distribution system contains a residual disinfectant concentration, measured as free or combined chlorine, of at least 0.2 mg/L at all times the system serves water to the public; and

(b) Failure to provide a 0.2 mg/L residual at entry to distribution for more than four hours on any day shall be considered a treatment technique violation.

(6) Residual disinfectant concentration within the distribution system.

(a) The purveyor shall ensure that the residual disinfectant concentration in the distribution system, measured as total chlorine, free chlorine, combined chlorine, or chlorine dioxide, is detectable in at least ~~((95))~~ ninety-five percent of the samples taken each calendar month.

(b) Water in the distribution system with an HPC less than or equal to 500 organisms/ml is considered to have a detectable residual disinfectant concentration.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-664 Monitoring for filtered systems.

(1) Source coliform monitoring.

(a) The purveyor shall ensure that source water samples of each surface or GWI source are:

(i) Collected before the first point of disinfectant application and before coagulant chemical addition; and

(ii) Analyzed for fecal coliform density in accordance with methods acceptable to the department.

(b) At a minimum, the purveyor shall ensure source samples are collected for fecal coliform analysis at a frequency equal to ~~((40))~~ ten percent of the number of routine coliform samples collected within the distribution system each month under WAC 246-290-300, or once per calendar month, whichever is greater up to a maximum of one sample per day.

(2) Source turbidity monitoring.

(a) The purveyor using conventional, direct, or in-line filtration shall measure source turbidity at least once per day on a representative sample collected before disinfection and coagulant addition.

(b) Grab sampling or continuous turbidity monitoring and recording may be used to meet the requirement specified in (a) of this subsection.

(c) Purveyors using continuous turbidity monitoring shall record continuous turbidity measurements at equal intervals, at least every four hours, in accordance with a department-approved sampling schedule.

(3) Filtered water turbidity monitoring.

(a) The purveyor shall:

(i) Continuously monitor turbidity on representative samples from each individual filter unit and of the system's combined filter effluent, prior to clearwell storage;

(ii) Record continuous turbidity measurements at equal intervals, at least every four hours, in accordance with a department-approved sampling schedule; and

(iii) Conduct monitoring in accordance with the analytical techniques under WAC 246-290-638.

(b) Purveyors using slow sand filtration or an alternate filtration technology may reduce filtered water turbidity monitoring to one grab sample per day with departmental approval. Reduced turbidity monitoring shall be allowed only where the purveyor demonstrates to the department's satisfaction that a reduction in monitoring will not endanger the health of consumers served by the water system.

(4) Monitoring the level of inactivation and removal.

(a) Each day the system is in operation, the purveyor shall determine the total level of inactivation and removal of *Giardia lamblia* cysts and viruses achieved.

(b) The purveyor shall determine the total level of inactivation and removal based on:

(i) *Giardia lamblia* cyst and virus removal credit granted by the department for filtration; and

(ii) Level of inactivation of *Giardia lamblia* cysts and viruses achieved through disinfection.

(c) At least once per day, purveyors shall monitor the following to determine the level of inactivation achieved through disinfection:

(i) Temperature of the disinfected water at each residual disinfectant concentration sampling point used for CT calculations; and

(ii) If using chlorine, pH of the disinfected water at each chlorine residual disinfectant concentration sampling point used for CT calculations.

(d) Each day during peak hourly flow (based on historical information), the purveyor shall:

(i) Determine disinfectant contact time, T, to the point at which C is measured; and

(ii) Measure the residual disinfectant concentration, C, of the water at the point for which T is calculated. The C measurement point shall be located before or at the first (~~customer~~) consumer.

(e) The department may reduce CT monitoring requirements for purveyors (~~which~~) that demonstrate to the department's satisfaction that the required levels of inactivation are consistently exceeded. Reduced CT monitoring shall only be allowed where the purveyor demonstrates to the department's satisfaction that a reduction in monitoring will not endanger the health of consumers.

(5) Monitoring the residual disinfectant concentration entering the distribution system.

(a) Systems serving more than thirty-three hundred (~~(=3300))~~ people per month.

(i) The purveyor shall continuously monitor and record the residual disinfectant concentration of water entering the distribution system and report the lowest value each day.

(ii) If the continuous monitoring equipment fails, the purveyor shall measure the residual disinfectant concentration on grab samples collected at least every four hours at the entry to the distribution system while the equipment is being repaired or replaced. The purveyor shall have continuous monitoring equipment back on-line within five working days following failure.

(b) Systems serving thirty-three hundred or less (~~(=3300))~~ people per month.

(i) The purveyor shall collect grab samples or use continuous monitoring and recording to measure the residual disinfectant concentration entering the distribution system.

(ii) Purveyors of **community** systems choosing to take grab samples shall collect:

(A) Samples at the following minimum frequencies:

<u>Population Served</u>	<u>Number/day</u>
25 - 500	1
501 - 1,000	2
1,001 - 2,500	3
2,501 - 3,300	4

(B) At least one of the grab samples at peak hourly flow; and

(C) The remaining samples evenly spaced over the time the system is disinfecting water that will be delivered to the public.

(iii) Purveyors of **noncommunity** systems choosing to take grab samples shall collect samples for disinfectant residual concentration entering the distribution system as directed by the department.

(iv) When grab samples are collected and the residual disinfectant concentration at the entry to distribution falls below 0.2 mg/L, purveyors shall collect a grab sample every four hours until the residual disinfectant concentration is 0.2 mg/L or more.

(6) Monitoring residual disinfectant concentrations within the distribution system.

(a) The purveyor shall measure the residual disinfectant concentration at representative points within the distribution system on a daily basis or as otherwise approved by the department.

(b) At a minimum, the purveyor shall measure the residual disinfectant concentration within the distribution system at the same time and location that a routine or repeat coliform sample is collected in accordance with WAC 246-290-300(~~(2))~~ (3) or 246-290-320(2).

(c) The purveyor may measure HPC within the distribution system in lieu of measuring the residual disinfectant concentration in accordance with this subsection.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-666 Reporting for filtered systems. (1)

The purveyor shall notify the department, as soon as possible, but no later than the end of the next business day, when:

(a) A waterborne disease outbreak potentially attributable to the water system occurs;

(b) The turbidity of the combined filter effluent exceeds 5.0 NTU at any time;

(c) The residual disinfection concentration falls below 0.2 mg/L at the entry point to the distribution system. The purveyor shall also report whether the residual was restored to 0.2 mg/L or more within four hours; or

(d) An event occurs (~~which~~) that may affect the ability of the water treatment facility to produce drinking water (~~which~~) that complies with this chapter including, but not limited to:

- (i) Spills of hazardous materials in the watershed; and
- (ii) Treatment process failures.

(2) The purveyor shall report results of monitoring conducted in accordance with WAC 246-290-664 to the department. Monthly report forms shall be submitted within ten days after the end of each month the system served water to the public.

(3) The purveyor shall report, at a minimum, all the information requested by the department using a department-approved form or format including:

- (a) Water treatment facility operations information;
- (b) Turbidity monitoring results. Continuous measurements shall be reported at equal intervals, at least every four hours, in accordance with a department-approved schedule;
- (c) Disinfection monitoring information including:
 - (i) Level of inactivation achieved;
 - (ii) Residual disinfectant concentrations entering the distribution system; and
 - (iii) Residual disinfectant concentrations within the distribution system.
- (d) Total level of removal and inactivation; and
- (e) A summary of water quality complaints received from consumers served by the water system.

(4) A person certified under chapter 246-292 WAC shall complete and sign the monthly report forms required in this section.

PERMANENT

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-668 Watershed control. (1) The purveyor shall, to the extent possible, exercise surveillance over conditions and activities in the watershed affecting source water quality. The purveyor shall develop and implement a department-approved watershed control program.

(2) The purveyor shall ensure that an evaluation of the watershed is completed at least every six years. Watershed evaluations shall be performed such that results of the survey are included in the purveyor's water system plan in accordance with WAC 246-290-100 or small water system management program in accordance with WAC ((246-290-410)) 246-290-105, whichever is applicable.

(3) A professional engineer registered in the state of Washington shall direct the conduct of the watershed evaluation and develop a watershed evaluation report.

(4) The purveyor shall submit the report to the department within sixty days of completion of the watershed evaluation.

(5) The report shall describe the watershed, characterize the watershed hydrology, and discuss the purveyor's watershed control program. The report shall also describe:

- (a) Conditions/activities in the watershed ((which)) that are adversely affecting source water quality;
- (b) Changes in the watershed ((which)) that could adversely affect source water quality that have occurred since the last watershed evaluation;

- (c) The monitoring program the purveyor uses to assess the adequacy of watershed protection including an evaluation of sampling results; and
- (d) Recommendations for improved watershed control.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-670 Compliance requirements for existing unfiltered systems installing filtration. (1) The purveyor of an existing unfiltered system shall:

- (a) Install filtration ((by:
 - (i) ~~June 29, 1993, for systems notified by the department before December 30, 1991, to install filtration; or~~
 - (ii) within eighteen months after department notification((, for systems notified by the department after December 30, 1991, to install filtration.)); and

(b) Be subject to the ((effective dates;)) interim compliance requirements((, and treatment technique violations specified in Table 12)) as determined by the department and in conformance with 40 CFR 141.13 and WAC 246-290-632.

(2) The purveyor under an enforcement action or compliance agreement ((which)) that is dated prior to the effective date of Part 6 of chapter 246-290 WAC, shall adhere to the compliance schedule for installation of filtration established in the departmental order or bilateral compliance agreement in lieu of the dates specified in subsection (1) of this section.

Table 12
COMPLIANCE REQUIREMENTS FOR EXISTING UNFILTERED SYSTEMS NOTIFIED BY THE DEPARTMENT TO INSTALL FILTRATION

EFFECTIVE DATE	APPLICABLE PART 6 REQUIREMENTS	VIOLATION TYPE	
		Turbidity MCL	Treatment Technique
Until June 29, 1993 or until the new water treatment facility produces filtered water served to the public, whichever is later.	Subpart C treatment, monitoring and reporting requirements	Still in effect	As defined in WAC 246-290-632
Beginning June 29, 1993 or when the new water treatment facility first serves filtered water to the public, whichever is later.	Subparts A and B	No longer in effect	As defined in WAC 246-290-632

(3) The purveyor required to install filtration shall submit an action plan and schedule to the department for review and approval. The plan shall:

- (a) Be submitted within ninety days of departmental notification; and
- (b) Document the purveyor's plan and implementation schedule to comply with one of the following:
 - (i) Subparts A and B of Part 6 of chapter 246-290 WAC, if continuing to use the surface or GWI source as a permanent source and installing filtration;
 - (ii) Subparts A and D of Part 6 of chapter 246-290 WAC, if abandoning the surface or GWI source and purchasing completely treated water from a department-approved public water system using surface or GWI water; or

(iii) All other applicable sections of this chapter, if abandoning the surface or GWI source and developing an alternate department-approved ground water source.

(4) Between written departmental notification of the filtration requirement and installation of filtration, the purveyor shall meet:

- (a) The interim disinfection requirements under WAC 246-290-672 or as otherwise directed by the department;
 - (b) The interim monitoring and reporting requirements under WAC 246-290-674; and
 - (c) All other applicable requirements of this chapter.
- (5) The purveyor installing filtration shall ensure that when completed, the final treatment processes, consisting of

PERMANENT

filtration and disinfection, will comply with the requirements under WAC 246-290-660 and 246-290-662, respectively.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-672 Interim treatment requirements.

(1) Purveyors of existing unfiltered systems installing filtration shall provide interim disinfection treatment to:

(a) Ensure compliance with the monthly coliform MCL under WAC 246-290-310;

(b) Achieve ~~((at least 99 percent (2 log)))~~ inactivation levels of *Giardia lamblia* cysts on a daily basis each month the system serves water to the public ~~((unless otherwise))~~ as directed by the department; and

(c) Maintain a detectable residual disinfectant concentration in the distribution system, measured as total chlorine, free chlorine, or combined chlorine in 95 percent or more of the samples taken each calendar month. Water in the distribution system with an HPC level less than or equal to 500 organisms/ml is considered to have a detectable residual disinfectant concentration.

(2) Failure to provide the required level of inactivation in subsection (1)(b) of this section on more than one day in any calendar month shall be considered a treatment technique violation.

(3) The department may require the purveyor to provide higher levels of treatment than specified in subsection (1)(b) of this section when necessary to protect the health of consumers served by the public water system.

(4) Interim treatment requirements shall be met in accordance with a schedule acceptable to the department.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-674 Interim monitoring and reporting. (1) Monitoring. Unless directed otherwise by the department, the purveyor of an existing unfiltered system installing filtration shall:

(a) Conduct interim monitoring in accordance with ~~((WAC 246-290-300 and 246-290-320))~~ 40 CFR 141.22; ~~((and))~~

(b) Measure the residual disinfectant concentration within the distribution system at the same time and location that a routine or repeat sample is collected in accordance with WAC 246-290-300~~((2))~~(3) or 246-290-320(2); and

(c) Measure residual disinfection concentrations at entry to the distribution system on a daily basis, or as directed by the department.

(2) Reporting.

(a) The purveyor installing filtration shall report to the department as soon as possible, but no later than the end of the next business day, when:

(i) A waterborne disease outbreak potentially attributable to the water system occurs;

(ii) The turbidity of water delivered to the public exceeds 5.0 NTU; or

(iii) The interim disinfection requirements under WAC 246-290-672 are not met.

(b) The purveyor shall report results of monitoring to the department. Monthly report forms shall be submitted within ten days after the end of each month the system served water to the public.

(c) The purveyor shall report, at a minimum, all the information requested by the department using a department-approved form or format including:

(i) Water quality information, including results of monitoring in accordance with WAC 246-290-300 and 246-290-320;

(ii) Disinfection monitoring information;

(iii) A summary of water quality complaints received from consumers served by the system.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-676 Filtration technology and design criteria. (1) General.

(a) The purveyor proposing to construct new water treatment facilities or to make additions to existing water treatment facilities for surface and GWI sources shall ensure that the facilities comply with the treatment, design, and reliability requirements of Part 6 of chapter 246-290 WAC.

(b) The purveyor shall submit an engineering report to the department describing how the treatment facilities will be designed to comply with the requirements specified in Subparts A, B, and C of Part 6 of chapter 246-290 WAC.

(2) Filtration technology.

(a) The purveyor shall select a filtration technology acceptable to the department using criteria such as those outlined in ~~((the DOH SWTR Guidance Manual))~~ department guidance on surface water treatment. The following filtration technologies are considered acceptable:

(i) Conventional;

(ii) Direct;

(iii) Diatomaceous earth; and

(iv) Slow sand.

(b) In addition to the technologies specified in subsection (1) of this section, alternate filtration technologies may be acceptable, if the purveyor demonstrates to the department's satisfaction all of the following:

(i) Through acceptable third party testing, that system components do not leach or otherwise add substances to the finished water that would violate drinking water standards ~~((or food and drug administration regulations))~~, or otherwise pose a threat to public health;

(ii) The technology's effectiveness in achieving at least 99 percent (2 log) removal of *Giardia lamblia* cysts or cyst surrogate particles. ~~((On a case-by-case basis, the department may allow, with adequate engineering justification, installation of an alternate filtration technology which achieves less than 99 percent (2 log) removal. Alternate technologies which achieve less than 1.5 log removal shall be considered unacceptable.))~~ The purveyor shall further demonstrate the technology's removal capability through research conducted:

(A) By a party acceptable to the department; and

(B) In accordance with protocol and standards acceptable to the department.

(iii) Through on-site pilot plant studies or other means, that the filtration technology:

(A) In combination with disinfection treatment consistently achieves 99.9 percent (3 log) removal and inactivation of *Giardia lamblia* cysts and 99.99 percent (4 log) removal and inactivation of viruses; and

(B) Meets the applicable turbidity performance requirements ~~((in Table H))~~ as determined by the department for the specific treatment process being considered, but in no case to exceed 1.0 NTU for the finished water.

(3) Pilot studies.

(a) The purveyor shall ensure pilot studies are conducted for all proposed filtration facilities, except where waived based on engineering justification acceptable to the department.

(b) The purveyor shall obtain department approval for the pilot study plan before the pilot filter is constructed and before the pilot study is undertaken.

(c) The pilot study plan shall identify at a minimum:

(i) Pilot filter design;

(ii) Water quality and operational parameters to be monitored;

(iii) Type of data to be collected, frequency of data collection, and length of pilot study; and

(iv) Pilot plant operator qualifications.

(d) The purveyor shall ensure that the pilot study is:

(i) Conducted to simulate proposed full-scale design conditions;

(ii) Conducted over a time period that will demonstrate the effectiveness and reliability of the proposed treatment system during changes in seasonal and climatic conditions; and

(iii) Designed and operated in accordance with good engineering practices and that ANSI/NSF standards 60 and 61 are considered.

(e) When the pilot study is complete, the purveyor shall submit a project report to the department for approval in accordance with WAC 246-290-110.

(4) Design criteria.

(a) The purveyor shall ensure that water treatment facilities for surface and GWI sources are designed and constructed in accordance with good engineering practices documented in references such as those identified in WAC 246-290-200.

(b) Filtration facilities.

(i) The purveyor shall ensure that all new filtration facilities and improvements to any existing filtration facilities (excluding disinfection) are designed to achieve at least:

(A) 99 percent (2 log) removal of *Giardia lamblia* cysts; and

(B) 90 percent (1 log) removal of viruses.

(ii) The purveyor proposing to use an alternate filtration technology ~~((which doesn't))~~ that does not meet the requirements of (b)(i)(B) of this subsection shall demonstrate to the department's satisfaction that the potential for viral contamination of the source is low. The purveyor shall base the demonstration on results of a watershed evaluation acceptable to the department.

(iii) The purveyor shall ensure that all new filtration facilities contain provisions for filtering to waste with appropriate measures for backflow prevention.

(c) ~~((Disinfection systems-~~

~~(i))~~ The purveyor shall ensure that disinfection systems for new filtration facilities ~~((using other than alternate filtration technologies and))~~ or improvements to existing disinfection facilities are designed to ((achieve at least:

~~(A) 90 percent (1 log) inactivation of *Giardia lamblia* cysts; and~~

~~(B) 99.9 percent (3 log) inactivation of viruses.~~

~~(ii) The purveyor proposing to use an alternate filtration technology shall ensure that the disinfection system is designed to comply with the following requirements as applicable:~~

~~(A) If the department has rated the filtration technology as capable of achieving at least 99 percent (2 logs) removal of *Giardia lamblia* cysts, the purveyor shall ensure that the disinfection system provides at least 90 percent (1 log) inactivation of *Giardia lamblia* cysts; or~~

~~(B) If the department has rated the filtration technology as capable of achieving less than 99 percent (2 logs) removal of *Giardia lamblia* cysts, the purveyor shall ensure that the disinfection system provides at least 99.9 percent (3 logs) inactivation of *Giardia lamblia* cysts; and~~

~~(C) If the department has determined the filtration technology is not capable of removing viruses, the purveyor shall ensure that the disinfection system achieves at least 99.99 percent (4 log) inactivation of viruses)) meet the requirements of WAC 246-290-662.~~

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-678 Reliability for filtered systems. (1)

The purveyor shall ensure that reliability features are included in all water treatment facilities used to treat surface or GWI sources.

(2) Reliability features shall include but not be limited to:

(a) Alarm devices to provide warning of treatment process failures including coagulation, filtration, and disinfection. Alarm devices shall warn individuals responsible for taking corrective action and/or provide for automatic plant shutdown until corrective action can be taken;

(b) Standby replacement equipment available to assure continuous operation and control of coagulation, clarification, filtration and disinfection processes;

(c) Multiple filter units ~~((which))~~ that provide redundant capacity when filters are out of service for backwash or maintenance, except where waived based on engineering justification acceptable to the department.

(3) The department may accept alternatives to the requirements specified in subsection (2) of this section, if the purveyor demonstrates to the department's satisfaction that the proposed alternative will assure an equal degree of reliability.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-686 Compliance requirements for unfiltered systems. (1) The purveyor using an unfiltered surface or GWI source shall comply with:

(a) Subparts A and D of Part 6 of chapter 246-290 WAC; and

(b) All other applicable sections of this chapter.

(2) The purveyor purchasing water from a system using a surface or GWI source shall comply with:

(a) The applicable requirements of Subpart A of Part 6 of chapter 246-290 WAC;

(b) The disinfection, monitoring and reporting requirements under WAC 246-290-692 (5)(b), 246-290-694 ((~~6~~)) (~~8~~)(b) and 246-290-696(4) respectively when purchasing completely treated surface or GWI water; or

(c) The treatment technique, monitoring and reporting requirements ((of Subpart D of Part 6 of chapter 246-290 WAC)) as directed by the department when the purveyor is purchasing incompletely treated surface or GWI water.

(3) The purveyor using an unfiltered GWI source shall be subject to the effective dates, compliance requirements, and violations specified in((:

(a) ~~Table 13, when using an unfiltered surface source; or~~

(b) ~~Table 14, when using an unfiltered GWI source))~~

Table 12.

((Table 13

COMPLIANCE REQUIREMENTS FOR SYSTEMS USING UNFILTERED SURFACE WATER SOURCES

REQUIREMENTS BECOME EFFECTIVE	APPLICABLE PART 6 REQUIREMENTS	VIOLATION TYPE	
		Turbidity MCL	Treatment Technique
From January 1, 1991 through December 29, 1991))	Only Analytical, Monitoring and Reporting Requirements (WAC 246-290-638, 246-290-694 and 246-290-696 respectively)	Still in effect	Not in effect yet
Beginning December 30, 1991 and thereafter	Subparts A and D	No longer in effect	In effect as defined in WAC 246-290-632))

Table ((14)) 12

COMPLIANCE REQUIREMENTS FOR SYSTEMS USING UNFILTERED GWI SOURCES

REQUIREMENTS BECOME EFFECTIVE	APPLICABLE PART 6 REQUIREMENTS	VIOLATION TYPE	
		Turbidity MCL	Treatment Technique
Six months after GWI determination	Only Analytical, Monitoring and Reporting Requirements (WAC 246-290-638, 246-290-694 and 246-290-696 respectively)	((Still in effect)) <u>Refer to 40 CFR 141.13 and 141.22</u>	Not in effect yet

REQUIREMENTS BECOME EFFECTIVE	APPLICABLE PART 6 REQUIREMENTS	VIOLATION TYPE	
		Turbidity MCL	Treatment Technique
Eighteen months after GWI determination	Subparts A and D	No longer in effect	In effect as defined in WAC 246-290-632

(4) Purveyors of **community** systems using surface water sources had the option to remain unfiltered if they demonstrated compliance with the department's criteria to remain unfiltered by December 30, 1991.

(5) A purveyor (~~using a department determined~~) that served water to the public before January 1, 1991, using a GWI source may have that source remain unfiltered, if, within eighteen months of GWI determination, the purveyor complies with Part 6 of this chapter ((246-290 WAC)) and ((in particular), the source water quality and site-specific conditions under WAC 246-290-690 or 246-290-691 as demonstrated through monitoring conducted in accordance with WAC 246-290-694.

(6) ((After the department makes an initial determination that a system may)) The purveyor with sources that are approved to remain unfiltered((, the purveyor)) shall comply with the source water quality and site-specific conditions under WAC 246-290-690 or 246-290-691 as demonstrated through monitoring conducted in accordance with WAC 246-290-694.

(7) The purveyor shall install filtration when((:

(a)) ~~the system fails to meet one or more of the source water quality and site-specific conditions under WAC 246-290-690((:)) and 246-290-691, or ((b))~~ the department determines that installation of filtration is necessary to protect the health of consumers served by the water system.

(8) The ((department shall provide written notification to the purveyor of:

(a) A filtration requirement; and

(b) An initial determination that the system may remain unfiltered)) purveyor, in response to a written notification by the department, shall install filtration within eighteen months.

(9) The purveyor may comply with the requirements to install filtration by:

(a) Constructing a water treatment facility that is designed, operated, and maintained in accordance with Subparts A, B, and C of Part 6 of this chapter;

(b) Satisfying the source water quality and site-specific criteria specified in WAC 246-290-691 and constructing treatment facilities that are designed, operated, and maintained to provide a limited alternative to filtration in accordance with WAC 246-290-692; or

(c) Abandoning the surface water or GWI source, and:

((a)) (i) Developing an alternate, department-approved ground water source; or

((b)) (ii) Purchasing completely treated water from a department-approved public water system.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

WAC 246-290-690 Criteria to remain unfiltered. (1) For a system not using the "limited alternative to filtration"

PERMANENT

option to remain unfiltered, the purveyor using a surface water or GWI source shall meet the source water quality and site-specific conditions under this section, as demonstrated through monitoring conducted in accordance with WAC 246-290-694.

(2) Source water quality conditions necessary to remain unfiltered.

(a) Coliform limits.

(i) The purveyor shall ensure that representative source water samples taken before the first point of disinfection have a fecal coliform density less than or equal to 20/100 ml in ~~((90))~~ ninety percent or more of all samples taken during the six previous calendar months the system served water to the public. Samples collected on days when source water turbidity exceeds 1.0 NTU shall be included when determining compliance with this requirement.

(ii) The purveyor shall submit a written report to the department if no source fecal coliform data has been submitted for days when source turbidity exceeded 1.0 NTU. The report shall document why sample results are not available and shall be submitted with the routine monitoring reports for the month in which the sample results are not available.

(b) Turbidity limits.

(i) The purveyor shall ensure that the turbidity level in representative source water samples taken ~~((immediately downstream from the intake and))~~ before primary disinfection does not exceed 5.0 NTU.

(ii) A system failing to meet the turbidity requirements in (b)(i) of this subsection may remain unfiltered, if:

(A) The purveyor demonstrates to the department's satisfaction that the most recent turbidity event was caused by unusual and unpredictable circumstances; and

(B) Including the most recent turbidity event, there have not been more than:

(I) Two turbidity events in the twelve previous calendar months the system served water to the public; or

(II) Five turbidity events in the one-hundred-twenty previous calendar months the system served water to the public.

(iii) The purveyor of a system experiencing a turbidity event shall submit a written report to the department documenting why the turbidity event(s) occurred. The purveyor shall submit the report with the routine monitoring reports for the month in which the turbidity event(s) occurred.

(iv) The purveyor of a system with alternate, department-approved sources or sufficient treated water storage may avoid a turbidity event by implementing operational adjustments to prevent water with a turbidity exceeding 5.0 NTU from being delivered to consumers.

(v) When an alternate source or treated water storage is used during periods when the turbidity of the surface or GWI source exceeds 5.0 NTU, the purveyor shall not put the surface or GWI source back on-line, until the source water turbidity is 5.0 NTU or less.

(3) Site-specific conditions to remain unfiltered.

(a) Level of inactivation.

(i) The purveyor shall ensure that the *Giardia lamblia* cyst and virus inactivation levels required under WAC 246-290-692(1) are met in at least eleven of the twelve previous calendar months that the system served water to the public.

(ii) A system failing to meet the inactivation requirements during two of the twelve previous calendar months that the system served water to the public may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that at least one of the failures was caused by unusual and unpredictable circumstances.

(iii) To make such a demonstration, the purveyor shall submit to the department a written report documenting the reasons for the failure. The purveyor shall submit the report with the routine monitoring reports for the month in which the failure occurred.

(b) Redundant disinfection components or automatic shut-off.

The purveyor shall ensure that the requirement for redundant disinfection system components or automatic shut-off of water to the distribution system under WAC 246-290-692(3) is met at all times the system serves water to the public.

(c) Disinfectant residual entering the distribution system.

(i) The purveyor shall ensure that the requirement for having a residual entering the distribution system under WAC 246-290-692(4) is met at all times the system serves water to the public.

(ii) A system failing to meet the disinfection requirement under (c)(i) of this subsection may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that the failure was caused by unusual and unpredictable circumstances.

(iii) To make such a demonstration, the purveyor shall submit to the department a written report documenting the reasons for the failure. The purveyor shall submit the report with the routine monitoring reports for the month in which the failure occurred.

(d) Disinfectant residuals within the distribution system.

(i) The purveyor shall ensure that the requirement for maintaining a residual within the distribution system under WAC 246-290-692(5) is met on an ongoing basis.

(ii) A system failing to meet the disinfection requirements under (d)(i) of this subsection may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that the failure was caused by something other than a deficiency in source water treatment.

(iii) To make such a demonstration, the purveyor shall submit to the department a written report documenting the reasons for the failure. The purveyor shall submit the report with the routine monitoring reports for the month in which the failure occurred.

(e) Watershed control.

(i) The purveyor shall develop and implement a department-approved watershed control program.

(ii) The purveyor shall monitor, limit, and control all facilities and activities in the watershed affecting source quality to preclude degradation of the physical, chemical, microbiological (including viral), and radiological quality of the source. The purveyor shall demonstrate, through ownership and/or written agreements acceptable to the department, control of all human activities ~~((which))~~ that may adversely impact source quality.

(iii) ~~((A department guideline, titled *DOH SWTR Guidance Manual*, is available to assist purveyors with develop~~

ment and implementation of a watershed control program.)) At a minimum, the purveyor's watershed control program shall:

(A) Characterize the watershed hydrology and land ownership;

(B) Identify watershed characteristics and activities ~~((which))~~ that may adversely affect source water quality; and

(C) Monitor the occurrence of activities ~~((which))~~ that may adversely affect source water quality.

(iv) If the department determines significant changes have occurred in the watershed, the purveyor shall submit, within ninety days of notification, an updated watershed control program to the department for review and approval.

(v) The department may require an unfiltered system to conduct additional monitoring to demonstrate the adequacy of the watershed control program.

(vi) A purveyor shall be considered out of compliance when failing to:

(A) Have a department-approved watershed control program;

(B) Implement the watershed control program to the satisfaction of the department; or

(C) Conduct additional monitoring as directed by the department.

~~((vii) The purveyor using a GWI source may use a department approved wellhead protection program to meet the watershed control program requirements under (c) of this subsection with departmental approval.))~~

(f) On-site inspections.

(i) The department shall conduct on-site inspections to assess watershed control and disinfection treatment.

(ii) The department shall conduct annual inspections unless more frequent inspections are deemed necessary to protect the health of consumers served by the system.

(iii) For a system to remain unfiltered, the on-site inspection shall indicate to the department's satisfaction that the watershed control program and disinfection treatment comply with (e) of this subsection and WAC 246-290-692, respectively.

(iv) The purveyor with unsatisfactory on-site inspection results shall take action as directed by the department in accordance with a department-established schedule.

(g) Waterborne disease outbreak.

(i) To remain unfiltered, a system shall not have been identified by the department as the cause of a waterborne disease outbreak attributable to a failure in treatment of the surface or GWI source.

(ii) The purveyor of a system identified by the department as the cause of a waterborne disease outbreak may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that system facilities and/or operations have been sufficiently modified to prevent another waterborne disease outbreak.

(h) Total coliform MCL.

(i) For a system to remain unfiltered, the purveyor shall ensure that the MCL for total coliform under WAC 246-290-310 is met in at least eleven of the twelve previous calendar months the system served water to the public.

(ii) A system failing to meet the criteria in (i) of this subsection, may remain unfiltered, if the purveyor demonstrates

to the department's satisfaction that the total coliform MCL violations were not caused by a deficiency in source water treatment.

(iii) The department shall determine the adequacy of source water treatment based on results of total coliform monitoring at the entry to the distribution system in accordance with WAC 246-290-694~~((2))~~ (3).

(i) THM MCL and monitoring.

For a system to remain unfiltered, the purveyor shall comply with the THM monitoring and MCL requirements under WAC 246-290-300 and 246-290-310, respectively.

(j) Laboratory services.

(i) For a system to remain unfiltered, the purveyor shall retain the services of the public health laboratory or another laboratory certified by the department to analyze samples for total and fecal coliform. Laboratory services shall be available on an as needed basis, seven days a week, including holidays. The purveyor shall identify in the annual comprehensive report required under WAC 246-290-696 the certified laboratory providing these services.

(ii) The department may waive this requirement, if the purveyor demonstrates to the department's satisfaction that an alternate, department-approved source is used when the turbidity of the surface or GWI source exceeds 1.0 NTU.

NEW SECTION

WAC 246-290-691 Criteria for unfiltered systems with a "limited alternative to filtration" to remain unfiltered. (1) For a system providing a limited alternative to filtration, the purveyor using a surface water or GWI source shall meet the source quality and site-specific conditions under this section.

(2) Source water turbidity requirements.

(a) The purveyor shall ensure that the turbidity level in representative source water samples taken before primary disinfection does not exceed 5.0 NTU.

(b) A system with more than two turbidity events in the twelve previous calendar months the water was served to the public or more than five turbidity events in the one hundred twenty previous calendar months the water was served to the public shall expand the scope of its next annual comprehensive report required under WAC 246-290-696(6) to include:

(i) A description of the events;

(ii) A summary of previous turbidity events;

(iii) A proposed plan of corrective action; and

(iv) A schedule for implementing the action plan.

(3) Site-specific requirements.

(a) Level of inactivation.

(i) The purveyor shall ensure that the removal and/or inactivation levels required under WAC 246-290-630(11) are met in at least eleven of the twelve previous calendar months that the system served water to the public.

(ii) A system failing to meet the inactivation requirements in (a)(i) of this subsection in two or more months of the previous twelve calendar months the system served water to the public shall expand the scope of its annual comprehensive report required under WAC 246-290-696(6) to include:

(A) A description of the failure(s);

(B) A summary of previous inactivation failures;

- (C) A proposed plan of corrective action; and
- (D) A schedule for implementing the action plan.

(b) Watershed control.

(i) The watershed must not be allowed to be inhabited, except for those designated individuals and for those periods of time each year that would be directly associated with the protection of the watershed.

(ii) The purveyor shall develop and implement a department-approved watershed control program.

(iii) The purveyor shall monitor, limit, and control all facilities and activities in the watershed affecting source quality to preclude degradation of the physical, chemical, microbiological (including viral), and radiological quality of the source. The purveyor shall demonstrate, through ownership and/or written agreements acceptable to the department, control of all human activities that may adversely impact source quality.

(iv) At a minimum, the purveyor's watershed control program shall:

(A) Characterize the watershed hydrology and land ownership;

(B) Identify watershed characteristics and activities that may adversely affect source water quality; and

(C) Monitor the occurrence of activities that may adversely affect source water quality.

(v) If the department determines significant changes have occurred in the watershed, the purveyor shall submit, within ninety days of notification, an updated watershed control program to the department for review and approval.

(vi) The purveyor may be required to conduct additional monitoring to demonstrate the adequacy of the watershed control program.

(vii) A purveyor shall be considered out of compliance when failing to:

(A) Have a department-approved watershed control program;

(B) Implement the watershed control program to the satisfaction of the department;

(C) Conduct additional monitoring as directed by the department; or

(D) Prevent the human inhabitation of the watershed, except during the periods of time when conducting watershed protection activities as provided in (b)(i) of this subsection.

(c) On-site inspections.

(i) The purveyor shall submit to on-site inspections by the department to assess watershed control and disinfection treatment.

(ii) The purveyor shall submit to annual inspections by the department unless more frequent inspections are deemed necessary to protect the health of consumers served by the system.

(iii) The purveyor with unsatisfactory on-site inspection results shall take action as directed by the department in accordance with a department-established schedule.

(d) Waterborne disease outbreak.

(i) The system shall not be identified by the department as the cause of a waterborne disease outbreak attributable to a failure in treatment of the surface or GWI source.

(ii) A system identified by the department as the cause of a waterborne disease in (d)(i) of this subsection shall expand

the scope of its annual comprehensive report required under WAC 246-290-696(6) to include:

(A) A description of the outbreak;

(B) A summary of previous waterborne disease outbreaks attributed to the system;

(C) A proposed plan of corrective action; and

(D) A schedule for implementing the action plan.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-692 Disinfection for unfiltered systems. (1) General requirements.

(a) The purveyor without a limited alternative to filtration shall provide continuous disinfection treatment to ensure at least 99.9 percent (3 log) inactivation of *Giardia lamblia* cysts and 99.99 percent (4 log) inactivation of viruses at all times the system serves water to the public.

(b) The purveyor with a limited alternative to filtration shall meet the treatment requirements in WAC 246-290-630(11) at all times the system serves water to the public.

(c) ~~The ((department may require the)) purveyor may be required to provide greater levels of inactivation of *Giardia lamblia* cysts, other pathogenic microorganisms of public health concern, and viruses to protect the health of consumers.~~

~~((e)) (d) Failure to ((provide the required inactivation level on more than one day in any calendar month the system serves water to the public))~~ meet the inactivation level requirements of WAC 246-290-690 (3)(a) or 246-290-691 (3)(a) shall be considered a violation.

(2) Determining the level of inactivation.

(a) Each day the system without a limited alternative to filtration serves water to the public, the purveyor, using procedures and CT_{99.9} values specified in 40 CFR 141.74, Vol. 54, No. 124, (published June 29, 1989, and copies of which are available from the department), shall determine:

(i) CT values using the system's treatment parameters and calculate the total inactivation ratio achieved by disinfection; and

(ii) Whether the system's disinfection treatment process is achieving the minimum levels of inactivation of *Giardia lamblia* cysts and viruses required by the department. For purposes of determining compliance with the inactivation requirements specified in subsection (1) of this section, no credit shall be granted for disinfection applied to a source water with a turbidity greater than 5.0 NTU.

(b) Each day the system with a limited alternative to filtration serves water to the public, the purveyor, using appropriate guidance, shall determine:

(i) CT values using the system's treatment parameters and calculate the total inactivation ratio achieved by disinfection; and

(ii) Whether the system's treatment process is achieving the minimum levels of inactivation of *Giardia lamblia* cysts, viruses, or other pathogenic organisms of health concern that would be greater than what would be expected from the combination of filtration plus chlorine disinfection.

PERMANENT

(c) The purveyor shall be considered in compliance with the daily inactivation requirement when a total inactivation ratio equal to or greater than 1.0 is achieved.

~~((e))~~ (d) The purveyor of a system using a disinfectant ~~((other than chlorine))~~ or combination of disinfectants may use CT values lower than those specified in (a) of this subsection, if the purveyor demonstrates to the department's satisfaction that the required levels of inactivation of *Giardia lamblia* cysts ~~((and))~~, viruses, and, if providing a limited alternative to filtration, any other pathogenic organisms of public health concern, can be achieved using the lower CT values.

~~((d))~~ (e) The purveyor of a system using preformed chloramines or adding ammonia to the water before chlorine shall demonstrate to the department's satisfaction that the system achieves at least 99.99 percent (4 log) inactivation of viruses.

(3) The purveyor using either unfiltered or "limited alternative to filtration" treated sources shall ensure that disinfection facilities provide either:

(a) Redundant components, including an auxiliary power supply with automatic start-up and alarm, to ensure continuous disinfection. Redundancy shall ensure that both the minimum inactivation requirements and the requirement for a 0.2 mg/L residual disinfectant concentration at entry to the distribution system are met at all times water is delivered to the distribution system; or

(b) Automatic shut-off of delivery of water to the distribution system when the residual disinfectant concentration in the water is less than 0.2 mg/L. Automatic shut-off shall be allowed only in systems where the purveyor demonstrates to the department's satisfaction that automatic shutoff will not endanger health or interfere with fire protection.

(4) Disinfectant residual entering the distribution system.

(a) The purveyor shall ensure that water entering the distribution system contains a residual disinfectant concentration, measured as free or combined chlorine, of at least 0.2 mg/L at all times the system serves water to the public; and

(b) Failure to provide a 0.2 mg/L residual at entry to distribution for more than four hours on any day shall be considered a treatment technique violation.

(5) Disinfectant residuals within the distribution system.

(a) The purveyor shall ensure that the residual disinfectant concentration in the distribution system, measured as total chlorine, free chlorine, combined chlorine, or chlorine dioxide, is detectable in at least ~~((95))~~ ninety-five percent of the samples taken each calendar month.

(b) The purveyor of a system ~~((which))~~ that purchases completely treated surface or GWI water as determined by the department shall comply with the requirements specified in (a) of this subsection.

(c) Water in the distribution system with an HPC level less than or equal to 500 organisms/ml is considered to have a detectable residual disinfectant concentration.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-694 Monitoring for unfiltered systems. (1) Source coliform monitoring for systems without a limited alternative to filtration.

(a) The purveyor shall ensure that source water samples of each surface or GWI source are representative and:

(i) Collected before the first point of disinfectant application; and

(ii) Analyzed for fecal coliform density in accordance with methods acceptable to the department.

(b) The purveyor shall ensure source samples are collected for fecal coliform analysis each week the system serves water to the public based on the following schedule:

Population Served	Minimum Number/week*
25 - 500	1
501 - 3,300	2
3,301 - 10,000	3
10,001 - 25,000	4
>25,000	5

*Must be taken on separate days.

(c) Each day the system serves water to the public and the turbidity of the source water exceeds 1.0 NTU, the purveyor shall ensure one representative source water sample is collected before the first point of disinfectant application and analyzed for fecal coliform density. This sample shall count toward ~~((s))~~ the weekly source coliform sampling requirement.

(d) A purveyor shall not be considered in violation of (c) of this subsection, if the purveyor demonstrates to the department's satisfaction that, for valid logistical reasons outside the purveyor's control, the additional fecal coliform sample could not be analyzed within a time frame acceptable to the department.

(2) Source coliform monitoring for systems with a limited alternative to filtration.

(a) The purveyor shall ensure that source water samples of each surface or GWI source are:

(i) Collected before the first point of primary disinfection; and

(ii) Analyzed for fecal coliform density in accordance with methods acceptable to the department.

(b) At a minimum, the purveyor shall ensure source samples are collected for fecal coliform analysis at a frequency equal to ten percent the number of routine coliform samples collected within the distribution system each month under WAC 246-290-300, or once per calendar month, whichever is greater, up to a maximum of one sample per day.

(3) Coliform monitoring at entry to distribution for systems without a limited alternative to filtration.

(a) The purveyor shall collect and have analyzed one coliform sample at the entry point to the distribution system each day that a routine or repeat coliform sample is collected within the distribution system under WAC 246-290-300 ~~((2))~~ (3) or 246-290-320(2), respectively.

PERMANENT

(b) The purveyor shall use the results of the coliform monitoring at entry to distribution along with inactivation ratio monitoring results to demonstrate the adequacy of source treatment.

~~((3))~~ (4) Source turbidity monitoring for systems without a limited alternative to filtration.

(a) The purveyor shall continuously monitor and record turbidity:

(i) On representative source water samples before the first point of primary disinfectant application; and

(ii) In accordance with the analytical techniques under WAC 246-290-638.

(b) If source water turbidity is not the same as the turbidity of water delivered to consumers, the purveyor shall continuously monitor and record turbidity of water delivered.

~~((4))~~ (5) Source turbidity monitoring for systems with a limited alternative to filtration. The purveyor shall:

(a) Continuously monitor turbidity on representative source samples before the first point of primary disinfection application;

(b) Record continuous turbidity measurements at equal intervals, of at least four hours, in accordance with a department-approved sampling schedule; and

(c) Conduct monitoring in accordance with the analytical techniques under WAC 246-290-638.

(6) Monitoring the level of inactivation.

(a) Each day the system is in operation, the purveyor shall determine the total level of inactivation of *Giardia lamblia* cysts ~~(and)~~, viruses, and, if providing a limited alternative to filtration, any other pathogenic organisms of health concern, achieved through disinfection.

(b) At least once per day, the purveyor shall monitor the following parameters to determine the total inactivation ratio achieved through disinfection:

(i) Temperature of the disinfected water at each residual disinfectant concentration sampling point used for CT calculations; and

(ii) If using chlorine, pH of the disinfected water at each chlorine residual disinfectant concentration sampling point used for CT calculations.

(c) Each day during peak hourly flow, the purveyor shall:

(i) Determine disinfectant contact time, T, to the point at which C is measured; and

(ii) Measure the residual disinfectant concentration, C, of the water at the point for which T is calculated. The C measurement point must be before or at the first ~~(customer)~~ consumer.

~~((5))~~ (7) Monitoring the residual disinfectant concentration entering the distribution system for either unfiltered systems, or systems using a limited alternative to filtration.

(a) Systems serving more than thirty-three hundred ~~((3300))~~ people.

(i) The purveyor shall continuously monitor and record the residual disinfectant concentration of water entering the distribution system and report the lowest value each day.

(ii) If the continuous monitoring equipment fails, the purveyor shall measure the residual disinfectant concentration on grab samples collected at least every four hours at the entry to the distribution system while the equipment is being repaired or replaced. The purveyor shall have continuous

monitoring equipment back on-line within five working days following failure.

(b) Systems serving thirty-three hundred or less ~~((3300))~~ people.

(i) The purveyor shall collect grab samples or use continuous monitoring and recording to measure the residual disinfectant concentration entering the distribution system.

(ii) A purveyor choosing to take grab samples shall collect:

(A) Samples at the following minimum frequencies:

Population Served	Number/day
25 - 500	1
501 - 1,000	2
1,001 - 2,500	3
2,501 - 3,300	4

(B) At least one of the grab samples at peak hourly flow based on historical flows for the system; and

(C) The remaining sample or samples at intervals evenly spaced over the time the system is disinfecting water that will be delivered to the public.

(iii) When grab samples are collected and the residual disinfectant concentration at the entry to distribution falls below 0.2 mg/L, the purveyor shall collect a grab sample every four hours until the residual disinfectant concentration is 0.2 mg/L or more.

~~((6))~~ (8) Monitoring residual disinfectant concentration within the distribution system for either unfiltration systems, or systems using a limited alternative to filtration.

(a) The purveyor shall measure the residual disinfectant concentration within the distribution system at the same time and location that a routine or repeat coliform sample is collected in accordance with WAC 246-290-300~~((2))~~(3) or 246-290-320(2) or once per day, whichever is greater.

(b) The purveyor of a system ~~(which)~~ that purchases completely treated surface or GWI water as determined by the department shall comply with the requirements of (a) of this subsection or as otherwise directed by the department under WAC 246-290-300 ~~((+g))~~ (2)(c). At a minimum, the purveyor shall measure the residual disinfectant concentration within the distribution system at the same time and location that a routine or repeat coliform sample is collected in accordance with WAC 246-290-300~~((2))~~(3) or 246-290-320(2).

(c) The purveyor may measure HPC within the distribution system in lieu of measuring the residual disinfectant concentration in accordance with this subsection.

AMENDATORY SECTION (Amending WSR 94-14-001, filed 6/22/94, effective 7/23/94)

WAC 246-290-696 Reporting for unfiltered systems.

(1) The purveyor shall report to the department as soon as possible, but no later than the end of the next business day, when:

(a) A waterborne disease outbreak potentially attributable to the water system occurs;

(b) The turbidity of water delivered to the public exceeds 5.0 NTU;

(c) The minimum level of inactivation required by the department is not met;

(d) The residual disinfectant concentration falls below 0.2 mg/L at the entry point to the distribution system. The purveyor shall also report whether the residual was restored to 0.2 mg/L or more within four hours; or

(e) The surface or GWI source is taken off-line due to an emergency.

(2) The purveyor shall report results of monitoring conducted in accordance with WAC 246-290-694 to the department. Monthly report forms shall be submitted within ten days after the end of each month the system served water to the public.

(3) The purveyor shall report, at a minimum, all the information requested by the department using a department-approved form or format including:

(a) Water quality information, including the results of both:

(i) Source coliform monitoring; and

(ii) Source turbidity monitoring.

(b) Disinfection monitoring information, including:

(i) Level of inactivation achieved;

(ii) Residual disinfectant concentrations entering the distribution system; and

(iii) Residual disinfectant concentrations within the distribution system.

(c) A summary of water quality complaints received from consumers served by the water system.

(4) The purveyor of a system ~~((which))~~ that purchases completely treated water shall:

(a) Report results of distribution system residual disinfectant concentration monitoring to the department using department-approved forms or format; and

(b) Submit forms to the department in accordance with subsection (2) of this section or as otherwise directed by the department.

(5) A person certified under chapter 246-292 WAC shall complete and sign the monthly report forms required in this section.

(6) Beginning in 1992, by October 10th of each year, the purveyor shall submit to the department an annual comprehensive report ~~((which))~~ that summarizes the:

(a) Effectiveness of the watershed control program and identifies, at a minimum, the following:

(i) Activities in the watershed ~~((which))~~ that are adversely affecting source water quality;

(ii) Changes in the watershed that have occurred within the previous year ~~((which))~~ that could adversely affect source water quality;

(iii) Activities expected to occur in the watershed in the future and how the activities will be monitored and controlled;

(iv) The monitoring program the purveyor uses to assess the adequacy of watershed protection including an evaluation of sampling results; and

(v) Special concerns about the watershed and how the concerns are being addressed;

(b) System's compliance with the criteria to remain unfiltered under WAC 246-290-690, or, when applicable, the criteria required if the system provides a limited alternative to filtration under WAC 246-290-691; and

(c) Significant changes in system design and/or operation ~~((which))~~ that have occurred within the previous year ~~((which))~~ that impact the ability of the system to comply with the criteria to remain unfiltered, or, if applicable, the ability of the system to provide a limited alternative to filtration in accordance with WAC 246-290-692.

(7) The purveyor of a system attempting to remain unfiltered or to remain with a limited alternative to filtration shall submit a *Filtration Decision Report* at the request of the department. The report shall:

(a) Provide the information ~~((needed))~~ by which the department ~~((to initially))~~ may determine whether a system continues to meet((s)) the criteria to remain unfiltered or, if applicable, the criteria allowing the provision of a limited alternative to filtration; and

(b) Be submitted ~~((by the deadline))~~ on a schedule as specified by the department.

REPEALER

The following sections of the Washington Administrative Code are repealed:

246-290-115	Corrosion control recommendation report.
246-290-240	Disinfection of facilities.
246-290-330	Public notification.
246-290-410	Small water system management program.
246-290-430	Continuity of service.
246-290-440	Operations.
246-290-610	Definitions relating to surface water treatment.

**WSR 99-07-023
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Medical Assistance Administration)

[Filed March 10, 1999, 8:37 a.m.]

Date of Adoption: March 10, 1999.

Purpose: The department is amending these rules per the Governor's Executive Order 97-02 which requires rules to be rewritten for clarity, concision, foundation in law, fairness, readability, and with public involvement. In addition, the department is expanding the geographic of the access to baby and child dentistry (ABCD) program, and is requiring additional prior authorization requirements for certain high-cost crowns for back teeth.

PERMANENT

Citation of Existing Rules Affected by this Order:
 Repealing WAC 388-535-1000; and amending WAC 388-535-1050, 388-535-1100, 388-535-1150, 388-535-1200, 388-535-1250, 388-535-1300, 388-535-1350, 388-535-1400, 388-535-1450, 388-535-1500, and 388-535-1550.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.035, 74.09.520 and 74.09.700, 42 USC 1396d(a), CFR 440.100 and 440.225.

Adopted under notice filed as WSR 99-01-169 on December 23, 1998.

Changes Other than Editing from Proposed to Adopted Version:

- | | |
|---|-------|
| # | Text* |
|---|-------|
- WAC 388-535-1050 Dental-related definitions.**
1. "Anterior" means teeth in the front of the mouth. In relation to crowns, only these permanent teeth are considered anterior for laboratory processed crowns:
 2. "Base metal" means dental alloy containing little or no precious metals.
WAC 388-535-1080 Covered dental-related services.
 3. (2)(i) Endodontic (root canal) therapies for permanent teeth except for wisdom teeth;
 4. (2)(m) Sealants for: (i) Occlusal surfaces of only these: (A) Permanent ; teeth; two, three, ~~four~~, fourteen, fifteen, eighteen, nineteen, thirty and thirty-one; and (B) Primary teeth A, B, I, J, K, L, S, and T;
WAC 388-535-1100 Dental-related services not covered.
 5. (2)(k) Routine fluoride treatments for adults, unless developmentally disabled clients of the division of developmental disabilities;
WAC 388-535-1250 Orthodontic coverage for DSHS children.
 6. (5) Limited transitional orthodontic care is covered for a maximum of one year from original placement. Follow-up treatment is allowed in three-month increments after the initial treatment placement.
 7. (6) Full orthodontic care is limited to a maximum of two years from original banding. Six follow-up treatments are allowed in three-month increments, beginning six months after original banding banding.
WAC 388-535-1500 Dental-related hospital services—Payment.
 8. MAA pays for dentally-necessary hospital inpatient and outpatient services in accord with WAC 388-550-1100.

*Changes from CR-102 filing are ~~struck through~~ and underlined.

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 7, Amended 11, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, Amended 11, 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 7, Amended 11, Repealed 1.

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

March 10, 1999

Marie Myerchin-Redifer, Manager
 Rules and Policies Assistance Unit

GENERAL

NEW SECTION

WAC 388-535-1010 Dental-related program introduction. This chapter describes:

- (1) The dental-related services that the medical assistance administration (MAA) offers to its eligible clients;
- (2) Limitations to those services;
- (3) Provider requirements, including prior authorizations; and
- (4) MAA's methods for paying providers for dental-related services.

AMENDATORY SECTION (Amending Order 3931, filed 12/6/95, effective 1/6/96)

WAC 388-535-1050 Dental-related definitions. This section contains definitions of words and phrases in bold that the department uses in ((rules for the medical assistance administration dental program)) this chapter. See also chapter 388-500 WAC for other definitions and abbreviations. Further dental definitions used by the department may be found in the Current Dental Terminology (CDT-2) and the Current Procedural Terminology (CPT). Where there is any discrepancy between the CDT-2 or CPT and this section, this section prevails.

~~((1))~~ **"Access to baby and child dentistry (ABCD)"** is a ~~((Spokane County pilot initiative))~~ demonstration project to increase access to dental services in targeted areas for Medicaid eligible infants, toddlers, and preschoolers up through the age of five. See WAC 388-535-1300 for specific information.

~~((2))~~ **"Adult"** means a client nineteen years of age or older.

"Anterior" means teeth in the front of the mouth. In relation to crowns, only these permanent teeth are considered anterior for laboratory processed crowns:

- (1) **"Lower anterior,"** teeth twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven; and
- (2) **"Upper anterior,"** teeth six, seven, eight, nine, ten, and eleven.

"Arch" means the curving structure formed by the crowns of the teeth in their normal position, or by the residual ridge after loss of the teeth.

~~((3))~~ **"Asymptomatic"** means having no symptoms.

PERMANENT

"Banding" means the application of **orthodontic** brackets to the teeth (~~and/or face~~) for the purpose of correcting dentofacial abnormalities.

~~((4))~~ **"Base metal"** means dental alloy containing little or no precious metals.

"Behavior management" means managing the behavior of a client during treatment using the assistance of additional professional staff, and professionally accepted restraints (~~such as a papoose board~~) or sedative agent, to protect the client from self-injury.

~~((5))~~ **"Buccal"** means pertaining to or directed toward the cheek. **"Bicuspid"** means teeth four, five, twelve, thirteen, twenty, twenty-one, twenty-eight, and twenty-nine.

~~((6))~~ **"By report"** - a method of payment for a covered service, supply, or equipment (~~for which the medical assistance administration has not established a maximum allowable, either because the service or supply is new and its use is not yet considered standard, or it~~) which:

- (1) Has no maximum allowable established by MAA.
- (2) Is a variation on a standard practice, or
- (3) Is rarely provided. (Payment for a "by report" service or item is made on a case-by-case basis.

~~((7))~~ **"Caries"** means (a disease of the calcified tissues of the teeth resulting from the action of microorganisms on carbohydrates, characterized by a decalcification of the inorganic portion of the tooth and accompanied or followed by disintegration of the organic portion) tooth decay.

~~((8))~~ **"Child"** (~~for purposes of the dental program, a child is defined as a person zero through~~) means a client eighteen years of age or younger.

~~((9))~~ **"Cleft"** means (a longitudinal) an opening or fissure involving significant dental processes, especially one occurring in the embryo. (Also see "facial cleft."

~~((10))~~ These can be:

- (1) Cleft lip.
- (2) Cleft palate (at the roof of the mouth), or
- (3) Transverse facial cleft (macrostomia).

"Comprehensive oral evaluation" means a thorough evaluation and recording of the (extraoral and intraoral) hard and soft tissues (~~includes~~) in and around the mouth, including the evaluation and recording of the patient's dental and medical history and a general health assessment.

~~((11))~~ **"Corona"** is the portion of a tooth that is covered by **enamel**, and is separated from the root or roots by a slightly constricted region, known as the (neck) cemento-enamel junction.

~~((12))~~ **"Craniofacial anomalies"** means abnormalities of the head and face, either congenital or acquired, involving significant dental processes.

~~((13))~~ **"Craniofacial team"** means a department of health and MAA recognized cleft palate/maxillofacial team which is: Responsible for management (review, evaluation, and approval) of patients with cleft palate craniofacial anomalies to provide integrated case management, promote parent-professional partnership, making appropriate referrals to implement and coordinate treatment plans.

"Current dental terminology (CDT), second edition (CDT-2)," a systematic listing of descriptive terms and identifying codes for reporting dental services and procedures

performed by dental practitioners. CDT is published by the Council on Dental Benefit Programs of the American Dental Association (ADA).

~~((14))~~ **"Dental analgesia"** means the use of agents to induce insensibility to or relief from dental pain without loss of consciousness **"Current procedural terminology (CPT),"** means a description of medical procedures and is available from the American Medical Association of Chicago, Illinois.

~~((15))~~ **"Dental general anesthesia"** means the use of agents to induce loss of feeling or sensation, a controlled state of unconsciousness, in order to allow dental services to be rendered to the client (~~The term is applied especially to the loss of sensation of pain through general anesthesia~~).

~~((16))~~ **"Dentally necessary"** means diagnostic, preventive, or corrective services that are accepted dental procedures appropriate for the age and development of the client to prevent the incidence or worsening of conditions that endanger teeth or periodontium (tissues around the teeth) or cause significant malfunction or impede reasonable development or homeostasis (health) in the stomatognathic (mouth and jaw) system:

(1) Which may include simple observation with no treatment, if appropriate; and

(2) Includes use of less costly, equally effective services.

"Dentin" is the (chief substance or) mineralized tissue of the teeth, which surrounds the tooth pulp and is covered by enamel on the crown and by cementum on the roots of the teeth.

~~((17))~~ **"Dental prosthesis"** means a replacement for one or more of the teeth or other oral structure, ranging from a single tooth to a complete denture.

~~((18))~~ **"Dentures"** are a set of (natural or) prosthetic artificial teeth (~~ordinarily used to designate an artificial replacement for the natural teeth~~). See WAC 388-535-1240 for specific information.

~~((19))~~ **"Dysplasia"** means an abnormality (of) in the development of the teeth.

~~((20))~~ **"Enamel"** is the white, compact, and very hard substance that covers and protects the dentin of the crown of a tooth.

~~((21))~~ **"Facial clefts"** are the clefts between the embryonic processes which normally unite to form the face. Failure of such union, depending on its site, causes such developmental defects as cleft lip (hare lip), cleft mandible, oblique facial cleft, and transverse facial cleft (macrostomia).

~~((22))~~ **"Endodontic"** means a root canal treatment and related follow-up.

"EPSDT/healthy kids" means the department's early periodic screening, diagnosis, and treatment program for clients twenty years of age and younger as described in WAC 388-86-027.

"Fluoride varnish" means a substance containing dental fluoride, for painting onto teeth. When painted onto teeth, it sticks to tooth surfaces.

"Gingiva" means the gums.

"Hemifacial microsomia" means half or part of the face is smaller-sized.

"High noble metal" means dental alloy containing at least sixty percent pure gold.

"High risk(⚡) child" means any child who has been identified through an oral evaluation or assessment as ~~((having))~~ being at a high risk for developing dental disease because of caries in the child's dentin; or a child identified by the department as developmentally disabled.

~~((23))~~ "Hypoplasia" means the incomplete or defective development of the enamel of the teeth.

~~((24))~~ "Limited oral evaluation" means an evaluation or reevaluation limited to a specific oral health situation or problem.

~~((25))~~ "Limited visual oral assessment"—A service performed by dentists which involves assessing the need for sealants to be placed by dental hygienists; screening children in Head Start or ECEAP programs; providing triage services; or in circumstances referring a child to another dentist for treatment. These assessments are also used by dental hygienists performing intraoral screening of soft and hard tissues to assess the need for prophylaxis, sealants, fluoride varnish, or refers to a dentist for other dental treatment.

~~((26))~~ "Low risk(⚡) child" means any child who has been identified through an oral evaluation or assessment as ~~((having))~~ being at a low risk for dental disease because of the absence of white spots or caries in the enamel or dentin. This category includes children with restorations who are otherwise without disease.

~~((27))~~ "Macrostomia" means a greatly exaggerated width of the mouth, resulting from failure of union of the maxillary and mandibular processes, with extension of the oral orifice to the ear. The defect may be unilateral or bilateral.

~~((28))~~ "Major bone grafts" means a transplant of solid bone tissue(s), such as buttons or plugs.

"Malocclusion" means the contact between the ~~((maxillary and mandibular))~~ upper and lower teeth ~~((as with))~~ that interferes with the highest efficiency during the ~~((excursive))~~ movements of the jaw that are essential to ~~((mastication))~~ chewing. The abnormality is categorized into four classes, graded by Angle's classification. For coverage, see WAC 388-535-1250.

~~((29))~~ "Maxillofacial" means relating to the jaws and face.

"Minor bone grafts" means a transplant of nonsolid bone tissue(s), such as powdered bone.

"Moderate risk(⚡) child" means a child who has been identified through an oral evaluation or assessment as ~~((having))~~ being at a moderate risk for dental disease, based on presence of white spots, enamel caries or hypoplasia.

~~((30))~~ "Molars" means:

(1) Permanent teeth one, two, three, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, thirty, thirty-one, and thirty-two; and

(2) Primary teeth A, B, I, J, K, L, S and T.

"Noble metal" means a dental alloy containing at least twenty-five percent but less than sixty percent pure gold.

"Occlusion" means the relation of the ~~((maxillary and mandibular))~~ upper and lower teeth when in functional contact during ~~((activity of the mandible))~~ jaw movement.

~~((31))~~ "Oral evaluation" is ~~((an evaluation performed on a client, new or established, to determine the patient's dental and/or medical health status, or changes to that status.~~

~~((32))~~ "Oral health assessment or screening" is) a comprehensive oral health and developmental history; an assessment of physical and oral health development and nutritional status; and health education, including anticipatory guidance.

~~((33))~~ "Oral health assessment or screening" means a screening of the hard and soft tissues in the mouth.

"Oral health status" refers to the client's risk or susceptibility to dental disease at the time an oral evaluation is done by a dental practitioner. This risk is designated as low, moderate or high based on the presence or absence of certain indicators.

~~((34))~~ "Oral sedation" means the use of oral agents to produce a sedative or calming effect.

~~((35))~~ "Orthodontia(⚡)" "Orthodontic" is a treatment involving the use of any appliance, ~~((intraoral or extraoral))~~ in or out of the mouth, removable or fixed, or any surgical procedure designed to ~~((move))~~ redirect teeth and surrounding tissues.

~~((35))~~ "(Partial dentures) Partials" means a prosthetic appliance replacing one or more missing teeth in one jaw, and receiving its support and retention from both the underlying tissues and some or all of the remaining teeth. See WAC 388-535-1240 for specific information.

~~((36))~~ "Posterior" means teeth and tissue towards the back of the mouth. Specifically, only these permanent teeth: one, two, three, four, five, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two.

"Prophylaxis" ~~((is a preventive))~~ means intervention which includes the scaling and polishing of teeth to remove coronal plaque, calculus, and stains.

~~((37))~~ "Rebase" means to replace the base material of a denture without changing the occlusal relations of the teeth.

~~((38))~~ "Reline" means to resurface the tissue side of a denture with new base material in order to achieve a more accurate fit.

~~((39))~~ "Restorative services" means services or treatments to restore a tooth to its original condition by the filling of a cavity and replacement of lost parts, or the material used in such a procedure.

~~((40))~~ "Root planing" is a procedure designed to remove microbial flora, bacterial toxins, calculus, and diseased cementum or dentin from the teeth's root surfaces and pockets.

~~((41))~~ "Scaling" means the removal of calcareous material from the exposed tooth surfaces and that part of the teeth covered by the marginal gingiva.

~~((42))~~ "Sealant" is a material applied to teeth to prevent dental caries.

~~((43))~~ "Space management therapy" is a treatment to hold space for missing first and/or second primary molars and maintain position for permanent teeth.

~~((44))~~ "Sequestrectomy" means removal of dead or dying bone that has separated from healthy bone.

"Therapeutic pulpotomy" means the surgical removal of a portion of the pulp (inner soft tissue of a tooth), to retain the healthy remaining pulp.

"Usual and customary ((change))" means the fee that the provider usually charges ((his or her)) non-Medicaid customers for ((a)) the same service or item. This is the maximum amount that the provider may bill MAA ((for the same service or item)).

"Wisdom teeth" means teeth one, sixteen, seventeen, and thirty-two.

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.

COVERAGE

NEW SECTION

WAC 388-535-1060 Eligible dental-related clients.

(1) Subject to the specific limitations described in WAC 388-535-1080, Covered services, clients of the following MAA programs are eligible for the dental-related services described in this chapter:

(a) Categorically needy (CN or CNP), including:

- (i) Children's health; and
 - (ii) Pregnant undocumented aliens.
- (b) Medically needy (MN).

(2) Clients with the following state-only funded eligibility programs receive the coverage described in WAC 388-535-1260:

- (a) General assistance unemployable (GAU); and
 - (b) Alcohol and drug abuse treatment and support act (ADATSA).
- (3) Clients of the medically indigent (MI) program are limited to emergency hospital-based services only.

NEW SECTION

WAC 388-535-1080 Covered dental-related services.

(1) MAA pays only for covered dental and dental-related services, equipment, and supplies listed in this section when they are:

- (a) Within the scope of an eligible client's medical care program;
- (b) **Dentally necessary**;
- (c) Within accepted dental or medical practice standards and are:
 - (i) Consistent with a diagnosis of dental disease or condition; and
 - (ii) Reasonable in amount and duration of care, treatment, or service.
- (2) The following dental-related services are covered:
 - (a) Oral health evaluations and assessments.
 - (i) Oral health evaluations no more than once every six months.
 - (ii) The evaluation services must be documented in the client's dental file.
 - (iii) These evaluations must include:
 - (A) A comprehensive oral health and developmental history;
 - (B) An assessment of physical and oral health development status;
 - (C) Health education, including anticipatory guidance; and
 - (D) **Oral health status.**
 - (b) Dentally necessary services for the identification of dental problems or the prevention of dental disease subject to limitations of this chapter;
 - (c) Prophylaxis treatment is allowed:
 - (i) Once every twelve months for **adults** including nursing facility clients.
 - (ii) Once every six months for **children.**
 - (iii) Three times a calendar year for clients of the division of developmental disabilities.
 - (d) Dental services or treatment necessary for the relief of pain and infections, including removal of symptomatic **wisdom teeth**. Routine removal of **asymptomatic wisdom teeth** without justifiable medical indications is not covered;
 - (e) Restoration of teeth and maintenance of dental health subject to limitations of WAC 388-535-1100, Dental services not covered;
 - (f) Complex **orthodontic** treatment for severe handicapping dental needs as specified in WAC 388-535-1250, Orthodontic coverage for DSHS clients;
 - (g) Complete and partial dentures, and necessary modifications, repairs, rebasing, **relining** and adjustments of dentures subject to the limitations of WAC 388-535-1240, Dentures;
 - (h) **Dentally necessary** oral surgery when coordinated with the client's managed care plan (if any);
 - (i) **Endodontic** (root canal) therapies for permanent teeth except for **wisdom teeth**;
 - (j) Nitrous oxide only when medically justified and a component of **behavior management**;
 - (k) Crowns as described in WAC 388-535-1230, Crowns;
 - (l) **Therapeutic pulpotomies**, once per tooth; and
 - (m) Sealants for:
 - (i) Occlusal surfaces of only these:
 - (A) Permanent teeth two, three, fourteen, fifteen, eighteen, nineteen, thirty and thirty-one; and
 - (B) Primary teeth A, B, I, J, K, L, S and T.
 - (ii) Lingual pits of teeth seven and ten;
 - (iii) Teeth with no decay;
 - (iv) **Children** only; and
 - (v) Once per tooth in a three-year period.

- (i) Oral health evaluations no more than once every six months.
 - (ii) The evaluation services must be documented in the client's dental file.
 - (iii) These evaluations must include:
 - (A) A comprehensive oral health and developmental history;
 - (B) An assessment of physical and oral health development status;
 - (C) Health education, including anticipatory guidance; and
 - (D) **Oral health status.**
 - (b) Dentally necessary services for the identification of dental problems or the prevention of dental disease subject to limitations of this chapter;
 - (c) Prophylaxis treatment is allowed:
 - (i) Once every twelve months for **adults** including nursing facility clients.
 - (ii) Once every six months for **children.**
 - (iii) Three times a calendar year for clients of the division of developmental disabilities.
 - (d) Dental services or treatment necessary for the relief of pain and infections, including removal of symptomatic **wisdom teeth**. Routine removal of **asymptomatic wisdom teeth** without justifiable medical indications is not covered;
 - (e) Restoration of teeth and maintenance of dental health subject to limitations of WAC 388-535-1100, Dental services not covered;
 - (f) Complex **orthodontic** treatment for severe handicapping dental needs as specified in WAC 388-535-1250, Orthodontic coverage for DSHS clients;
 - (g) Complete and partial dentures, and necessary modifications, repairs, rebasing, **relining** and adjustments of dentures subject to the limitations of WAC 388-535-1240, Dentures;
 - (h) **Dentally necessary** oral surgery when coordinated with the client's managed care plan (if any);
 - (i) **Endodontic** (root canal) therapies for permanent teeth except for **wisdom teeth**;
 - (j) Nitrous oxide only when medically justified and a component of **behavior management**;
 - (k) Crowns as described in WAC 388-535-1230, Crowns;
 - (l) **Therapeutic pulpotomies**, once per tooth; and
 - (m) Sealants for:
 - (i) Occlusal surfaces of only these:
 - (A) Permanent teeth two, three, fourteen, fifteen, eighteen, nineteen, thirty and thirty-one; and
 - (B) Primary teeth A, B, I, J, K, L, S and T.
 - (ii) Lingual pits of teeth seven and ten;
 - (iii) Teeth with no decay;
 - (iv) **Children** only; and
 - (v) Once per tooth in a three-year period.
- (3) For clients identified by the department as developmentally disabled, the following preventive services may be allowed more frequently than the limits listed in (3) of this section:
- (a) **Fluoride** application, **varnish** or gel;
 - (b) **Root planing**; and
 - (c) **Prophylaxis scaling** and **coronal polishing.**
- (4) Panoramic radiographs are allowed only for oral surgical or **orthodontic** purposes.

(5) The department covers **dentally necessary** services provided in a hospital under the direction of a physician or dentist for:

(a) The care or treatment of teeth, jaws, or structures directly supporting the teeth if the procedure requires hospitalization; and

(b) Short stays when the procedure cannot be done in an office setting. See WAC 388-550-1100(4), Hospital coverage.

(6) For clients residing in nursing facilities or group homes:

(a) Dental services must be requested by the client or a referral for services made by the attending physician, facility nursing supervisor, or the client's legal guardian;

(b) Mass screening for dental services of clients residing in a facility is not permitted; and

(c) Nursing facilities must provide dental-related necessary services per WAC 388-97-225, Nursing facility care.

AMENDATORY SECTION (Amending Order 3931, filed 12/6/95, effective 1/6/96)

WAC 388-535-1100 ((Nonecovered)) Dental-related services not covered. (1) Dental-related services described in subsection (2) of this section are not covered unless:

(a) Required by a physician as a result of ((a)) an EPSDT/Healthy Kids screen((;included as part of a managed care plan service package;)):

(i) Except that all of the orthodontic limitations of WAC 388-535-1250, Orthodontic coverage for DSHS clients, still apply; and

(ii) Such services must be **dentally necessary**

(b) Included in a waived program; or

(c) Part of one of the Medicare programs for ((the)) qualified Medicare beneficiaries((; the)) (OMB) except for OMB-only which is not covered.

(2) MAA ((may exclude from the scope of covered dental-related services)) does not cover:

(a) Services, procedures, treatment, devices, drugs, or application of associated services which MAA or the Health Care Financing Administration (HCFA) consider investigative or experimental on the date the services are provided;

(b) Cosmetic treatment or surgery, except for medically or **dentally necessary** reconstructive surgery to correct defects attributable to an accident, birth defect, or illness;

(c) Orthodontia)) Teeth whitening;

(d) Orthodontic care for adults((; except that Medicaid eligible clients nineteen and twenty years of age who meet the criteria in WAC 388-535-1250 shall be covered));

((d)) Orthodontia))

(e) Orthodontic care for cosmetic reasons and for children who do not meet the criteria in WAC 388-535-1250, ((or who request orthodontia for cosmetic reasons)) Orthodontic coverage for DSHS clients;

((e)) (f) Any service specifically excluded by statute;

((f)) (g) More costly services when less costly equally effective services as determined by the department are available;

((g)) (h) Nonmedical equipment, supplies, personal or comfort items and/or services;

((h)) Prophylaxis, for children seven years of age or younger, unless developmentally disabled;))

(i) Root planing for children((; eighteen years of age or younger)) unless clients of the division of developmental disabilities;

(j) Endodontics for clients nineteen years of age or older;

(k) Endodontic)) Root canal services for ((anterior)) primary teeth((; except that new therapeutic pulpotomy shall be covered; and

(l) For a persons nineteen years of age and older, unless developmentally disabled:

((i)):

(k) Routine fluoride treatments for **adults**, unless clients of the division of developmental disabilities;

((ii)) Molar endodontics; or

((iii)) Orthognathic surgery))

(l) Extraction of asymptomatic teeth:

(i) Except as a necessary part of orthodontic treatment, or
(ii) Unless their removal is the most cost effective dental procedure related to dentures;

(m) Crowns for **wisdom teeth**; and

(n) Amalgam or acrylic build-up for **wisdom teeth**.

((2)) (3) MAA does not pay for the following services/supplies:

(a) Missed or canceled appointments;

(b) Provider mileage or travel costs;

(c) Take-home drugs;

(d) Dental supplies such as toothbrushes((;)) (manual ((or)), automatic, or electric), toothpaste, floss, or whiteners;

(e) Educational supplies;

(f) Reports, client charts, insurance forms, copying expenses;

(g) Service charges/delinquent payment fees;

(h) Dentist's time writing prescriptions or calling in prescriptions or prescription refills to a pharmacy; ((and))

(i) Medical)) Supplies used in conjunction with an office visit;

(j) Transitional/immediate dentures;

(k) Teeth implants including follow up and maintenance;

(l) Bridges;

(m) Nonemergent oral surgery for **adults** performed in an inpatient setting;

(n) Minor bone grafts; or

(o) Temporary crowns.

AMENDATORY SECTION (Amending Order 3931, filed 12/6/95, effective 1/6/96)

WAC 388-535-1150 ((Eligible)) Becoming a DSHS dental provider((s defined)). (1) The following providers ((shall be)) are eligible for enrollment to provide and be ((reimbursed)) paid for dental-related ((medical)) services to eligible clients:

(a) Persons currently licensed by the state of Washington to:

(i) Practice dentistry or specialties of dentistry;

(ii) Practice medicine and osteopathy((;)) for;

(A) Oral surgery procedures;

~~((b) Persons currently licensed by the state of Washington to practice dentistry;~~

~~(e) Persons currently licensed by the state of Washington to) or~~

(B) Fluoride varnish under EPSDT/Healthy Kids.

(iii) Practice as dental hygienists;

~~((d) Persons currently licensed by the state of Washington to) ((iv) Provide denture services ((denturists)));~~

~~((e)) (v) Practice anesthesiology; or~~

(vi) Provide conscious sedation, when providing that service in dental offices for dental treatments and when certified by the department of health.

(b) Facilities which are:

(i) Hospitals currently licensed by the department of health;

~~((f)) (ii) Federally-qualified health centers;~~

~~((g) Participating health departments;~~

~~(h)) (iii) Medicare-certified ambulatory surgical centers;~~

~~((i)) (iv) Medicare-certified rural health clinics;~~

~~((j) Public health providers of dental screening services who have a signed agreement with the department to provide such services to persons eligible for EPSDT/healthy kids services) or~~

(v) Community health centers.

(c) Participating local health jurisdictions; and

~~((k)) (d) Border area or out-of-state providers of dental-related services qualified in their states to provide these services.~~

~~(2) ((A) Licensed providers participating in the MAA dental program may be ((reimbursed) paid only for those services that are within ((his or her)) their scope of practice.~~

~~((3) The provider shall bill the department and its clients according to WAC 388-87-010 and 388-87-015.))~~

AMENDATORY SECTION (Amending Order 3931, filed 12/6/95, effective 1/6/96)

WAC 388-535-1200 Dental services requiring prior authorization. ~~((+))~~ The following services require prior approval:

~~((a) Nonemergent surgical procedures as described under WAC 388-86-095;~~

~~(b)) (1) Nonemergent inpatient hospital dental admissions as described under WAC ((388-86-050 and 388-87-070)) 388-550-1100(1) Hospital coverage;~~

~~((e)) (2) Orthodontic treatment as described under WAC ((388-535-1000-3)(f)) 388-535-1250;~~

~~((d) Cast base partial))~~

(3) Dentures as described in WAC 388-535-1240;

~~((e) Coronal polishing and sealing for children seven years of age and under; or~~

~~(f)) (4) Crowns as described in WAC 388-535-1230; and~~

(5) Selected procedures ((determined by the department)) identified by MAA, published in its current dental billing instructions, available from MAA at Olympia, Washington.

~~((2) When requesting prior approval, the department shall require the dental provider to submit, in writing, suffi-~~

~~cient objective clinical information to establish medical necessity including, but not limited to:~~

~~(a) A physiological description of the disease, injury, impairment, or other ailment;~~

~~(b) Pertinent laboratory findings;~~

~~(c) X-ray reports; and~~

~~(d) Patient profiles.~~

~~(3) The department shall approve a request when the requested service meets the criteria in WAC 388-535-1000(2), Scope of coverage.~~

~~(4) The department shall deny a request for dental services when the requested service is:~~

~~(a) Not medically necessary as defined under WAC 388-500-0005; or~~

~~(b) A service, procedure, treatment, device, drug, or application of associated service which MAA or the Health Care Financing Administration (HCFA) consider investigative or experimental on the date the service is provided.~~

~~(5) The department may require a second opinion and/or consultation before the approval of any elective oral surgical procedure.))~~

NEW SECTION

WAC 388-535-1220 Obtaining prior authorization for dental services. Authorization by MAA only indicates that the specific treatment is **dentally necessary**. Authorization for dental services does not guarantee payment.

(1) When requesting prior authorization, the dental provider must submit to MAA, in writing, sufficient objective clinical information to establish dental necessity including, but not limited to:

(a) Physiological description of the disease, injury, impairment, or other ailment;

(b) X-ray(s);

(c) Treatment plan;

(d) Study model, if requested; and

(e) Photographs, if requested.

(2) When the requested service meets the criteria in WAC 388-535-1080, Covered services, it will be authorized.

(3) A request for dental services will be denied when the requested service is:

(a) Not **dentally necessary**; or

(b) A service, procedure, treatment, device, drug, or application of associated service which MAA or the Health Care Financing Administration (HCFA) consider investigative or experimental on the date the service is provided.

(4) Second opinions and/or consultations may be required before the authorization of any elective procedure.

(5) Authorization is valid only if the client is eligible for the date of service.

(6) Miscellaneous or unspecified procedures may require prior authorization at MAA's discretion.

NEW SECTION

WAC 388-535-1230 Crowns. (1) The following crowns do not need authorization and are covered:

(a) Stainless steel, and

(b) Nonlaboratory resin for primary anterior teeth.

PERMANENT

(2) The following crowns are limited to single restorations for permanent **anterior** (upper and lower) teeth and require prior authorization by MAA:

- (a) Porcelain fused to a **high noble metal**;
- (b) Porcelain fused to a predominately **base metal**;
- (c) Porcelain fused to a **noble metal**;
- (d) Porcelain with ceramic substrate;
- (e) Full cast **high noble metal**;
- (f) Full cast predominately **base metal**;
- (g) Full cast **noble metal**; and
- (h) Resin (laboratory).

(3) Criteria for crowns:

(a) Crowns may be authorized when the tooth meets the criteria of **dentally necessary**.

(b) Coverage is based upon a supportable five year prognosis that the client will retain the tooth if crowned. The provider must submit the following information:

- (i) The overall condition of the mouth;
- (ii) **Oral health status**;
- (iii) Patient maintenance of good oral health status;
- (iv) **Arch integrity**; and
- (v) Prognosis of remaining teeth (that is, no more involved than periodontal case type II).

(c) **Anterior** teeth must show traumatic or pathological destruction to loss of at least one incisal angle.

(4) The laboratory processed crowns described in subsection (2):

- (a) Are covered only once per permanent tooth in a five year period;
- (b) Are covered for **endodontically** treated **anterior** teeth only after satisfactory completion of the root canal therapy. Post-**endodontic** treatment X-rays must be submitted for prior authorization of these crowns; and
- (c) Including tooth and soft tissue preparation, amalgam or acrylic build-ups, temporary restoration, cement base, insulating bases, impressions, and local anesthesia; and
- (d) Are covered when a lesser service will not suffice because of extensive **coronal** destruction, and treatment is beyond **intracoronal** restoration.

NEW SECTION

WAC 388-535-1240 Dentures. (1) Initial dentures do not require prior authorization except as described in subsection (4).

(2) Partial dentures are covered under these limits:

- (a) Cast base partials only when replacing three or more teeth per **arch** excluding **wisdom teeth**; and
- (b) No partials are covered when they replace **wisdom teeth** only.

(3) Prior authorization for replacement dentures or partials is not required when:

- (a) The client's existing dentures or partials are:
 - (i) No longer serviceable and cannot be **relined** or rebased;
 - (ii) Are lost; or
 - (iii) Are damaged beyond repair.
- (b) The client's health would be adversely affected by absence of dentures;

(c) The client has been able to wear dentures successfully; and

(d) The denture meets the criteria of **dentally necessary**.

(4) Payment (which may be partial) for laboratory and professional fees for dentures and partials requires prior authorization when the client:

- (a) Dies;
 - (b) Moves from the state;
 - (c) Cannot be located; or
 - (d) Does not participate in completing the dentures.
- (5) The provider must document in the client's medical or dental record:
- (a) Justification for replacement of dentures; and
 - (b) Charts of missing teeth, for replacement of partials.
- (6) The impression date may be used as the service date for dentures including partials only when:
- (a) Related dental services including laboratory services were provided during a client's eligible period; and
 - (b) The client is not eligible at the time of delivery.

AMENDATORY SECTION (Amending Order 3931, filed 12/6/95, effective 1/6/96)

WAC 388-535-1250 Orthodontic coverage for DSHS ~~((clients)) children.~~ ~~((The department shall cover orthodontia care when:))~~ Complex orthodontic treatment for severe handicapping dental needs is covered only for categorically needy children subject to the limits of this section.

(1) ~~Prior ((authorized;)) authorization is not required for cleft lip, cleft palate, or craniofacial anomalies when the client is:~~

(a) Being treated by a department-recognized cleft lip, cleft palate or craniofacial anomaly team; and

(b) Eligible per WAC 388-535-1060.

~~((A client is eligible for EPSDT/healthy kids services; and))~~ Orthodontic care must be prior authorized for children with severe malocclusions.

(3) A client ~~((meets))~~ must meet one of the following categories to be eligible for orthodontic care:

(a) A child with **clefts** ~~((and congenital or acquired))~~ (lip or palate) craniofacial anomalies and severe malocclusions when followed by an MAA-recognized cleft lip, cleft palate, or craniofacial team for:

(i) **Cleft lip and palate, cleft palate, ((and)) or cleft lip** with alveolar process involvement;

(ii) **Craniofacial anomalies**, including but not limited to:

- (A) Hemifacial microsomia;
- (B) Craniosynostosis syndromes;
- (C) Cleidocranial dysplasia;
- (D) Arthrogyposis;
- (E) Marfans syndrome; or
- (F) Other syndromes by MAA review;

(iii) Other diseases/**dysplasia** with significant facial growth impact, e.g., juvenile rheumatoid arthritis (JRA); or

(iv) Post traumatic, post radiation, or post burn jaw deformity.

(b) A child with severe **malocclusions** which include one or more of the following:

- (i) A severe skeletal disharmony;
- (ii) A severe overjet resulting in functional impairment;
- (iii) A severe vertical overbite resulting in palatal impingement(=) and/or damage to the mandibular labial tissues.

(c) A child with other dental malformations resulting in severe dental functional impairment ~~((shall be reviewed))~~ . MAA reviews each of these cases for ((medical)) dental necessity.

(4) Interceptive **orthodontic** treatment is covered once per client's lifetime for clients with **cleft palate, craniofacial anomaly, or severe malocclusions.**

(5) Limited transitional **orthodontic** care is covered for a maximum of one year from original placement. Follow up treatment is allowed in three-month increments after the initial placement.

(6) Full **orthodontic** care is limited to a maximum of two years from original **banding**. Six follow up treatments are allowed in three month increments, beginning six months after original banding.

(7) Lost or broken **orthodontics** appliances are not covered.

(8) **Orthodontic** removal is covered for a client whose appliance was placed by a provider not participating with MAA, or whose payment was not covered by MAA.

NEW SECTION

WAC 388-535-1260 Dental-related limits of state-only funded programs. (1) Clients with the following state-funded only eligibility programs receive only the limited coverage described in this section:

- (a) General assistance unemployable (GAU); and
- (b) Alcohol and drug abuse treatment and support act (ADATSA) (GAU-W).

(2) The dental services described and limited in this chapter are covered for clients eligible for GAU or GAU-W only when provided as part of a medical treatment for:

(a) Apical abscess verified by clinical examination, and treated by:

- (i) Open and drain palliative treatment;
- (ii) Tooth extraction; or
- (iii) Root canal;

(b) Radiation therapy for cancer of the mouth, only for a total dental extraction performed prior to and because of that radiation therapy;

- (c) Tooth fractures (limited to extraction);
- (d) **Maxillofacial** fracture;

(e) Systemic or presystemic cancer, only for oral hygiene related to those conditions;

- (f) Cysts or tumor therapies; or
- (g) Sequestrectomies.

(3) MAA may require prior authorization for any dental treatment provided to a GAU or GAU-W client.

AMENDATORY SECTION (Amending Order 3931, filed 12/6/95, effective 1/6/96)

WAC 388-535-1300 Access to baby and child dentistry (ABCD) program. (1) The access to baby and child dentistry (ABCD) program is a demonstration project ~~((in Spokane County,))~~ established to increase access to dental services in targeted areas for Medicaid eligible infants, toddlers, and preschoolers.

(2) **Children** eligible for the ABCD program ~~((shall))~~ must be ((four)) five years of age ((and under)) or younger and residing in ((Spokane County)) targeted areas selected by MAA.

(3) ~~((Dental providers certified by the University of Washington continuing education program shall provide ABCD services.))~~ MAA pays enhanced fees to ABCD-certified participating providers for the targeted services. The University of Washington continuing education program certifies dental providers for ABCD services.

(4) In addition to services provided under the ~~((medical assistance administration-))~~ MAA(=) dental care program, the following services are provided:

- (a) Family oral health education; and
- (b) Case management services.

(5) Clients who do not comply with program requirements may be disqualified from the ABCD program. The client remains eligible for regular MAA dental coverage(=:

~~((6) MAA pays enhanced fees to ABCD-certified participating providers for the targeted services.))~~

PAYMENT

AMENDATORY SECTION (Amending Order 3931, filed 12/6/95, effective 1/6/96)

WAC 388-535-1350 ~~((Payment methodology))~~ Dental-related services-Payment methodology. The department uses the dental services described in the Current Dental Terminology, 2nd edition (CDT-2), and the Current Procedure Terminology (CPT). The department uses state-assigned procedure codes to identify services not fully described in the CDT-2 or CPT descriptions.

(1) For covered services provided to eligible clients, MAA ~~((shall reimburse))~~ pays dentists and related providers on a fee-for-service or ~~((contract))~~ contractual basis, subject to the exceptions and restrictions listed under WAC 388-535-1100, ~~((None covered))~~ Dental services not covered, and WAC 388-535-1400, Dental payment limits.

(2) ~~((In general maximum allowable fees (MAFs) for dental services provided to adult clients are based on the department's historical reimbursement rates, updated for legislatively authorized vendor rate increases.~~

~~((3))~~ MAA may pay providers a higher reimbursement rate for selected dental services provided to children ((eighteen years and younger)) in order to increase children's access to dental services.

~~((4))~~ (3) Maximum allowable fees ((MAFs)) for dental services provided to children are set as follows:

(a) The department's historical reimbursement rates for various procedures are compared to usual and customary charges.

(b) The department consults with and seeks input from representatives of the provider community to identify program areas ~~((and))~~ and concerns that need to be addressed.

(c) The department consults with dental experts and public health professionals to identify and prioritize dental services ~~((and))~~ and procedures in terms of their effectiveness in improving ~~((and))~~ or promoting children's dental health.

(d) Legislatively authorized vendor rate increases and/or earmarked appropriations for children's dental services are allocated to specific procedures based on this priority list and considerations of access to services.

(e) Larger percentage increases ~~((are))~~ may be given to those procedures which have been identified as most effective in improving ~~((and))~~ or promoting children's dental health.

(f) Budget-neutral rate adjustments are made as appropriate based on the department's evaluation of utilization trends, effectiveness of interventions, and access issues.

~~((5))~~ (4) **Dental general anesthesia** services for all eligible clients are reimbursed on the basis of base anesthesia units ~~((BAU))~~ plus time. Payment for **dental general anesthesia** is calculated as follows:

(a) Dental procedures are assigned ~~((five base))~~ an anesthesia base unit ~~((s))~~ of five;

(b) Twelve minutes constitute one unit of time. When a dental procedure requiring **dental general anesthesia** results in multiple time units and a remainder (less than twelve minutes), the remainder or fraction ~~((shall be))~~ is considered as one time unit;

(c) Time units are added to the ~~((five base))~~ anesthesia base unit ~~((s))~~ of five and multiplied by the anesthesia conversion factor;

(d) The formula for determining ~~((reimbursement))~~ payment for **dental general anesthesia** is: (5.0 base anesthesia units + time units) x conversion factor = payment.

(5) Anesthesiologists may be paid for general dental anesthesia provided in dental offices. Only anesthesiologists specially contracted by MAA will be paid an additional fee for that service.

(6) Dental hygienists ~~((shall be))~~ are paid at the same rate as dentists for services allowed under The Dental Hygienist Practice Act available from the department of health, Olympia, Washington.

(7) Licensed denturists or dental laboratories billing independently ~~((shall be))~~ are paid at MAA's allowance for ~~((prosthodontics))~~ prosthetics (dentures and partials) services.

(8) Fee schedule changes are made whenever vendor rate increases or decreases are authorized by the legislature.

~~((The department uses the American Dental Association's Current Dental Terminology, Second Edition (CDT-2) as the basis for identification of dental services. The department supplements this list with state assigned procedure codes to identify services which do not fit exactly into the CDT-2 descriptions.~~

~~((4))~~ The department may adjust maximum allowable fees to reflect changes in the services or procedure code descriptions.

AMENDATORY SECTION (Amending Order 3931, filed 12/6/95, effective 1/6/96)

WAC 388-535-1400 Dental payment limits. (1) Provision of covered dental services to ~~((a client))~~ an eligible ~~((for a medical care program))~~ client constitutes acceptance by the provider of the department's rules and fees.

(2) Participating providers ~~((shall))~~ must bill the department their usual and customary fees.

(3) Payment for dental services is based on the department's schedule of maximum allowances. Fees listed in the MAA fee schedule are the maximum allowable fees.

(4) Payment to the provider will be the lesser of the billed charge (**usual and customary fee**) or the department's maximum allowable fee.

(5) If a covered service is performed for which no fee is listed, the service ~~((shall be))~~ is paid "by report ~~((-))~~" on a case-by-case basis as determined by MAA

~~((Clients shall be responsible for payment as described under WAC 388-087-010 for services not covered under the client's medical care program))~~ If eligibility for dental services ends before the conclusion of the dental treatment, payment for any remaining treatment is the client's responsibility.

The client is responsible for payment of any dental treatment or service received during any period of ineligibility with the exception described in WAC 388-535-1240(4) even if the treatment was started when the client was eligible.

AMENDATORY SECTION (Amending Order 3931, filed 12/6/95, effective 1/6/96)

WAC 388-535-1450 ~~((Payment--)) Denture laboratory services --Payment.~~ ~~((4))~~ A dentist using the services of an independent denture laboratory ~~((shall request services for an MAA client in the same manner he or she requests services for his or her private patient))~~ must bill MAA for the services of the laboratory.

~~((2))~~ ~~An independently practicing dentist may bill the department directly.--)~~ No ~~((reimbursement shall be))~~ payment will be made to a dentist for services performed and billed by an independent dentist.

AMENDATORY SECTION (Amending Order 3931, filed 12/6/95, effective 1/6/96)

WAC 388-535-1500 ~~((Payment--)) Dental-related hospital services --Payment.~~ ~~((The department shall pay for medically))~~ MAA pays for dentally necessary ~~((dental-related))~~ hospital inpatient and outpatient services ~~((according to))~~ in accord with WAC ~~((388-87-070 and 388-87-072))~~ 388-550-1100.

AMENDATORY SECTION (Amending Order 3931, filed 12/6/95, effective 1/6/96)

WAC 388-535-1550 Dental care provided out-of-state—Payment. (1) ~~((The department shall authorize and provide comparable dental care services to))~~ Clients, except those receiving medical care services (state-only funding), who are temporarily outside ~~((of))~~ the state ~~((to the same extent that such))~~ receive the same dental care services ((are furnished to)) as clients in the state, subject to the same exceptions and limitations ~~((as in state clients)).~~

(2) ~~((The department shall not provide))~~ Out-of-state dental care ((to)) received by clients receiving medical care services ((as defined under WAC 388-500-0005. The department shall cover dental services in designated bordering cities for)) (state-only funding) is not covered.

(3) Eligible clients in MAA-designated border areas may receive the same dental services as if provided in state.

~~((3) Out-of-state))~~

(4) Dental providers ((shall)) who are out-of-state must meet the same criteria for payment as in-state providers, including the requirements to contract with MAA.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-535-1000 Dental-related services—
Scope of coverage.

WSR 99-07-024

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 10, 1999, 8:41 a.m.]

Date of Adoption: March 10, 1999.

Purpose: When the manual rewrites took place there were areas needing clarification or corrections. WAC 388-444-0035 adds the 15% exemption for able-bodied adults without dependents (ABAWDs). WAC 388-444-0040 adds the work programs for ABAWDs. Due to a federal clarification, WAC 388-444-0045 adds language allowing clients to regain eligibility during the thirty-day application period.

Citation of Existing Rules Affected by this Order: Amending WAC 388-444-0035, 388-444-0040, 388-444-0045, and 388-444-0075.

Statutory Authority for Adoption: RCW 74.04.510.

Adopted under notice filed as WSR 99-01-115 on December 18, 1998.

Changes Other than Editing from Proposed to Adopted Version: A federal clarification allowed language to be added to WAC 388-444-0045 permitting clients to regain eligibility during the thirty-day application period. In response to the written comments, WAC 388-444-0045 (1)(a) and (b) reverts to the original language of regaining eligibility during a thirty-day period. WAC 388-444-0075 clarifies employ-

ment salary and hours to reestablish eligibility during a disqualification period, and any employment as one way to reestablish eligibility after the disqualification period.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

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

March 10, 1999

Marie Myerchin-Redifer, Manager

Rules and Policies Assistance Unit

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

WAC 388-444-0035 Clients who are exempt from ABAWD provisions. A client is exempt from the ABAWD rules provided in WAC 388-444-0030 when the client is:

(1) Under eighteen or ~~((over forty-nine))~~ fifty years of age or older;

(2) Physically or mentally unable to work;

(3) A parent or other member of a household with responsibility for a dependent child under eighteen years of age or an incapacitated person;

(4) A pregnant woman;

(5) Living in an exempt area approved by U.S. Department of Agriculture; or

(6) Otherwise exempt under food stamp employment and training as follows:

(a) Complying with the work requirements of ~~((the WorkFirst))~~ an employment and training program under TANF;

(b) Applying for or receiving unemployment compensation;

(c) A student enrolled at least half time in any recognized school; or

(d) ~~((A regular participant))~~ Participating in a chemical dependency treatment program; or

(e) Employed a minimum of thirty hours per week or receiving weekly earnings which equal the minimum hourly rate multiplied by thirty hours.

(7) Eligible for one of the annual FNS-approved exemption slots under what is called the fifteen percent exemption rule.

PERMANENT

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

WAC 388-444-0040 (~~Workfare~~) **Work programs for ABAWDs in the food stamp employment and training program.** ~~((1) Workfare is a)~~ Work programs are available to clients eighteen to fifty years of age who are able to work and have no dependents.

~~((2))~~ (1) The following are considered work programs:

(a) Workfare consists of:

~~((a))~~ (i) Thirty days of job search activities in the first month beginning with the first day of application, or sixteen hours of volunteer work with a public or private nonprofit agency; and

~~((b))~~ (ii) In subsequent months, sixteen hours per month of volunteer work with a public or private nonprofit agency allows the client to remain eligible for food stamps. Workfare is not enforced community service or for paying fines or debts due to legal problems.

(b) Work experience (WEX) is supervised, unpaid work for at least twenty hours a week. The work must be for a non-profit agency or governmental or tribal entity. This work is to improve the work skills of the client.

(c) On-the-job training (OJT) is paid employment for at least twenty hours a week. It is job training provided by an employer at the employer's place of business and may include some classroom training time.

~~((3) A client is not required to perform)~~

(2) The department may not require more than thirty hours a week of Workfare and paid work ((for more than a total of thirty hours a week)) combined.

~~((4))~~ (3) The department may pay((s)) for some of a client's actual expenses needed for the client to participate in ((Workfare)) work programs. Standards for paying expenses are set by the department.

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

WAC 388-444-0045 **Regaining eligibility for food assistance.** (1) A client who is ineligible for food assistance because that client has exhausted the three-month limit in WAC 388-444-0030, can regain eligibility by:

(a) Working eighty hours or more during a thirty-day period;

(b) Participating in and complying with a work program for eighty hours or more during a thirty-day period; ~~((or))~~

(c) Participating in and complying with the community service part of a Workfare program; or

(d) Meeting any of the work requirements in (a) through (c) of this subsection in the thirty days after an application for benefits has been filed.

(2) A client who regains eligibility for food assistance under subsection (1) of this section is eligible from the date of application and as long as the requirements of ((subsection (1) of this section)) WAC 388-444-0030 are met.

(3) If otherwise eligible, a client~~((s))~~ who regains eligibility ~~((in))~~ under the provision of subsection (1) of this section ~~((and then loses employment or stops participating)),~~

may receive an additional three consecutive months of food assistance when the client:

(a) Loses employment; or

(b) Loses the opportunity to participate in a work program ((or in Workfare will receive an additional three consecutive months of food assistance. The three-month certification is)).

(4) The provisions in subsection (3) of this section are allowed only once in the thirty-six month 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.

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

WAC 388-444-0075 **Disqualifications for quitting a job without good cause.** (1) If the client quits a job without good cause~~((, the client is disqualified))~~:

(a) For applicants, the application is denied and the penalty in subsection (2) of this section is applied beginning with the day of quit; or

(b) For clients already receiving food stamps, the penalty in subsection (2) of this section begins the first of the month following the notice of adverse action.

(2) The client is disqualified for the following minimum periods of time and until the conditions in subsection ((2)) (3) of this section are met:

(a) For the first quit, one month;

(b) For the second quit, three months; and

(c) For the third or subsequent quit, six months.

~~((2))~~ (3) Eligibility may be established during a disqualification period, if the client is otherwise eligible and:

(a) Secures new employment that has a salary or hours comparable to the job which was quit; or

(b) Secures a comparable job at less hours or at a lower salary.

(4) The client may re-establish eligibility after the disqualification, if otherwise eligible by:

(a) Getting a new job;

(b) In nonexempt areas, participating in the FS E&T program;

(c) Participating in Workfare as provided in WAC 388-444-0040;

(d) Becoming exempt as provided in WAC-388-444-0015 ((or WAC), 388-444-0020, or 388-444-0035;

(e) Applying for or receiving unemployment compensation; or

(f) Participating in WorkFirst.

~~((3))~~ (5) If a disqualified client moves from the assistance unit and joins another assistance unit, the client continues to be treated as an ineligible member of the new assistance unit for the remainder of the disqualification period.

WSR 99-07-027
PERMANENT RULES
SOUTHWEST AIR
POLLUTION CONTROL AUTHORITY

[Filed March 10, 1999, 10:17 a.m.]

Date of Adoption: October 15, 1998.

Purpose: These rules were approved by the SWAPCA board of directors under Board Resolution 1998-8 dated October 15, 1998.

Title of Rule - SWAPCA 400 - General Regulations for Air Pollution Sources.

Sections:

SWAPCA 400-030 Definitions, the purpose of this section is to provide definitions for commonly used words or phrases in the rest of the regulation.

SWAPCA 400-040 General Standards for Maximum Emissions, the purpose of this section is to provide a minimum set of air emission standards for all sources.

SWAPCA 400-052 Stack Sampling of Major Combustion Sources, the purpose of this section is to provide a minimum set of air emission standards for sampling emissions from major combustion sources.

SWAPCA 400-060 Emission Standards for General Process Units, the purpose of this section is to provide a minimum set of air emission standards for general process units.

SWAPCA 400-070 Emission Standards for Certain Source Categories, the purpose of this section is to provide a minimum set of air emission standards for sampling emissions from certain defined source categories and activities.

SWAPCA 400-075 Emission Standards for Sources Emitting Hazardous Air Pollutants, the purpose of this section is to adopt by reference the federal standards relating to hazardous air pollutant standards referred to generally as the MACT standards.

SWAPCA 400-076 Emission Standards for Sources Emitting Toxic Air Pollutants, the purpose of this section is to provide a reference to the toxic air pollutant rule and describe the permitting process.

SWAPCA 400-091 Voluntary Limits on Emissions, the purpose of this section is to provide a mechanism and process for sources to request a voluntary limit on emissions from their sources.

Summary of Sections:

SWAPCA 400-030 Definitions - this section is the placeholder for definitions of words and phrases used throughout SWAPCA 400. Most definitions are identical to the federal definitions.

SWAPCA 400-040 General Standards for Maximum Emissions - this section contains the visible emission standard of 20% opacity, and other limits for fallout, fugitive emissions, odors, emissions detrimental to persons or property, sulfur dioxide, concealment and masking and fugitive dust sources.

SWAPCA 400-052 Stack Sampling of Major Combustion Sources - this section contains requirements for stack sampling of major combustion sources every two years to assist with preparation of the emission inventory which is submitted to EPA each year by SWAPCA.

SWAPCA 400-060 Emission Standards for General Process Units - this section identifies the maximum emission standard of 0.1 grains per dry standard cubic feet of exhaust gas for any general process operation.

SWAPCA 400-070 Emission Standards for Certain Source Categories - this section [provides] additional emission standards and requirements for certain source categories including wigwam burners, hog fuel boilers, orchard heaters, catalytic cracking units, sulfuric acid plants, gasoline dispensing facilities, dry cleaning facilities and abrasive blasting operations.

SWAPCA 400-075 Emission Standards for Sources Emitting Hazardous Air Pollutants - this section adopts the federal standards for sources emitting hazardous air pollutants contained in 40 CFR part 61 and part 63 by reference (MACT standards) as requirements for sources in SWAPCA jurisdiction for local implementation and enforcement.

SWAPCA 400-076 Emission Standards for Sources Emitting Toxic Air Pollutants - this section describes general requirements for toxic pollutant emission sources and provides a reference to the toxics rule chapter 173-460 WAC which is adopted by reference by SWAPCA under separate rule making.

SWAPCA 400-091 Voluntary Limits on Emissions - this section provides the authority and describes the process for a source to request a voluntary limit on emissions. This section provides the ability to have a federally enforceable emission limit to keep out of the Title 5 Operating Permit program.

Short Explanation of Rule, its Purpose, and Anticipated Effects and Changes:

SWAPCA 400-030 Definitions - this is an existing section. Proposed changes include adding more language to the definition of "air contaminant" to include "criteria pollutant"; updating dates of adoption for references to existing federal rules; adding a new definition for "PM_{2.5}" and "pollutant"; and adding additional substances to the exempt list of items for the definition of "volatile organic compound" consistent with the federal definition.

SWAPCA 400-040 General Standards for Maximum Emissions - this is an existing section. The proposed change is to add reference to a proposed method (SWAPCA Method 9 as an attachment to SWAPCA 400) for determining visible emissions. The method is similar to EPA Method 9 but contains the Washington state standard for data reduction. In addition, SWAPCA is proposing to delete the exemption for sources which are not capable of meeting the state standard for sulfur dioxide. Currently all sources in SWAPCA jurisdiction are capable of meeting the state standard.

SWAPCA 400-052 Stack Sampling of Major Combustion Sources - this is an existing rule. The proposed change is to add reference to SWAPCA 400-106 which contains requirements on how to perform emissions sampling.

SWAPCA 400-060 Emission Standards for General Process Units - this is an existing rule. The proposed change is to update the adoption date of the federal standard for source testing methods.

SWAPCA 400-070 Emission Standards for Certain Source Categories - this is an existing rule. The proposed changes are to remove reference to SWAPCA 400-110(8) for gasoline dispensing facilities because this section is proposed

to be removed from the rules, and to adopt a new rule for dry cleaning operations to be consistent with the existing federal requirements.

SWAPCA 400-075 Emission Standards for Sources Emitting Hazardous Air Pollutants - This is an existing rule. The proposed changes include updating the adoption date of the federal standards for hazardous air pollutants and include source categories for which new federal standards have been promulgated.

SWAPCA 400-076 Emission Standards for Sources Emitting Toxic Air Pollutants - This is an existing rule. The proposed changes are to change the reference from SWAPCA 460 to chapter 173-460 WAC to be more precise about the adoption status by SWAPCA of the existing state rule.

SWAPCA 400-091 Voluntary Limits on Emissions - this is an existing rule. The proposed change is to add language to clarify that a voluntary limit may be requested for a process parameter of throughput in addition to emissions of air pollutants.

Citation of Existing Rules Affected by this Order: See Purpose above.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 98-15-142 on July 22, 1998.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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 6, 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.

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

March 3, 1999

Robert D. Elliott
Executive Director

AMENDATORY SECTION

SWAPCA 400-030 Definitions

[Statutory Authority: Chapter 70.94.030 RCW, 70.94.141 RCW and 70.94.331 RCW. Original adoption by Board 12/17/68 (Regulation 1); Amended by Board 10/29/69 (Regulation 2); Amended by Board 3/20/84; Amended by Board 12/16/86; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

Except as provided elsewhere in this regulation the following definitions apply throughout the regulation:

(1) "Actual emissions" means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with (a) through (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the

emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) The Authority may presume that source specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

(2) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of a Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with (a) times of visitor use of the Federal Class I area and (b) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.

(3) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. This includes any substance regulated as an air pollutant under WAC 173-460, NESHAPS, Section 112 of the Federal Clean Air Act Amendments or substance for which a primary or secondary National Ambient Air Quality Standard has been established and volatile organic compounds. "Air pollutant" means the same as "air contaminant". A criteria pollutant is an air pollutant for which a criteria document has been prepared by EPA and has a primary or secondary ambient air quality standard. These pollutants are identified at 40 CFR Part 50 and include sulfur oxides (measured as sulfur dioxide), particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead. Volatile organic compounds as a category are no longer identified as a criteria pollutant.

(4) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this regulation air pollution shall not include air contaminants emitted in compliance with Chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of various pesticides.

(5) "Allowable emissions" means the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in 40 CFR Part 60, 61, or 63;

(b) Any applicable State Implementation Plan emission limitation including those with a future compliance date;

(c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date; or

(d) The emission rate specified by an applicable regulatory order.

(6) "Ambient air" means the surrounding outside air.

(7) "Ambient air quality standard" (AAQS) means an established concentration, exposure time, and frequency of occurrence of an air contaminant or multiple air contaminants in the ambient air which shall not be exceeded.

(8) "Authority" means the Southwest Air Pollution Control Authority (SWAPCA).

(9) "Best available control technology, (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each air pollutant subject to regulation under Chapter 70.94 RCW which would be emitted from or which results from any new or modified stationary source, which the Authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "best available control technology" result in emissions of any air pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Part 60, Part 61, and Part 63 as they exist on August 1, 1996, or their later enactments as adopted by reference by the Authority by rule. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

(10) "Best available retrofit technology (BART)" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(11) "Board" means the Board of Directors of the Southwest Air Pollution Control Authority.

(12) "Bubble" means a set of emission limits which allows an increase in emissions from a given emissions unit(s) in exchange for a decrease in emissions from another emissions unit(s), pursuant to RCW 70.94.155, and SWAPCA 400-120.

(13) "Capacity factor" means the ratio of the average load on a machine or equipment for the period of time considered, to the manufacturer's capacity rating of the machine or equipment.

(14) "Class I area" means any area designated pursuant to §§ 162 or 164 of the Federal Clean Air Act as a Class I area. The following areas are the Class I areas potentially affected by emissions from sources within SWAPCA jurisdiction:

Alpine Lakes Wilderness;
Glacier Peak Wilderness;
Goat Rocks Wilderness;
Mount Adams Wilderness;
Mount Rainier National Park;
Mt. Hood Wilderness Area;
Mt. Jefferson Wilderness Area.

(15) "Closure" means permanently stopping or terminating all processes at a facility. Such termination of processes shall result in no emissions of pollutants to the ambient air. Closure does not mean temporary shutdown of operations. A facility shall be considered "permanently closed" if operations have ceased and registration fees are not paid as set forth in SWAPCA 400-100 (2)(e). Process and pollution control equipment may remain in place and on site but shall be configured such that the equipment or processes are incapable of generating emissions to the atmosphere (e.g. disconnection of power to equipment, mechanical positioning that inhibits processing; placing of padlocks on equipment to prevent operation). Closure of a facility requires notification to SWAPCA in accordance with SWAPCA 400-100 (2)(d). New Source Review and applicable emission control technology requirements in accordance with current requirements for similar facilities will be required of the facility prior to restart if the annual registration fee is not paid.

(16) "Combustion and incineration sources" means emissions units using combustion for waste disposal, steam production, chemical recovery or other process requirements, but excludes open burning.

(17) "Commenced construction" means that an owner or operator has all the necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time. (ref. 40 CFR 52.21)

(18) "Concealment" means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

(19) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions. (ref 40 CFR 52.21)

(20) "Control Officer" means the Executive Director of the Southwest Air Pollution Control Authority.

(21) "Director" means the director of the Washington State Department of Ecology or duly authorized representative.

(22) "Dispersion technique" means a method which attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

(23) "Ecology" means the Washington State Department of Ecology.

(24) "Emission" means a release of air contaminants into the ambient air.

(25) "Emission control technology" means emission control equipment integral or in addition to the emission unit or other technology, device, component or control parameter that is integral to the design of an emission unit or the basic design to the emission unit; i.e., low NOx burner for a boiler or turbine.

(26) "Emission reduction credit (ERC)" means a credit granted pursuant to SWAPCA 400-131. This is a voluntary reduction in emissions beyond required levels of control. ERCs may be sold, leased, banked for future use or traded in accordance with applicable regulations. Emission reduction credits shall provide an incentive for reducing emissions below the required levels and to establish a framework to promote a market based approach to air pollution control.

(27) "Emission standard" and "emission limitation" mean a requirement established under the FCAA or Chapter 70.94 RCW or local regulation which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice, or operational standard promulgated under the FCAA or Chapter 70.94 RCW.

(28) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the FCAA, Chapter 70.94 RCW or Chapter 70.98 RCW.

(29) "Excess emissions" means emissions of an air pollutant in excess of any applicable emission standard.

(30) "Excess stack height" means that portion of a stack which exceeds the greater of sixty-five meters (213.25 feet) or the calculated stack height described in SWAPCA 400-200(2).

(31) "Executive Director" means the Control Officer of the Southwest Air Pollution Control Authority.

(32) "Existing stationary facility" means a stationary source of air pollutants which has the potential to emit two hundred fifty tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted. For purposes of determining whether a stationary source is an existing stationary facility the term "building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered as part of the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual*, 1987.

(33) "Federal Clean Air Act (FCAA)" means the Federal Clean Air Act, also known as Public Law 88-206, Stat. 392,

December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

(34) "Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(35) "Fossil fuel-fired steam generator" means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

(36) "Fugitive dust" means a type of particulate emission made airborne by forces of wind, human activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

(37) "Fugitive emissions" means emissions which do not pass and which could not reasonably be collected to pass through a stack, chimney, vent, or other functionally equivalent opening.

(38) "General process unit" means an emissions unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

(39) "Good agricultural practices" means economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.

(40) "Good engineering practice (GEP)" refers to a calculated stack height based on the equation specified in SWAPCA 400-200 (2)(a)(ii).

(41) "Incinerator" means a furnace used primarily for the thermal destruction of waste.

(42) "In operation" means engaged in activity related to the primary design function of the source.

(43) "Integral vista" means a view perceived from within a mandatory Class I federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I federal area.

(44) "Lowest achievable emission rate (LAER)" means for any source that rate of emissions which reflects the more stringent of:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed new or modified source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source. In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

(45) "Maintenance Area" or "Maintenance Plan Area" means a geographical area of the jurisdiction of SWAPCA which was formerly designated as a nonattainment area and which has been redesignated as an attainment area as provided under 40 CFR 52. The maintenance area designation shall be in effect as long as there is a federal or state requirement to have a maintenance plan in effect.

(46) "Maintenance Pollutant" means a pollutant for which a maintenance plan area was formerly designated a nonattainment area.

(47) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act. Any net emissions increase that is considered significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone. A physical change or change in the method of operation shall not include:

- (a) Routine maintenance, repair, and replacement;
- (b) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Supply Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
- (c) Use of an alternative fuel by reason of an order or rule under section 125 of the FCAA, 42 U.S.C. 7425;
- (d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- (e) Use of an alternative fuel or raw material by a stationary source which:
 - (i) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, in a Prevention of Significant Deterioration permit or an Order of Approval for a Notice of Construction application; or
 - (ii) The source is approved to use under any federally enforceable notice of construction approval or a PSD permit issued by the Environmental Protection Agency;
- (f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, in a Prevention of Significant Deterioration permit or an Order of Approval for a Notice of Construction application;
- (g) Any change in ownership at a stationary source.

(48) "Major stationary source" means:

- (a) Any stationary source which:
 - (i) Emits or has the potential to emit one hundred tons per year or more of any air contaminant regulated by the Washington State or Federal Clean Air Acts;
 - (ii) Is located in a "marginal" or "moderate" ozone non-attainment area and which emits or has the potential to emit one hundred tons per year or more of volatile organic compounds or oxides of nitrogen;
 - (iii) Is located in a "serious" carbon monoxide nonattainment area where stationary sources contribute significantly to carbon monoxide levels and which emits or has the potential to emit fifty tons per year or more of carbon monoxide; or
 - (iv) Is located in a "serious" particulate matter (PM₁₀) nonattainment area and which emits or has the potential to emit seventy tons per year or more of PM₁₀ emissions.
- (b) Any physical change that would occur at a stationary source not qualifying under (a) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself;

(c) A major stationary source that is major for VOCs or NO_x shall be considered major for ozone;

(d) The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the stationary source belongs to one of the following categories of stationary sources or the source is a major stationary source due to (a)(iii) or (iv) of this subsection:

- (i) Coal cleaning plants (with thermal dryers);
 - (ii) Kraft pulp mills;
 - (iii) Portland cements plants;
 - (iv) Primary zinc smelters;
 - (v) Iron and steel mills;
 - (vi) Primary aluminum ore reduction plants;
 - (vii) Primary copper smelters;
 - (viii) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
 - (ix) Hydrofluoric, sulfuric, or nitric acid plants;
 - (x) Petroleum refineries;
 - (xi) Lime plants;
 - (xii) Phosphate rock processing plants;
 - (xiii) Coke oven batteries;
 - (xiv) Sulfur recovery plants;
 - (xv) Carbon black plants (furnace process);
 - (xvi) Primary lead smelters;
 - (xvii) Fuel conversion plants;
 - (xviii) Sintering plants;
 - (xix) Secondary metal production plants;
 - (xx) Chemical process plants;
 - (xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;
 - (xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels (12,600,000 gallons);
 - (xxiii) Taconite ore processing plants;
 - (xxiv) Glass fiber processing plants;
 - (xxv) Charcoal production plants;
 - (xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and
 - (xxvii) Any other stationary source category which, as of August 7, 1980, was being regulated under sections 111 or 112 of the Federal Clean Air Act.
- (e) For purposes of determining whether a stationary source is a major stationary source, the term "building, structure, facility, or installation" means all the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual*, 1987.
- (49) "Mandatory Class I federal area" means any area defined in Section 162(a) of the FCAA. The mandatory Class I federal areas potentially affected by emissions from sources within SWAPCA jurisdiction are as follows:
- Alpine Lakes Wilderness;

Glacier Peak Wilderness;
Goat Rocks Wilderness;
Mount Adams Wilderness;
Mount Rainier National Park;
Mt. Hood Wilderness Area;
Mt. Jefferson Wilderness Area.

(50) "Masking" means the mixing of a chemically nonre-active control agent with a malodorous gaseous effluent to change the perceived odor, usually to a less offensive odor.

(51) "Materials handling" means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant alteration of the chemical or physical properties of the material.

(52) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(53) "National Emission Standards for Hazardous Air Pollutants (NESHAPS)" means the federal regulations set forth in 40 CFR Part 61 or Part 63.

(54) "Natural conditions" means naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(55) "Net emissions increase" means:

(a) The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular change or change in method of operation at a source; and

(ii) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the changes in actual emissions occur between the date ten years before construction on the particular change commences and the date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than one year prior to the date of submittal of a complete Notice of Construction application for the particular change, or it has been documented by an emission reduction credit, in which case the credit shall expire ten years after the date of original issue of the ERC. Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC.

(ii) The Authority or Ecology has not relied on it in issuing any permit or Order of Approval for the source under regulations approved pursuant to 40 CFR 51 Subpart I or the EPA has not relied on it in issuing a PSD permit pursuant to 40 CFR 52.21, which order or permit is in effect when the increase in emissions from the particular change occurs.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(iv) The Authority has not relied on it in issuing any permit, regulatory order or Order of Approval under regulations approved pursuant to 40 CFR 51 Subpart I, the EPA has not relied on it in issuing a PSD permit pursuant to 40 CFR 52.21 or Ecology or the Authority has not relied on it in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(56) "New source" means one or more of the following:

(a) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted;

(b) Any other project that constitutes a new source under the Federal Clean Air Act;

(c) Restart after a lapse in one year or more in payment of registration fees or operating permit fees;

(d) Restart after a period of five years of non-operation where registration or operating permit fees have been paid.

(57) "New Source Performance Standards (NSPS)" means the federal regulations set forth in 40 CFR Part 60 and adopted by the Authority in SWAPCA 400-115.

(58) "Nonattainment area" means a clearly delineated geographic area which has been designated by EPA promulgation as exceeding a National Ambient Air Quality Standard or standards.

(59) "Notice of Construction application (NOC)" means a written application from the source by which the Authority records and tracks requests from registered and nonregistered sources for the purpose of obtaining information regarding proposed changes or activities at a source. Types of changes may include modifications, alterations, changes to process or control equipment, establishment of emission limits, installation of new sources, control technology determinations, PSD determinations and other items specified by the Authority. A Notice of Construction application shall be submitted to the Authority for review and approval prior to construction of a new source, modification of an existing stationary source or replacement or substantial alteration of control technology at an existing stationary source or portable source. A Notice of Construction application may be submitted to the Authority for activities not requiring New Source Review and shall not automatically impose New Source Review requirements. (For more information refer to SWAPCA 400-109.)

(60) "Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage.

(61) "Open burning" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Open burning includes all forms of outdoor burning except those listed as exempt in SWAPCA 425-020. Wood waste disposal in wigwam burners is not considered open burning.

(62) "Order" or Regulatory Order means any order issued by the Authority pursuant to Chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153 and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, compliance schedule order, consent order, order of denial, order of violation, order of prevention, order of discontinuance, administrative order, and regulatory order.

(63) "Order of Approval" and "Approval Order" mean a regulatory order issued by the Authority to approve a Notice of Construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source or portable source. Note: For more information refer to SWAPCA 400-230 (1)(a).

(64) "Particulate matter" or "particulates" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

(65) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Part 60 or by a test method specified in the Washington State Implementation Plan.

(66) "Parts per million (ppm)" means parts of a contaminant per million parts of gas or carrier medium, by volume. When calculating or measuring the ppm of a given gas or carrier stream, such measurement or calculation shall be exclusive of water and particulate matter.

(67) "Person" means an individual, firm, public or private corporation, owner, owner's agent, operator, contractor, association, partnership, political subdivision, municipality, or government agency.

(68) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(69) "PM₁₀ emissions" means finely divided solid or liquid material, including condensible particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the Washington State Implementation Plan.

(70) "PM_{2.5}" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method,

specified in 40 CFR Part 50 or by a test method specified in the Washington State Implementation Plan.

(71) "Pollutant" means the same as air contaminant, air pollutant and air pollution. (Refer to definitions 3, 4 and 78)

~~7((9))~~ 2 "Potential to emit" means the maximum capacity (i.e., design capacity) of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

~~7((4))~~ 3 "Prevention of Significant Deterioration (PSD)" means the program set forth in SWAPCA 400-141 and WAC 173-400-141.

~~7((2))~~ 4 "Projected width" means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

~~7((3))~~ 5 "Reasonably attributable" means attributable by visual observation or any other technique the Authority deems appropriate.

~~7((4))~~ 6 "Reasonably available control technology (RACT)" means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after public notice and opportunity for comment are afforded. RACT shall apply to existing sources.

~~7((5))~~ 7 "Regulatory order" means an order issued by the Authority to an air contaminant source which applies to that source, any applicable provision of Chapter 70.94 RCW, or the rules adopted thereunder, or, the regulations of the Authority. Note: For further clarification refer also to the definition of Order and Order of Approval and SWAPCA 400-230.

~~7((6))~~ 8 "Significant" or "significant emission rate" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emission equal to or greater than any one of the following rates:

<u>Pollutant</u>	<u>Tons/Year</u>
Carbon monoxide	100
Nitrogen oxides	40
Sulfur dioxide	40
Particulate matter (PM)	25
Fine particulate matter (PM ₁₀)	15

PERMANENT

Pollutant	Tons/Year
Volatile organic compounds (VOC)	40
Lead	0.6
Fluorides	3
Sulfuric acid mist	7
Hydrogen sulfide (H ₂ S)	10
Total reduced sulfur (including H ₂ S)	10
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035
Municipal waste combustor metals (measured as PM)	15
Municipal waste combustor acid gases (measured as SO ₂ and hydrogen chloride)	40

(7((7))9) "Significant visibility impairment" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of visitor visual experience of a Class I area as defined in Section 162(a) of the FCAA. The determination must be made on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairment, and how these factors correlate with the time of visitor use of the Class I area and frequency and timing of natural conditions that reduce visibility.

((78))80) "Source" means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous and adjacent properties, and are under the control of the same person (or persons under common control), whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual*, 1987.

((79))81) "Source category" means all sources of the same type or classification as described in the *Standard Industrial Classification Manual*, 1987.

(8((0))2) "Southwest Air Pollution Control Authority (SWAPCA)" or "Authority" means the local air pollution agency empowered to enforce and implement the Federal Clean Air Act (42 U.S.C. 7401, et seq.) and the Clean Air Washington Act (RCW 70.94) in Clark, Cowlitz, Lewis, Skamania and Wahkiakum Counties of Washington State.

(8((1))3) "Stack" means any emission point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

(8((2))4) "Stack height" means the height of an emission point measured from the ground-level elevation at the base of the stack.

(8((3))5) "Standard conditions" means a temperature of 20 degrees C (68 degrees F) and a pressure of 29.92 inches (760 mm) of mercury except as otherwise specified.

(8((4))6) "State Implementation Plan, (SIP)" means a comprehensive plan developed/prepared by the Washington State Department of Ecology with assistance from the South-

west Air Pollution Control Authority, other regional air pollution control authorities and other interested planning and governing entities, and submitted to EPA for approval, which provides for implementation, maintenance and enforcement of the primary and secondary National Ambient Air Quality Standards.

(8((5))7) "Stationary source" means any building, structure, facility, or installation which emits or may emit any contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road engine or non-road vehicle as defined in Section 216 of the FCAA.

(8((6))8) "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

(8((7))9) "Total reduced sulfur, (TRS)" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA Method 16 or an approved equivalent method and expressed as hydrogen sulfide.

((88))90) "Total suspended particulate" means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B as in effect on July 1, 1998.

((89))91) "United States Environmental Protection Agency, (USEPA)" shall be referred to as EPA.

((90))92) "Upgraded" is defined only for gasoline dispensing facilities and means the modification of a gasoline storage tank or piping to add cathodic protection, tank lining or spill and overflow protection that involved removal of ground or ground cover above a portion of the product piping. "Modification" of a gasoline dispensing facility means the same as "upgraded".

((91))92) "Visibility impairment" means any perceptible degradation in visibility (visual range, contrast, coloration) not caused by natural conditions.

((92))93) "Visibility impairment of Class I areas" means visibility impairment within the area and visibility impairment of any formally designated integral vista associated with the area.

((93))94) "Volatile organic compound (VOC)" means:

(a) Any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any organic compound other than the following, which have negligible photochemical activity: acetone; ethane; methane; methyl acetate; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2 tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlo-

robenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C4F9OCH3); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OCH3); 1-ethoxy-1,1,2,2,3,3,4,4-nonafluorobutane (C4F9Oc2H5); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OC2H5); and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear, completely fluorinated alkanes;

(ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations; ~~(and)~~

(iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

~~((iii))~~ (iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOCs will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Air Pollution Control Authority and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-040 General Standards for Maximum Emissions

[Statutory Authority: Chapter 70.94.040 RCW, 70.94.141 RCW, 70.94.154 RCW, and 70.94.331 RCW. Original adoption by Board 12/17/68 (Regulation 1); Amended by Board 10/29/69 (Regulation 2); Amended by Board 12/18/79; Amended by Board 3/20/84; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

All sources and emissions units are required to meet the emission standards of this section. Where an emission standard listed in another section is applicable to a specific emissions unit, such standard shall take precedent over a general emission standard listed in this section. When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the

emissions of the common stack must meet the most restrictive standard of any of the connected emissions units. Further, all emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the applicable emission limitations of this regulation or any chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the Authority shall, as provided in RCW 70.94.154, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

(1) **Visible emissions.** No person shall cause or permit the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity as determined in accordance with Appendix A by a Certified Observer certified in accordance with EPA Method 9 "Visual Determination of the Opacity of Emissions from Stationary Sources" as specified in 40 CFR 60 Appendix A except:

(a) When the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary to the operation of boiler facilities. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and the Authority shall be advised of the schedule.

(b) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent.

(c) When two or more sources are connected to a common stack, the Authority may allow or require the use of an alternate time period if it is more representative of normal operations.

(d) When an alternate opacity limit has been established per RCW 70.94.331 (2)(c).

(2) **Fallout.** No person shall cause or permit the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner(s) or operator(s) of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(3) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or any other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the contaminants for which nonattainment has been designated.

(4) **Odors.**

(a) Any person who shall cause or allow the generation of any odor from any source, which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

(b) A scentometer No. 1 odor strength or equivalent dilution in residential and commercial areas shall not be exceeded.

(c) A scentometer No. 3 odor strength or equivalent dilution in all other land use areas shall not be exceeded.

Scentometer Readings

Scentometer No.	Concentration Range No. of Thresholds
0	1 to 2
1	2 to 8
2	8 to 32
3	32 to 128
4	128

(d) A violation of this section shall have occurred when two measurements made within a period of one (1) hour, separated by at least fifteen (15) minutes, off the property surrounding the air contaminant source exceeds the scentometer limitations set hereunder.

(e) When the source is a manufacturing process, no violation of this section shall have occurred provided that Best Available Control Technology (BACT), Maximum Available Control Technology (MACT), or Lowest Achievable Emission Rate (LAER), as applicable for odor control and abatement, is provided and is operating in compliance with other applicable regulations and emission limits.

(f) When the source is using "good agricultural practices", as provided in RCW 70.94.640, no violation of this section shall have occurred.

(5) **Emissions detrimental to persons or property.** No person shall cause or permit the emission of any air contaminant from any source if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(6) **Sulfur dioxide.** No person shall cause or permit the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen or twelve percent CO₂, as required by the applicable emission standard for combustion sources, and based on the average of any period of sixty consecutive minutes (~~except:~~

~~(a) When the owner or operator of an emissions unit supplies emission data and can demonstrate to the Authority that there is no feasible method of reducing the concentration to less than one thousand ppm (on a dry basis, corrected to seven percent oxygen for combustion sources) and that the state and federal ambient air quality standards for sulfur dioxide will not be exceeded. In such cases, the Authority may require specific ambient air monitoring stations be established, operated, and maintained by the owner or operator at mutually approved locations. All sampling results shall be made available upon request and a monthly summary shall be submitted to the Authority.~~

~~(b) When a source limits such emission by a combination of constant emission controls and dispersion techniques approved by the Authority).~~

(7) **Concealment and masking.** No person shall cause or permit the installation or use of any means which conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this section.

(8) **Fugitive dust sources.**

(a) The owner or operator of a source of fugitive dust shall take reasonable precautions to prevent fugitive dust from becoming airborne and shall maintain and operate the source to minimize emissions.

(b) The owner(s) or operator(s) of any existing source(s) of fugitive dust that has been identified as a significant contributor to a PM₁₀ nonattainment area shall be required to use reasonably available control technology (RACT) to control emissions. Significance will be determined by the criteria found in SWAPCA 400-113(3).

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-052 Stack Sampling of Major Combustion Sources

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.331 RCW. Original adoption 93-21-003 filed 10/7/93, effective 11/8/93]

(1) **General Requirements.** No owner or operator of a major source which is also a combustion or incineration source shall operate the source except in compliance with the requirements of this section.

(2) **Applicability.** All sources that are designated as major as a result of the operation of a combustion or incineration unit (or units) where the combined emissions of a single pollutant from the combustion or incineration unit (or units) are 100 tons per year or more of oxides of nitrogen, carbon monoxide, particulate matter, sulfur dioxide or volatile organic compounds.

(3) **Emissions Sampling Requirements.** The owner or operator of a major combustion or incineration source identified in (2) shall cause or conduct emissions tests at least once every two calendar years to quantify emissions of the pollutants for which the source has been designated major. In the event that the combined emissions of a single pollutant from several emissions units establishes the source as major, emissions tests shall be conducted at least once every two calendar years for all emissions units which emit 30 percent or more of the emissions of the pollutant for which the source has been designated major. Emissions testing shall be performed in accordance with SWAPCA 400-106.

(4) **Sampling Methods.** All emissions tests shall be conducted in accordance with the specific test methods approved in advance by the Authority.

(5) **Additional Requirements.** Nothing in this section shall be construed as to limit the ability of the Authority to impose additional or supplemental emissions testing requirements for any emissions unit within the Authority's jurisdiction in accordance with SWAPCA 400-105(4).

PERMANENT

(6) **Alternative Sampling Schedules.** The Authority may on a case-by-case basis, accept or require an alternative emissions sampling schedule provided sufficient source-specific sampling data exists to adequately demonstrate that the source is capable of continuous compliance with any emission standards that are applicable to the source. Alternative sampling schedules shall be based upon measured emissions relative to the applicable emissions limitation. The Authority may reduce the frequency of the required emissions testing.

(7) **Continuous Emissions Monitors.** The use of continuous emissions monitors shall be acceptable as an alternative emissions sampling schedule.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-060 Emission Standards for General Process Units

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.331 RCW. Original adoption by Board 12/18/79; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

General process units shall meet all applicable provisions of SWAPCA 400-040 and, no person shall cause or permit the emission of particulate material from any general process operation in excess of 0.23 grams per dry cubic meter at standard conditions (0.1 grain/dscf) of exhaust gas. EPA test methods from 40 CFR Appendix A which are adopted by reference as in effect (~~August~~) July 1, 1996 and any other appropriate test procedures approved in advance by the Authority shall be used to determine compliance.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-070 Emission Standards for Certain Source Categories

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.331 RCW. Original adoption 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

The Authority finds that the reasonable regulation of sources within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for emissions units within the categories listed.

(1) **Wigwam burners.** The use of wigwam ("tee-pee", "conical", or equivalent type) burners is prohibited effective January 1, 1994.

(2) **Hog fuel boilers.**

(a) Hog fuel boilers shall meet all provisions of SWAPCA 400-040 and SWAPCA 400-050(1), except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any eight hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary for efficient operation of these units. This practice is to be scheduled for the same specific times each

day and the Authority shall be notified of the schedule or any changes.

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) **Orchard heating.**

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(4) **Catalytic cracking units.**

(a) All existing catalytic cracking units shall meet all provisions of SWAPCA 400-040:

(i) No person shall cause or permit the emission for more than three minutes, in any one hour, of an air contaminant from any catalytic cracking unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity.

(ii) No person shall cause or permit the emission of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.

(b) All new catalytic cracking units shall install BACT which may be more stringent than the provisions of SWAPCA 400-115.

(5) **Sulfuric acid plants.** No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H₂SO₄, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H₂SO₄.

(6) **Gasoline dispensing facilities.** All gasoline dispensing facilities shall meet all the provisions of (~~SWAPCA 400-110(8) and~~) SWAPCA 491 "Emission Standards and Controls for Sources Emitting Gasoline Vapors".

(7) **Dry Cleaning Facilities.** All dry cleaning facilities shall meet all the provisions of SWAPCA 494 "Dry Cleaning Operations".

(7) **Abrasive blasting.**

(a) Abrasive blasting shall be performed inside a booth or structure designed to capture the blast grit, overspray, and removed material except that outdoor blasting of structures or items too large to be reasonably handled indoors or in an enclosure shall employ control measures such as curtailment during windy periods, wet blasting, and/or enclosure of the area being blasted with tarps.

(b) Outdoor blasting shall be performed with either steel shot or an abrasive material containing less than one percent (by mass) which would pass through a No. 200 sieve.

(c) All abrasive blasting with sand shall be performed inside a blasting booth, enclosure or structure designed to capture fugitive particulate matter.

(d) All abrasive blasting of materials that have a coating or that may contain a substance that is identified as a toxic air pollutant in SWAPCA 460 or a hazardous substance shall be analyzed prior to blast operations. If a toxic or hazardous material is present in the blast media or removed media, all material shall be handled and disposed of in accordance with applicable regulations.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-075 Emission Standards for Sources Emitting Hazardous Air Pollutants

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.331 RCW. Original Board adoption 12/18/79; Amended by Board 12/16/86; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

(1) The emission standards for hazardous air pollutants promulgated by the United States Environmental Protection Agency (USEPA) as in effect August 1, 1996~~8~~, as contained in Title 40, Code of Federal Regulations, Part 61 and Part 63, are adopted by reference. The term "Administrator" in 40 CFR Part 61 shall mean the Administrator of EPA, the Director of Ecology and the Control Officer of the Authority.

(2) The Authority may require that source tests be conducted and require access to records, books, files, and other information specific to the control, recovery or release of those pollutants regulated under 40 CFR Part 61 and/or Part 63 in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Source testing, monitoring, and analytical methods for sources of hazardous air pollutants shall conform with the requirements of Title 40, Code of Federal Regulations, Part 61 and/or Part 63, as in effect August 1, 1996~~8~~.

(4) This section shall not apply to any source operating pursuant to a waiver granted by EPA or an exemption granted by the President of the United States during the effective life of such waiver or exemption.

(5) Specific standards of performance referred to as Maximum Achievable Control Technology (MACT) have been promulgated by the USEPA. As of ~~((August))~~ July 1, 1996~~8~~ the following standards of performance as set forth in 40 CFR 63 are hereby adopted by reference:

- Subpart A National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions (40 CFR 63.1 et seq.)
- Subpart B National Emission Standards for Hazardous Air Pollutants for Source Categories: Equivalent Emission Limitation By Permit (ref. 40 CFR 63.50 et seq.)
- Subpart D National Emission Standards for Hazardous Air Pollutants for Source Categories: Early Reduction Program (ref. 40 CFR 63.70 et seq.)
- Subpart F National Emission Standards for Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (ref. 40 CFR 63.100 et seq.)
- Subpart G National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (ref. 40 CFR 63.110 et seq.)
- Subpart H National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks (ref. 40 CFR 63.160 et seq.)

- Subpart I National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (ref. 40 CFR 60.190 et seq.)
- Subpart L National Emission Standards for Hazardous Air Pollutants for Coke Oven Operations (ref. 40 CFR 63.300 et seq.)
- Subpart M National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities (ref. 40 CFR 63.320 et seq.)
- Subpart N National Emission Standards for Hazardous Air Pollutants from Hard and Decorative Electroplating and Anodizing Operations (ref. 40 CFR 63.340 et seq.)
- Subpart O National Ethylene Oxide Air Emission Standards for Commercial Sterilizers (ref. 40 CFR 63.360 et seq.)
- Subpart Q National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers (ref. 40 CFR 63.400 et seq.)
- Subpart R National Emission Standards for Hazardous Air Pollutants for Gasoline Distribution Operations (Stage I) (ref. 40 CFR 63.420 et seq.)
- Subpart S National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (ref. 40 CFR 63.440 et seq.)
- Subpart T National Emission Standards for Hazardous Air Pollutants for Halogenated Solvents Cleaning Operations (ref. 40 CFR 63.460 et seq.)
- Subpart U National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins and Group IV Polymers and Resins (ref. 40 CFR 63.480 et seq.)
- Subpart W National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production (ref. 40 CFR 63.520 et seq.)
- Subpart X National Emission Standards for Hazardous Air Pollutants for Secondary Lead Smelting Manufacturing Operations (ref. 40 CFR 63.541 et seq.)
- Subpart Y National Emission Standards for Hazardous Air Pollutants for Marine Vessel Loading Operations (ref. 40 CFR 63.560 et seq.)
- Subpart CC National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries (ref. 40 CFR 63.640 et seq.)
- Subpart DD National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations (ref. 40 CFR 63.680 et seq.)
- Subpart EE National Emission Standards for Hazardous Air Pollutants for Magnetic Tape Manufacturing Operations (ref. 40 CFR 63.710 et seq.)
- Subpart GG National Emission Standards for Hazardous Air Pollutants for Aerospace Manufac-

PERMANENT

	turing Operations (ref. 40 CFR 63.740 et seq.)
Subpart II	National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair (Surface Coating) (ref. 40 CFR 63.780 et seq.)
Subpart JJ	National Emission Standards for Hazardous Air Pollutants for Wood Furniture Manufacturing Operations (ref. 40 CFR 63.800 et seq.)
Subpart KK	National Emission Standards for Hazardous Air Pollutants for the Printing and Publishing Industry (ref. 40 CFR 63.820 et seq.)
<u>Subpart LL</u>	<u>National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants (ref. 40 CFR 63.840 et seq.)</u>
Subpart JJJ	National Emission Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins (ref. 40 CFR 63.1310 et seq.)

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-076 Emissions Standards for Sources Emitting Toxic Air Pollutants

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.331 RCW. Original Board adoption 95-17-084 filed 8/21/95, effective 9/21/95]

(1) The term toxic air pollutants (TAP) or toxic air contaminant means any air pollutant listed in ((SWAPCA)) WAC 173-460-150 or 460-160. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in ((SWAPCA)) WAC 173-460-150 or 460-160. The Chemical Abstract Service (CAS) number shall be the primary means used to specifically identify a substance. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(2) All sources subject to the requirements of SWAPCA 400-110, 400-111, 400-112, 400-113 or 400-114 shall be subject to the requirements of ((SWAPCA)) WAC 173-460. All sources subject to review under SWAPCA 400 shall also be reviewed for applicability and/or compliance under ((SWAPCA)) WAC 173-460.

(3) The New Source Review fee schedule provided in SWAPCA 400-110 shall be applicable to all sources subject to ((SWAPCA)) WAC 173-460. The fees identified in SWAPCA 400-110 shall not be duplicate to any fees collected under ((SWAPCA)) WAC 173-460. Only a single fee shall apply to sources that are subject to SWAPCA 400 and ((SWAPCA)) WAC 173-460.

(4) A Notice of Construction is a written application to request approval for construction or modification of an air contaminant source. If a Notice of Construction application is required under both SWAPCA 400 and ((SWAPCA))

WAC 173-460, then the applications shall be combined. All sources subject to ((SWAPCA)) WAC 173-460 shall file a Notice of Construction application in accordance with SWAPCA 400-109 "Notice of Construction Application" and SWAPCA 400-110 "New Source Review".

(5) Authority actions including issuance of regulatory orders and enforcement actions for sources subject to ((SWAPCA)) WAC 173-460 shall be the same as those actions for sources subject to and identified in SWAPCA 400.

(6) Sources subject to ((SWAPCA)) WAC 173-460 shall be subject to the registration requirements of SWAPCA 400-100. Where a source is subject to both SWAPCA 400 and ((SWAPCA)) WAC 173-460, only one registration shall be provided and only one fee shall be collected in accordance with the schedule outlined in SWAPCA 400-100.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-091 Voluntary Limits on Emissions

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.331 RCW. Section previously numbered SWAPCA 400-090 - 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

(1) Voluntary limits on emissions and limitations on potential to emit or process parameters or throughputs may be requested by a source by submittal of a complete Notice of Construction application to the Authority as provided in SWAPCA 400-109. Confidential information shall be identified as set forth in SWAPCA 400-270. Upon request by the owner or operator of a source, and completion of review of the application by the Authority, the Authority shall issue a regulatory order which reduces that source's potential to emit to an amount agreed to by the owner or operator and the Authority.

(2) A condition contained in an order issued under this section shall be less than the source's otherwise allowable annual emissions of that air contaminant, process parameter or throughputs, under all applicable requirements of Chapter 70.94 RCW and the FCAA, including any standard or other requirement provided for in the Washington State Implementation Plan (SIP).

(3) Any order issued under this section shall include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with any emission limit, process parameter or throughput, established under this section. Monitoring requirements shall use terms, test methods, units, averaging periods, and other statistical conventions consistent with the requirements of SWAPCA 400-105.

(4) Any order issued under this section shall be subject to the public notice and comment procedures under SWAPCA 400-171.

(5) The terms and conditions of a regulatory order issued under this section shall be federally enforceable, upon approval of this section as an element of the Washington State Implementation Plan. Any proposed increase in emissions above limits contained in an order issued under this section shall require revision or revocation of the order.

(6) Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 99-07-028
PERMANENT RULES
SOUTHWEST AIR
POLLUTION CONTROL AUTHORITY

[Filed March 10, 1999, 10:19 a.m.]

Date of Adoption: October 15, 1998.

Purpose: These rules were adopted by the SWAPCA board of directors under Board Resolution 1998-8 dated October 15, 1998.

Title of Rule - SWAPCA 400 - General Regulations for Air Pollution Sources:

SWAPCA 400-101 Sources Exempt from Registration Requirements - the purpose of this section is to identify those sources which are exempt from the registration and new source review requirements of SWAPCA 400-100 and SWAPCA 400-110.

SWAPCA 400-105 Records, Monitoring and Reporting - the purpose of this section is to identify the requirements for sources to submit an emission inventory, conduct monitoring and perform emission sampling and reporting.

SWAPCA 400-106 Emission Testing at Sources - the purpose of this section is to provide a minimum set of standards for sampling emissions from all sources.

SWAPCA 400-109 Notice of Construction Application - the purpose of this section is to provide requirements for submittal and a description of the process for submitting a Notice of Construction application.

SWAPCA 400-111 Requirements for Sources in a Maintenance Plan Area - the purpose of this section is to identify the requirements for new or modified sources in a maintenance plan area. Because of the maintenance plan status of an area, emission standards to maintain air quality in a maintenance plan area are more demanding than those in less populated or industrialized areas.

SWAPCA 400-112 Requirements for Sources in Nonattainment Areas - the purpose of this section is to identify the requirements for new or modified sources in nonattainment areas for permitting purposes. This section also includes provisions for offsetting emissions for larger emission sources.

SWAPCA 400-113 Requirements for Sources in Attainment or Nonclassifiable Areas - the purpose of this section is to identify the requirements for new or modified sources in attainment areas for permitting purposes.

SWAPCA 400-115 Standards of Performance for New Sources - the purpose of this section is to adopt by reference the New Source Performance Standards (NSPS) contained in 40 CFR 60 for certain sources categories.

Summary of Sections:

SWAPCA 400-101 Sources Exempt from Registration Requirements - this section identifies those sources which are exempt from the registration and new source review requirements of SWAPCA 400-100 and SWAPCA 400-110.

SWAPCA 400-105 Records, Monitoring and Reporting - this section identifies the requirements for sources to submit an emission inventory, conduct monitoring and perform emission sampling.

SWAPCA 400-106 Emission Testing at Sources - this section provides a minimum set of standards for sampling and reporting emissions from all sources.

SWAPCA 400-109 Notice of Construction Application - this section identifies requirements for submittal of a Notice of Construction and a description of the process for submitting a Notice of Construction application.

SWAPCA 400-111 Requirements for Sources in a Maintenance Plan Area - this section identifies the requirements for new or modified sources in a maintenance plan area. Because of the maintenance plan status of an area, emission standards to maintain air quality in a maintenance plan area are more demanding than those in less populated or industrialized areas.

SWAPCA 400-112 Requirements for Sources in Nonattainment Areas - this section identifies the requirements for new or modified sources in nonattainment areas for permitting purposes. This section also includes provisions for offsetting emissions for larger emission sources.

SWAPCA 400-113 Requirements for Sources in Attainment or Nonclassifiable Areas - this section identifies the new source review requirements and emission standards for new or modified sources in attainment areas.

SWAPCA 400-115 Standards of Performance for New Sources - this section adopts by reference the New Source Performance Standards (NSPS) contained in 40 CFR 60 for identified sources categories.

Short Explanation of Rule, its Purpose, and Anticipated Effects and Changes:

SWAPCA 400-101 Sources Exempt from Registration Requirements - this is an existing rule. Proposed modifications are to change the reference from SWAPCA 460 to chapter 173-460 WAC to reflect the fact that SWAPCA adopts the WAC by reference and therefore clarifies the requirement for the reader. In addition, the exemption for fuel burning equipment has been clarified to describe "office" space heating as the identified exemption.

SWAPCA 400-105 Records, Monitoring and Reporting - this is an existing rule. The proposed changes remove reference to SWAPCA 460 and make reference to chapter 173-460 WAC, add two additional source categories for those type of sources which are required to submit an emission inventory which clarifies the types of sources identified in existing requirements, and to move the source testing section to a separate new section (SWAPCA 400-106) in the rules.

SWAPCA 400-106 Emission Testing at Sources - this is a new rule. This rule was excerpted from SWAPCA 400-105(4). This section is revised to include those conditions that are already being included in permits for source testing of certain equipment. This section will provide more consistency in testing and reporting of test results.

PERMANENT

SWAPCA 400-109 Notice of Construction Application - this is an existing rule. The proposed modification to this section is to add the word final in subsection 5 to clarify when a Notice of Construction can be withdrawn.

SWAPCA 400-111 Requirements for Sources in a Maintenance Plan Area - this is an existing rule. Modifications to this rule are clarifications to provide reference to the proper section numbers and clarify the requirement to certify that the source is in compliance. The reference to existing federal rules is being updated to reference the most current standard.

SWAPCA 400-112 Requirements for Sources in Nonattainment Areas - this is an existing rule. Modifications to this section are for clarification to reference chapter 173-460 WAC instead of SWAPCA 460 and to update reference [to] the existing federal rules.

SWAPCA 400-113 Requirements for Sources in Attainment or Nonclassifiable Areas - this is an existing rule. Modifications to this section are clarification to reference chapter 173-460 WAC instead of SWAPCA 460 and to reference the existing federal rules.

SWAPCA 400-115 Standards of Performance for New Sources - this is an existing rule. Modifications to this section include updating the adoption dates on the existing federal rules and adopting additional existing federal standards.

Citation of Existing Rules Affected by this Order: See Purpose above.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 98-15-143 on July 22, 1998.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 7, Repealed 0.

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

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

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

March 3, 1999

Robert D. Elliott

Executive Director

AMENDATORY SECTION

SWAPCA 400-101 Sources Exempt from Registration Requirements

[Statutory Authority: Chapter 70.94.141 RCW, 70.94.163 RCW, and 70.94.331 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 4.08); Amended by Board 10/29/69 (Regulation 2 Sec 3.03); Amended by Board 12/18/79 (400-100(3)); Amended by Board 12/18/79; Amended by Board 4/17/84; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

All air contaminant emissions units shall be registered with the Authority except for the emissions units listed in this section. In the event that a registered source has any of these emissions units at a location that is otherwise required to be registered or obtain an operating permit, the Authority may require that these emissions units be included on the permit or registration. However, registration fees shall not be assessed for any of the exempt emissions units. Any source exempted from registration under this section shall maintain sufficient documentation acceptable to the Authority that the source is entitled to exemption under this section. Any source exempted from registration under this section shall also be considered exempt from the requirements of SWAPCA 400-110, 400-111, 400-112, 400-113, and 400-114. For the purpose of identifying sources or emission units exempt from registration, the source's or emission unit's potential to emit shall be used as the basis for emissions and shall consider emissions before application of any control equipment. All exempt emission units shall be identified on an Order of Authorization to Operate for an otherwise registered source (refer to SWAPCA 400-109). An exemption for an entire facility or source shall be valid only if the combined emissions from all emission units at that site or facility are less than 1.0 ton per year for criteria pollutants and less than the Small Quantity Emission Rate for each toxic air pollutant identified in ((SWAPCA)) WAC 173-460. If any exemption threshold is exceeded for an emission unit or units, either individually or combined, the source or emission unit(s) shall not be considered to be exempt.

List of Exempt Emission Units or Sources as a Single Source or Emission Unit:

(1) Air conditioning or ventilating systems designed for space heating and cooling, combined or separate, that are less than 2.0 million BTU per hour which do not exhaust to the atmosphere contaminants generated by or released from process equipment.

(2) Any commercial or industrial manufacturing operation or business or process(es) associated with such operation or business which emits less than one ton per year combined of nitrogen oxides, carbon monoxide, PM₁₀, sulfur dioxide and volatile organic compounds from all emissions units combined. The one ton exemption does not apply to emissions of toxic air pollutants. Sources or emission units with emissions of toxic air pollutants to the ambient air may be exempted only if the annual emissions quantity for each toxic air pollutant is below the Small Quantity Emission Rate (annual rate) for each toxic air pollutant emitted as identified in ((SWAPCA)) WAC 173-460.

(3) Any commercial or industrial manufacturing operation or business or process(es) associated with such operation or business which is of insufficient stature to trigger a new source review fee assessment, from all emission units combined, as specified in Table A under SWAPCA 400-110.

(4) Asphalt roofing and application equipment (not manufacturing or storage equipment).

(5) Fuel burning equipment unless waste-derived fuel is burned, which:

(a) is used solely for a private dwelling serving less than five families; or

- (b) has an energy input of less than 2 million Btu per hour.
- (6) Fuel burning equipment used exclusively for office space heating other than boilers.
- (7) Insecticide, pesticide or fertilizer spray equipment.
- (8) Laundering devices, dryers, extractors or tumblers for fabrics using water solutions of bleach and/or detergents.
- (9) Portable, manually operated welding, brazing or soldering equipment when used at other than the owner's principal place of business.
- (10) Welding stations involved solely in the repair and maintenance of a facility. This exemption does not extend to manufacturing operations where welding is an integral part of the manufacturing process.
- (11) Food preparation facilities, establishments or equipment.
- (12) Retail paint sales establishments (not including manufacturing).
- (13) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing.
- (14) Sewing equipment.
- (15) Sources which due to the amount and nature of air contaminants produced and their potential to contribute to air pollution, are determined through review by the Authority to not warrant registration; provided that, for new sources, such determination shall be based upon review of a Notice of Construction application.
- (16) Spray painting or blasting equipment used at a temporary location to clean or paint bridges, water towers, buildings or other structures.
- (17) Chemical and physical laboratory operations or equipment, including fume hoods and vacuum producing devices provided the emissions do not exceed those listed in SWAPCA 400-101(2). This exemption applies to incidental fume hoods or laboratory equipment used by a source to perform in-house analyses that do not exceed the small quantity exemption of (2) above. This exemption does not apply to sources whose primary activity is chemical or physical laboratory operations.
- (18) Residential wood heaters.
- (19) Office equipment, operations and supplies.
- (20) Internal combustion including diesel engines used for standby emergency power generation which are used less than 100 hours per year and are rated at less than 500 horsepower.
- (21) Steam cleaning equipment used exclusively for that purpose.
- (22) Refrigeration systems which are not in air pollution control service.
- (23) Housekeeping activities and equipment.
- (24) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves and storage tanks.
- (25) Natural and forced air vents and stacks for bathroom/toilet facilities.
- (26) Personal care activities.
- (27) Lawn and landscaping activities.
- (28) Flares used to indicate danger to the public.
- (29) Fire fighting and similar safety equipment and equipment used to train fire fighters.

(30) Materials and equipment used by, and activities related to operation of an infirmary provided that operation of an infirmary is not the primary business activity at the source in question.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-105 Records, Monitoring and Reporting

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.331 RCW. Original Board adoption 12/18/79; Amended by Board 4/17/84 -renumbered to 400-170; Amended by Board (400-170) 12/16/86; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

The owner or operator of each registered source or emission unit shall maintain records of the type and quantity of emissions from the source and other information deemed necessary to determine whether the source is in compliance with applicable emission limitations, operating limitations, and control measures. Sources that are not subject to the registration requirements of SWAPCA 400-100 because they are exempt under SWAPCA 400-101 shall (~~nevertheless~~) maintain records and other information necessary and sufficient to substantiate that their small quantity emissions are less than the applicable thresholds.

(1) **Emission inventory.**

(a) When requested, the owner(s) or operator(s) of any air contaminant source shall submit an inventory of emissions from the source each year to the Authority. The inventory shall include stack and fugitive emissions of particulate matter, PM₁₀, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, and toxic air pollutants identified in (~~SWAPCA~~) WAC 173-460. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards.

(b) The emission inventory form supplied by the Authority shall be completed and returned to the Authority by April 15th for the following sources:

(i) Sources with the potential to emit over 100 tons of criteria pollutants, 10 tons of a single hazardous air pollutant or 25 tons of combined hazardous air pollutants, sources subject to NSPS, except subpart AAA, and sources subject to NES-HAPS, except subpart M, sources are required to submit an emissions inventory. Only the hazardous air pollutants listed in Section 112 of the FCAA are considered for inclusion as hazardous air pollutant emissions for the purpose of determining those sources required to submit an emissions inventory. (~~Minimum data required for the emissions inventory includes: emissions type, emissions quantity, process data, stack parameters, operating schedule, control equipment and boiler capacity.~~)

(ii) In ozone nonattainment or maintenance plan areas, those sources that emit over 10 tons of VOCs per year or over 25 tons per year of NO_x are also required to submit emission inventories. (~~Minimum data required for the emissions inventory includes: emissions type, emissions quantity, process data, stack parameters, operating schedule, control~~

equipment, and equipment capacity.) Sources subject to this section are also required to submit average daily emissions or process throughput data for NO_x and VOCs for ozone season in preparation for the SIP update.

(iii) Sources with actual emissions or potential to emit greater than 50% of the Title V permit thresholds as identified in (i) above.

(iv) Synthetic minor or Title V opt out sources.

(2) **Monitoring.** The Authority shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the Control Officer or an authorized representative may require any source under the jurisdiction of the Authority to conduct stack and/or ambient air monitoring and to report the results to the Authority.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from the Authority shall have the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing one or two families.

~~((4) **Source testing.** To determine compliance, evaluate control equipment performance, evaluate RACT or quantify emissions the Authority may conduct or require that a test be conducted of the source or any emissions unit within the jurisdiction of the Authority. Source testing shall be performed using appropriate sampling and analytical methods as approved in advance by the Authority including, but not limited to, approved EPA methods from 40 CFR 60 Appendix A which are adopted by reference, or alternate procedures approved by the Authority. The operator of a source shall provide the necessary platform and sampling ports for Authority personnel or others to perform a test of an emissions unit. The Authority shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.))~~

(54) **Continuous monitoring and recording.** Owners and operators of the following categories of sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million Btu per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million Btu per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise

demonstrated to the Authority by the owner(s) or operator(s).

(b) Sulfuric acid plants. Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluidized bed catalytic cracking units catalyst regenerators at petroleum refineries. Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) Opacity, except where steam generator capacity is less than one hundred million Btu per hour heat input.

(ii) Continuous monitoring equipment. The requirements of SWAPCA 400-105 (5)(e) do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by SWAPCA 400-105 (5)(d) shall be subject to approval by the Authority.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this section shall demonstrate to the Authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5, and 40 CFR 60 Appendices B through F, as appropriate, as in effect August 1, 1996~~8~~ which is adopted by reference.

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, the Authority determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures shall be established on an individual basis. Alternative monitoring and reporting procedures may include continuous monitoring of process/operational parameters as a surrogate to continuous emissions monitoring and/or stack tests conducted at a frequency sufficient to determine compliance with applicable regulations and permit requirements as well as to quantify emissions.

(g) Exemptions. This subsection (5) does not apply to any source which is:

(i) Subject to a new source performance standard. NSPS sources shall be governed by SWAPCA 400-115.

(ii) Not subject to an applicable emission standard.

(h) Monitoring system malfunctions. A source may be temporarily exempted from the monitoring and reporting requirements of this section during periods of monitoring system malfunctions provided that the source owner(s) or operator(s) shows to the satisfaction of the Authority that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(65) **Change in raw materials or fuels for sources not subject to requirements of the Operating Permit Program.** Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by SWAPCA 400-105(1) shall require the submittal of sufficient information to the Authority to determine the effect of the increase upon ambient concentrations of sulfur dioxide. The Authority may issue regulatory orders requiring controls to reduce the effect

of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase or decrease in average annual sulfur content over the initial inventory shall not require such notice.

(76) **Misrepresentation.** No person shall make any false material statement, representation or certification in any form, notice, or report required under Chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(87) **Tampering.** No person shall render inaccurate any monitoring device or method required under Chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Southwest Air Pollution Control Authority and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

SWAPCA 400-106 Emission Testing at Sources

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.331 RCW.]

(1) **Requirement to Test.** To determine compliance, evaluate control equipment performance, evaluate RACT or quantify emissions, the Authority may conduct or require that emission testing be conducted of the source or any emissions unit within the jurisdiction of the Authority.

(2) **Test Methods.** Any required source emission testing shall be performed using appropriate sampling and analytical methods as approved in advance by the Authority including, but not limited to, approved EPA methods from 40 CFR 60 Appendix A which are hereby adopted by reference, Opacity Determination Method (SWAPCA Method 9 - Appendix A to SWAPCA 400), Oregon Department of Environmental Quality (DEQ) Method 8 "Sampling Particulate Emissions from Stationary Sources (High Volume Method)" hereby adopted by reference, or alternate procedures approved in writing by the Authority.

(3) **Accommodations for Sampling.** The operator of a source shall provide the necessary platform and sampling ports for Authority personnel or others to perform a test of an emissions unit. The Authority shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(4) **Notification.** The owner or operator of a source shall notify the Authority in writing at least 2 weeks prior to any required emissions test and provide the Authority an opportunity to review the test plan. Authority personnel shall be informed at least three days prior to testing so that they have an opportunity to be present during testing.

(5) **Test Duration.** A minimum of three test runs one hour in length shall be performed at normal operating conditions unless otherwise approved in advance to establish that collected data is representative of normal operations. The source shall be operated at or near its maximum rated capacity during testing.¹ Compliance shall be determined by averaging the results of the individual test runs.

(6) **Records.** A complete record of production related parameters including startups, shutdowns, and adjustments shall be kept during emissions testing to correlate operations with emissions and shall be recorded in the final test report.

(7) **Reports.** Results of all required source or emissions testing shall be submitted to the Authority within 45 days of test completion. Measured concentrations for combustion and incineration sources shall be corrected as provided in SWAPCA 400-050(3). The report shall include:

(1) A description of the source including manufacturer, model number and design capacity of the equipment, and the location of the sample ports or locations.

(2) Time and date of the test and identification and qualifications of the personnel involved.

(3) A summary of results, reported in units and averaging periods consistent with the applicable emission standard or limit.

(4) A summary of control system or equipment operating conditions.

(5) A summary of production related parameters.

(6) A description of the test methods or procedures used including all field data, quality assurance/quality control procedures and documentation.

(7) A description of the analytical procedures used including all laboratory data, quality assurance/quality control procedures and documentation.

(8) Copies of field data and example calculations.

(9) Chain of custody information.

(10) Calibration documentation.

(11) Discussion of any abnormalities associated with the results.

(12) A statement signed by the senior management official of the testing firm certifying the validity of the source test report.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-109 Notice of Construction Application

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.331 RCW. Original Board adoption 95-17-084 filed 8/21/95, effective 9/21/95]

(1) **Purpose.** A Notice of Construction (NOC) application is the document or form used by the Authority to record and track requests from individual sources, registered and non-registered, for the purpose of obtaining information regarding proposed changes or activities at a source. Confidential information shall be identified as set forth in SWAPCA 400-270. Changes may include modifications, alterations, changes to process or control equipment, establishment of emission limits, and installation of new sources.

(2) **Applicability.**

(a) A Notice of Construction application consistent with SWAPCA 400-110 shall be submitted for all new installations, modifications, changes, and alterations to process and emission control equipment consistent with the definition of new source.

(b) Submittal of a Notice of Construction application shall not automatically impose New Source Review require-

ments for meeting emissions standards (including, but not limited to: NSPS, NESHAPs, any ambient air quality standard, etc.).

(3) **Types of Applications.** A Notice of Construction application may be submitted for, but not be limited to, the following activities:

- (a) New construction or installation.
- (b) Change of existing approved emission limits (including Title V opt-out requests - SWAPCA 400-091).
- (c) Review of existing or installed equipment operating without prior approval.
- (d) Modification, alteration or replacement of existing process or control equipment.
- (e) Change of registered owner (purchase or sale of source, facility or equipment).
- (f) Change of location of operations of existing portable and stationary equipment.
- (g) Review of existing equipment with an expired or lapsed approval or registration.
- (h) Review of a case-by-case RACT, BACT, MACT or other similar determination.
- (i) Other activities as identified by the Authority.

(4) **Fees.** A fee consistent with the fee schedule (Tables A and B) provided in SWAPCA 400-110 shall be paid by the owner or operator to the Authority prior to review of the Notice of Construction application by the Authority.

(5) **Authority Actions.** Each acceptable and complete Notice of Construction application shall have an Order of Approval or other applicable order issued by the Authority. A Notice of Construction for a gasoline dispensing station shall be submitted and approved as provided in SWAPCA 400-110(8). The requirements of SEPA (State Environmental Policy Act) shall be complied with for each Notice of Construction. Demonstration of completion of an environmental checklist as provided in WAC 197-11 shall be submitted with each Notice of Construction. Issuance of regulatory orders for all Notice of Construction applications shall be consistent with the requirements of SWAPCA 400-110. Requirements for New Source Review are provided in SWAPCA 400-110, 400-111, 400-112, 400-113 & 400-114. A Notice of Construction application may be withdrawn prior to issuance of a final regulatory order by the Authority as provided in (6) below; or an application may be determined by the Authority to be exempt as provided under 400-100, 400-101, or 400-110. An application determined to be exempt will be processed as identified in (6) below.

(6) **Withdrawal or Exempt.**

(a) A Notice of Construction application may be withdrawn by the applicant at any time prior to issuance of a regulatory order. The applicant must provide a written and signed request to the Authority indicating their desire to withdraw a Notice of Construction application, and certification that the proposed equipment or modification will not be installed, constructed, or operated without prior review and approval from the Authority. The Authority shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Authority, an application may be determined to be exempt from the registration requirements of SWAPCA 400-100 and New Source Review requirements

of SWAPCA 400-110. Written notification shall be provided by the Authority to the applicant for all applications that are determined to be exempt. For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees, if provided with the application, may be refunded, upon request, provided that substantial time has not been expended by the Authority for review of the Notice of Construction application.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-111 Requirements for Sources in a Maintenance Plan Area

Any person proposing to install, construct or operate a new source or emission unit or make a modification to an existing source or emission unit shall file a Notice of Construction application with the Authority in accordance with SWAPCA 400-109 and shall be subject to the New Source Review provisions of SWAPCA 400-110. Confidential information shall be identified as set forth in SWAPCA 400-270. A Notice of Construction application to establish a new source or make a modification to a source in an area that is covered by a maintenance plan, shall result in the issuance of an Order of Approval or other regulatory order. Such order shall contain such conditions as are reasonably necessary to assure the maintenance of compliance with this section, if it is determined that the proposed project satisfies all of the requirements of this section. New sources or modifications within a designated maintenance plan area, including sources of VOC or NO_x in a designated ozone maintenance plan area, shall meet the requirements listed below.

(1) **Emission Standards.** The proposed new source or modification shall:

(a) comply with all applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, emission standards adopted under Chapter 70.94 RCW and, the applicable emission standards of the Authority; and

(b) not cause any ambient air quality standard as provided in SWAPCA 400-113(3) to be exceeded; and

(c) not violate the requirements for reasonable further progress established by the Washington State Implementation Plan; and

(d) minimize emissions to the extent that the new source or modification will not delay the attainment date for a non-attainment area, exceed emission levels or other requirements provided in a maintenance plan for an area that was previously identified as a nonattainment area, nor cause or contribute to a violation of any ambient air quality standard.

(2) **BACT.** Except as provided in Section (87) of this section, the owner or operator of the proposed new source or modification shall apply BACT for each pollutant. In the case of a modification, the requirement for BACT shall apply to each new or modified emission unit which increases emissions. For phased construction projects, the determination of

BACT shall be reviewed at the latest reasonable time prior to commencement of construction of each independent phase.

(3) **Source Compliance.** The owner or operator of the proposed new source or modification shall ((demonstrate)) certify that all sources owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in Washington are in compliance or on a schedule for compliance, with all applicable emission limitations and standards under the Washington Clean Air Act (RCW 70.94).

(4) **Offsets or Growth Allowance.** The owner or operator of a proposed new major source or major modification shall provide offsets as specified in Section (98) of this section. Except as provided in Section (87) of this section, the requirements of this Section may be met in whole or in part in an ozone maintenance plan area with an allocation by SWAPCA from a growth allowance, if available, in accordance with Section (98) of this section and the applicable maintenance plan in the SIP adopted by the Board and approved by EPA.

(5) **Net Air Quality Benefit.** For cases in which emission reduction or offsets are required in accordance with Section (4) above, the applicant shall demonstrate that a net air quality benefit will be achieved in the maintenance plan area. If the proposed new source or the proposed modification is major for the contaminant for which the area has a maintenance plan, allowable emissions of the maintenance pollutant from the proposed new source or modification shall be offset by reductions in actual emissions of the maintenance pollutant. All offsetting emission reductions must satisfy the following requirements of Section (8).

(6) **Alternative Analysis.**

(a) Except as provided in Subsection (c) of this section, the owner or operator of a proposed major source or major modification shall conduct an alternatives analysis;

(b) This analysis shall include an evaluation of alternative sites, sizes, production processes, and environmental control techniques for such proposed source or modification which demonstrates that benefits of the proposed source or modification significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification;

(c) This analysis shall not be required for a major source or major modification that is subject to this rule due to emissions of particulate matter in a designated TSP maintenance area.

(7) **Contingency Plan Requirements.** If the contingency plan in an applicable maintenance plan (CO or ozone) has been triggered due to a violation of an ozone ambient air quality standard or a second violation of the CO ambient air quality standard, this Section shall apply in addition to other requirements of this rule and the applicable approved maintenance plan adopted by the Board and approved by EPA as a revision to the SIP.

(a) The requirements for BACT in Section (2) of this Section shall be replaced by a requirement for LAER. If the new source is a major stationary source or the proposed modification is a major modification, it must achieve LAER for

the maintenance pollutant and for which the proposed new source or modification is major.

(b) An allocation from a growth allowance shall not be used to meet the requirement for offsets in Section (4) of this Section. The growth allowance emissions shall be unavailable until such time as sufficient demonstration is made to reinstate the growth allowance emissions.

(8) **Industrial Growth Allowance and Offset Allocation.**

(a) Industrial growth allowances for sources in a maintenance plan area are identified in and governed by the Washington State Implementation Plan and the applicable maintenance plan for the applicable maintenance plan area.

(b) The growth allowance emissions may be increased or decreased as provided in a revision to the maintenance plan submitted to and approved by EPA. In the event of a confirmed ozone violation, the growth allowance for VOC and NO_x emissions shall be eliminated and new sources shall be required to implement LAER and offsets. Growth allowance emissions may be reinstated as provided in the EPA approved maintenance plan.

(c) The owner or operator of a proposed new major source or major modification emitting VOCs or NO_x, may obtain a portion of any remaining emissions in the respective growth allowance in accordance with the following process:

(i) Access is on a first-come-first-served basis, based on the date of a complete notice of construction and allowance allocation request;

(ii) No single source may receive an emissions allocation of more than 50% of any remaining growth allowance, or up to 10 tons per year, whichever is greater. On a case-by-case basis, the SWAPCA Board of Directors may approve an emissions allocation of greater than 50% upon consideration of the following:

(A) Information submitted by the source to SWAPCA justifying its request for exceeding the 50% emissions allocation, based on significant economic, employment, or other benefits to the maintenance plan area that will result from the proposed new major source or major modification;

(B) Information provided by SWAPCA on other known new major sources or major modifications seeking an emissions allocation from the same growth allowance; and

(C) Other relevant information submitted by the source or SWAPCA.

(iii) To avoid jeopardizing maintenance of the ozone standard during the interim years of the ozone maintenance plan, SWAPCA shall allocate only a portion of the VOC and NO_x growth allowances each year. SWAPCA will track use of VOC and NO_x emissions from the growth allowances. The amount of the growth allowance that can be allocated each year is identified in the applicable ozone maintenance plan.

(iv) The amount of the CO growth allowance that can be allocated is identified in the applicable CO maintenance plan, if any.

(d) If no emissions remain in the respective growth allowance or the contingency plan has been triggered which effectively zeros the growth allowance, the owner or operator of the proposed major source or major modification shall pro-

vide offsets. Applicants in a maintenance area shall demonstrate the following:

(i) A demonstration shall be provided showing that the proposed offsets will improve air quality in the same geographical area affected by the new source or modification. This demonstration may require that air quality modeling be conducted according to the procedures specified in 40 CFR Part 51, Appendix W, Guideline on Air Quality Models (Revised).

(ii) Offsets for VOCs or nitrogen oxides shall be within the same maintenance plan area as the proposed source. Offsets for particulate matter, PM₁₀, sulfur dioxide, carbon monoxide, nitrogen dioxide, lead, and other pollutants shall be less than the level of significant air quality impact. (Refer to SWAPCA 400-110 (1)(g) for significance levels).

(iii) New sources or modifications shall meet the following offset requirements:

(A) within a designated maintenance plan area, the offsets shall provide reduction which are equivalent or greater than the proposed increases. The offsets shall be appropriate in terms of short term, seasonal, and yearly time periods to mitigate the impacts of the proposed emissions;

(B) outside a designated maintenance plan area, owners or operators of new sources or modifications which have a significant air quality impact on the maintenance plan area as provided in SWAPCA 400-113(3) shall provide emission offsets which are sufficient to reduce impacts to levels below the significant air quality impact level with the maintenance plan area; and

(C) The emission reductions must provide for a net air quality benefit.

(I) New major sources within an ozone maintenance plan area shall:

(a) Offset the new VOC emissions at a ratio of 1.1 to 1, if the VOC emissions exceed either 100 tons per year or 700 pounds per day.

(b) Offset the new NO_x emissions at a ratio of 1.1 to 1, if the NO_x emissions exceed either 100 tons per year or 700 pounds per day.

(II) Sources within an ozone maintenance plan area undergoing major modifications shall:

(a) Offset the entire VOC emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(b) Offset the entire NO_x emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(III) New major sources within a carbon monoxide maintenance plan area shall:

(a) Offset the new carbon monoxide emissions at a ratio of 1 to 1, if the carbon monoxide emissions exceed either 100 tons per year or 700 pounds per day.

(IV) Sources within a carbon monoxide maintenance plan area undergoing major modifications shall:

(a) Offset the entire carbon monoxide emissions increase at a ratio of 1 to 1, if such increase exceeds either 100 tons per year or 700 pounds per day.

(D) New major sources or major modifications with CO emissions greater than 250 tpy are required to obtain offsets

and comply with the PSD requirements of SWAPCA 400-141.

(iv) The emission reduction shall be of the same type of pollutant as the emissions from the new source or modification. Sources of PM₁₀ shall be offset with particulate in the same size range.

(v) The emission reductions shall be contemporaneous, that is, the reductions shall take effect prior to the time of startup but not more than two years prior to the submittal of a complete notice of construction application for the new source or modification. This time limitation may be extended through banking, as provided in SWAPCA 400-130, 400-131 and 400-136 for banking activities approved after the effective date of this regulation. In the case of replacement facilities, SWAPCA may allow simultaneous operation of the old and new facilities during the startup period of the new facility provided that emissions do not exceed the new emission limits.

(vi) New major sources or major modifications in a maintenance plan area shall:

(A) The proposed new level of allowable emissions of the source or emissions units providing the reduction must be less than the current level of actual emissions of that source or emission unit(s). No emission reduction can be credited for actual emissions which exceed the current allowable emissions of the source or emissions unit(s) providing the reduction. Emission reductions imposed by local, state, or federal regulations, regulatory orders or permits cannot be credited.

(B) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable by the time the new or modified source commences operation. The new source may not commence operation before the date such reductions are actually achieved. SWAPCA may allow simultaneous operation of the old and new facilities during the startup period of the new facility provided that the facility wide emissions do not exceed the new emission limit.

(9) **PSD Applicability.** If the proposed new source is a major stationary source or the proposed modification is a major modification for the purposes of the PSD program as described in SWAPCA 400-141, the new source or modification shall meet the requirements of that program for all pollutants. For maintenance plan pollutants, the source shall meet all PSD requirements in addition to the additional requirements of this Section.

(10) **Toxics.** If the proposed new source or modification will emit any toxic air pollutants regulated under ((SWAPCA)) WAC 173-460, the source shall meet all applicable requirements of that regulation.

(11) **Visibility.** If the proposed new source is a major stationary source or the proposed modification is a major modification, the source shall meet all the visibility protection requirements of 40 CFR 52.27 as in effect on ((August 1, 1995)) July 1, 1998.

(12) **Noncompliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

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

AMENDATORY SECTION

SWAPCA 400-112 Requirements for New Sources in Nonattainment Areas

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.331 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 3); Amended by Board 12/18/79; Amended by Board 8/18/81; Amended by Board 3/20/84; Renumbered from 400-110 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

A Notice of Construction application to establish a new source or make a modification to a source in a nonattainment area, shall result in the issuance of an Order of Approval or other regulatory order, which contains such conditions as are reasonably necessary to assure the maintenance of compliance with this section, if the Authority determines that the proposed project satisfies each of the following requirements:

(1) The proposed new source or modification will comply with all applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, emission standards adopted under Chapter 70.94 RCW and, the applicable emission standards of the Authority.

(2) The proposed new source will employ BACT for all air contaminants, except that if the new source is a major stationary source or the proposed modification is a major modification it must achieve LAER for the contaminants for which the area has been designated nonattainment and for which the proposed new source or modification is major.

(3) The proposed new source will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the Washington State Implementation Plan and will comply with SWAPCA 400-113(3) for all contaminants for which the area has not been designated nonattainment.

(4) If the proposed new source is a major stationary source or the proposed modification is a major modification, and the Authority has determined, based on review of an analysis performed by the source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(5) If the proposed new source or the proposed modification is major for the contaminant for which the area is designated nonattainment, allowable emissions of the pollutant for which the area has been designated nonattainment from the proposed new source or modification are offset by reductions in actual emissions of the pollutant for which the area has been designated nonattainment from existing sources in the nonattainment area so as to represent (when considered together with the nonattainment provisions of section 172 of the FCAA) reasonable further progress. All offsetting emission reductions must satisfy the following requirements:

(a) The proposed new level of allowable emissions of the source or emissions units providing the reduction must be less than the current level of actual emissions of that source or emission unit(s). No emission reduction can be credited for actual emissions which exceed the current allowable emissions of the source or emissions unit(s) providing the

reduction. Emission reductions imposed by local, state, or federal regulations, regulatory orders or permits cannot be credited.

(b) The emission reductions must provide for a net air quality benefit.

(i) New major sources within a marginal ozone nonattainment area shall:

(A) Offset the new VOC emissions at a ratio of 1.1 to 1, if the VOC emissions exceed either 100 tons per year or 700 pounds per day.

(B) Offset the new NO_x emissions at a ratio of 1.1 to 1, if the NO_x emissions exceed either 100 tons per year or 700 pounds per day.

(ii) Sources within a marginal ozone nonattainment area undergoing major modifications shall:

(A) Offset the entire VOC emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(B) Offset the entire NO_x emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(iii) New major sources within a moderate carbon monoxide nonattainment area shall:

(A) Offset the new carbon monoxide emissions at a ratio of 1 to 1, if the carbon monoxide emissions exceed either 100 tons per year or 700 pounds per day.

(iv) Sources within a moderate carbon monoxide nonattainment area undergoing major modifications shall:

(A) Offset the entire carbon monoxide emissions increase at a ratio of 1 to 1, if such increase exceeds either 100 tons per year or 700 pounds per day.

(c) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable by the time the new or modified source commences operation. The new source may not commence operation before the date such reductions are actually achieved. An emission reduction credit issued under SWAPCA 400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(6) Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

(7) If the proposed new source is a major stationary source or the proposed modification is a major modification, the owner or operator has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules contained in the EPA-approved Washington State Implementation Plan.

(8) If the proposed new source is a major stationary source or the proposed modification is a major modification for the purposes of the PSD program described in SWAPCA 400-141 it meets the requirements of that program for all contaminants for which the area has not been designated nonattainment.

(9) If the proposed new source or modification will emit any toxic air pollutants regulated under ((SWAPCA)) WAC 173-460, the source meets all applicable requirements of that Chapter.

(10) If the proposed new source is a major stationary source or the proposed modification is a major modification, the Authority has complied with the visibility protection review requirements of 40 CFR 52.28(c) through (h), as in effect on August 1, 1996~~8~~, and determined that the project meets the criteria set forth in 40 CFR 52.28(g). For purposes of this subsection definitions referenced in 40 CFR 52.28(b) are incorporated by reference, except that the term "visibility protection area" means any Class I area, and terms defined in SWAPCA 400-030 shall have the meanings defined in that section. References in 40 CFR 52.28 to "the Administrator" shall mean the agency (either Ecology or the Authority) processing the Notice of Construction application.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-113 Requirements for New Sources in Attainment or Nonclassifiable Areas

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.331 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 3); Amended by Board 12/18/79; Amended by Board 8/18/81; Amended by Board 3/20/84; Renumbered from 400-110 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

Any person proposing to install, construct or operate a new source or emission unit or modification to an existing source or emission unit shall file a Notice of Construction application with the Authority and shall be subject to the New Source Review provisions of SWAPCA 400-110. Confidential information shall be identified as set forth in SWAPCA 400-270. A Notice of Construction application to establish a new source or make a modification to a source in an area that is in attainment or unclassifiable for any air contaminant the proposed new source would emit and that is in attainment or unclassifiable for ozone if the proposed new or modified source would emit VOCs or NO_x, shall result in the issuance of an Order of Approval or other regulatory order. Such order shall contain such conditions as are reasonably necessary to assure the maintenance of compliance with this section, if it is determined that the proposed project satisfies all of the following requirements:

(1) The proposed new source or modification will comply with all applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, emission standards adopted under Chapter 70.94 RCW and the applicable emission standards of the Authority.

(2) The proposed new source or modification will employ BACT for all pollutants not previously emitted or whose emissions would increase as a result of the new source or modification.

(3) Allowable emissions from the proposed new source or modification will not delay the attainment date for an area not in attainment or unclassifiable nor cause or contribute to a violation of any ambient air quality standard. This requirement will be considered to be met if the projected impact of

the allowable emissions from the proposed new source or the projected impact of the increase in allowable emissions from the proposed modification at any location within a nonattainment or maintenance plan area does not exceed the following levels for the pollutant(s) for which the area has been designated nonattainment:

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO	-	-	0.5 mg/m ³	-	2 mg/m ³
SO ₂	1.0 µg/m ³	5 µg/m ³	-	25 µg/m ³	30 µg/m ³
PM ₁₀	1.0 µg/m ³	5 µg/m ³	-	-	-
NO ₂	1.0 µg/m ³	-	-	-	-

An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.

(4) If the proposed new source is a major stationary source or the proposed modification is a major modification for purposes of the PSD program described in SWAPCA 400-141, it meets all applicable requirements of that section.

(5) If the proposed new source or the proposed modification will emit any toxic air pollutants regulated under ((SWAPCA)) WAC 173-460, the source meets all applicable requirements of that Chapter ((program)).

(6) Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

(7) If, within the meaning of the PSD program described in SWAPCA 400-141, the proposed new source is a major stationary source or the proposed modification is a major modification, the source would not cause an adverse impact upon visibility.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-115 Standards of Performance for New Sources

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.331 RCW. Originally adopted by Board 12/18/79; Amended by Board 4/17/84 (renumbered to 400-135); Amended by Board 12/16/86; 93-16-007 filed 7/22/93, effective 8/22/93; 95-17-084 filed 8/21/95, effective 9/21/95]

Title 40, Code of Federal Regulations, Part 60 (Standards of Performance for New Sources), as in effect on August 1, 1996~~8~~, is adopted by reference except for sections 60.5 (Determination of Construction or Modification) and 60.6 (Review of Plans). The term "Administrator" in 40 CFR Part 60 shall mean the Administrator of EPA, the Director of Ecology and the Control Officer of the Authority.

As of August 1, 1996~~8~~, the federal regulations adopted by reference hereby set standards of performance affecting facilities for the following described subparts of 40 CFR Part 60:

- 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 250 megawatts (ref. 40 CFR 60.40 et seq.)

PERMANENT

Subpart Da	Electric utility steam generating units for which construction commenced after September 18, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts (ref. 40 CFR 60.40a et seq.)	Subpart T	Phosphate fertilizer industry: Wet process phosphoric acid plants (ref. 40 CFR 60.200 et seq.)
Subpart Db	Industrial-commercial-institutional steam generating units for which construction commenced after June 19, 1984, and prior to June 19, 1986, which have a heat input greater than 29 megawatts but less than 73 megawatts (ref. 40 CFR 60.40b et seq.)	Subpart U	Phosphate fertilizer industry: Superphosphoric acid plants (ref. 40 CFR 60.210 et seq.)
Subpart Dc	Small industrial-commercial-institutional steam generating units (ref. 40 CFR 60.40c et seq.)	Subpart V	Phosphate fertilizer industry: Diammonium phosphate plants (ref. 40 CFR 60.220 et seq.)
Subpart E	Incinerators (ref. 40 CFR 60.50 et seq.)	Subpart W	Phosphate fertilizer industry: Triple superphosphate plants (ref. 40 CFR 60.230 et seq.)
Subpart Ea	Municipal waste combustors (ref. 40 CFR 60.50a et seq.)	Subpart X	Phosphate fertilizer industry: Granular triple superphosphate storage facilities (ref. 40 CFR 60.240 et seq.)
Subpart F	Portland cement plants (ref. 40 CFR 60.60 et seq.)	Subpart Y	Coal preparation plants (ref. 40 CFR 60.250 et seq.)
Subpart G	Nitric acid plants (ref. 40 CFR 60.70 et seq.)	Subpart Z	Ferroalloy production facilities (ref. 40 CFR 60.260 et seq.)
Subpart H	Sulfuric acid plants (ref. 40 CFR 60.80 et seq.)	Subpart AA	Steel plants: Electric arc furnaces (ref. 40 CFR 60.270 et seq.)
Subpart I	Asphalt concrete plants (ref. 40 CFR 60.90 et seq.)	Subpart AAa	Steel plants: Electric arc furnaces and argon-oxygen decarburization vessels (ref. 40 CFR 60.270a et seq.)
Subpart J	Petroleum refineries which produce less than 25,000 barrels per day of refined products (ref. 40 CFR 60.100 et seq.)	Subpart BB	Kraft pulp mills (ref. 40 CFR 60.280 et seq.)
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 (ref. 40 CFR 60.110 et seq.)	Subpart CC	Glass manufacturing plants (ref. 40 CFR 60.290 et seq.)
Subpart Ka	Storage vessels for petroleum liquids constructed after May 18, 1978, which have a capacity greater than 40,000 gallons (ref. 40 CFR 60.110a et seq.)	Subpart DD	Grain elevators (ref. 40 CFR 60.300 et seq.)
Subpart Kb	Volatile organic liquid storage vessels (including petroleum liquid storage vessels) constructed, reconstructed, or modified after July 23, 1984 (ref. 40 CFR 60.110b et seq.)	Subpart EE	Industrial surface coating: Metal furniture (ref. 40 CFR 60.310 et seq.)
Subpart L	Secondary lead smelters (ref. 40 CFR 60.120 et seq.)	Subpart GG	Stationary gas turbines (ref. 40 CFR 60.330 et seq.)
Subpart M	Brass and bronze ingot production plants (ref. 40 CFR 60.130 et seq.)	Subpart HH	Lime manufacturing plants (ref. 40 CFR 60.340 et seq.)
Subpart N	Iron and steel plants (ref. 40 CFR 60.140 et seq.)	Subpart KK	Lead-acid battery plants (ref. 40 CFR 60.370 et seq.)
Subpart O	Sewage treatment plants (ref. 40 CFR 60.150 et seq.)	Subpart LL	Metallic mineral processing plants (ref. 40 CFR 60.380 et seq.)
Subpart P	Primary copper smelters (ref. 40 CFR 60.160 et seq.)	Subpart MM	Automobile and light duty truck surface coating operations (ref. 40 CFR 60.390 et seq.)
Subpart Q	Primary zinc smelters (ref. 40 CFR 60.170 et seq.)	Subpart NN	Phosphate rock plants (ref. 40 CFR 60.400 et seq.)
Subpart R	Primary lead smelters (ref. 40 CFR 60.180 et seq.)	Subpart PP	Ammonium sulfate manufacture (ref. 40 CFR 60.420 et seq.)
Subpart S	Primary aluminum reduction plants (ref. 40 CFR 60.190 et seq.)	Subpart QQ	Publication rotogravure printing (ref. 40 CFR 60.430 et seq.)
		Subpart RR	Pressure sensitive tape and label surface coating operations (ref. 40 CFR 60.440 et seq.)
		Subpart SS	Industrial surface coating: Large appliances (ref. 40 CFR 60.450 et seq.)
		Subpart TT	Industrial surface coating: Metal coils (ref. 40 CFR 60.460 et seq.)
		Subpart UU	Asphalt processing and asphalt roofing manufacture (ref. 40 CFR 60.470 et seq.)
		Subpart VV	Synthetic Organic Chemical Manufacturing Industry equipment leaks (VOC) (ref. 40 CFR 60.480 et seq.)

Subpart WW	Beverage can surface coating operations (ref. 40 CFR 60.490 et seq.)
Subpart XX	Bulk gasoline terminals (ref. 40 CFR 60.500 et seq.)
Subpart AAA	New residential wood heaters (ref. 40 CFR 60.530 et seq.)
Subpart BBB	Rubber tire manufacturing industry (ref. 40 CFR 60.540 et seq.)
Subpart DDD	VOC emissions from the polymer manufacturing industry (ref. 40 CFR 60.560 et seq.)
Subpart FFF	Flexible vinyl and urethane coating and printing (ref. 40 CFR 60.580 et seq.)
Subpart GGG	Petroleum refineries - compressors and fugitive emission sources (ref. 40 CFR 60.590 et seq.)
Subpart HHH	Synthetic fiber production facilities (ref. 40 CFR 60.600 et seq.)
Subpart III	VOC emissions from Synthetic Organic Chemical Manufacturing Industry air oxidation unit processes (ref. 40 CFR 60.610 et seq.)
Subpart JJJ	Petroleum dry cleaners (ref. 40 CFR 60.620 et seq.)
Subpart KKK	Equipment leaks of VOC from onshore natural gas processing plants (ref. 40 CFR 60.630 et seq.)
Subpart LLL	Onshore natural gas processing; SO ₂ emissions (ref. 40 CFR 60.640 et seq.)
Subpart NNN	VOC emissions from Synthetic Organic Chemical Manufacturing Industry distillation operations (ref. 40 CFR 60.660 et seq.)
Subpart OOO	Nonmetallic mineral processing plants (ref. 40 CFR 60.670 et seq.)
Subpart PPP	Wool fiberglass insulation manufacturing plants (ref. 40 CFR 60.680 et seq.)
Subpart QQQ	VOC emissions from petroleum refinery waste water emissions (ref. 40 CFR 60.690 et seq.)
<u>Subpart RRR</u>	<u>Volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes (ref. 40 CFR 60.700 et seq.)</u>
Subpart SSS	Magnetic tape coating facilities (ref. 40 CFR 60.710 et seq.)
Subpart TTT	Industrial surface coating: Surface coating of plastic parts for business machines (ref. 40 CFR 60.720 et seq.)
Subpart VVV	Polymeric coating of supporting substrates facilities (ref. 40 CFR 60.740 et seq.)
<u>Subpart WWW</u>	<u>Municipal solid waste landfills (ref. 40 CFR 60.750 et seq.)</u>

Note: For fossil fuel fired steam generators referenced by Subpart D and Da above, units greater than 250 megawatts are governed by the Energy Facility Site Evaluation Council (EFSEC) in Title 463 WAC.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 99-07-029

PERMANENT RULES

SOUTHWEST AIR

POLLUTION CONTROL AUTHORITY

[Filed March 10, 1999, 10:20 a.m.]

Date of Adoption: October 15, 1998.

Purpose: The following sections were approved by the SWAPCA board of directors as documented in Board Resolution 1998-8 on October 15, 1998.

Title of Rule - SWAPCA 400 - General Regulations for Air Pollution Sources.

Sections:

SWAPCA 400-130 Use of Emission Reduction Credits - the purpose of this section is to identify the requirements and procedures for use of emission reduction credits.

SWAPCA 400-131 Deposit of Emission Reduction Credits into Bank - the purpose of this section is to identify the requirements and procedures for depositing emission reduction credits into the credit bank maintained by SWAPCA.

SWAPCA 400-136 Maintenance of the Bank - the purpose of this section is to identify the requirements for SWAPCA to maintain the emission reduction credit bank, how the credits are to be issued and describe how to manage credits that are expired beyond the five year time limit.

SWAPCA 400-141 Prevention of Significant Deterioration (PSD) - the purpose of this section is to identify the requirements for those sources subject to federal PSD permitting requirements and provides reference to the appropriate federal regulations.

SWAPCA 400-171 Public Involvement - the purpose of this section is to identify the requirements for public notice of SWAPCA permitting actions and the process by which public involvement is to be administered. This section also identifies those documents which are required to be subject to a public notice and those that are not required to be subject to public notice.

SWAPCA 400-180 Variance - the purpose of this section is to identify the requirements and procedures for obtaining a variance from the SWAPCA board of directors for an existing permit or the established regulations.

SWAPCA 400-230 Regulatory Actions and Civil Penalties - the purpose of this section is to identify the different types of common regulatory orders issued by SWAPCA and identify the enforcement and civil penalty authorities of SWAPCA.

SWAPCA 400-250 Appeals - the purpose of this section is to identify the requirements and procedures for appeals to any SWAPCA decision or regulatory order issued by the agency.

SWAPCA 400-280 Powers of Authority - the purpose of this section is to identify the powers vested in SWAPCA under RCW 70.94.141 and 43.21B.240.

APPENDIX A SWAPCA Method 9 - Visual Opacity Determination Method - the purpose of this section is to describe the procedure for performing visual opacity readings as part of compliance and enforcement activities by agency staff. This procedure is also to be used by sources in

SWAPCA jurisdiction for self determination of compliance with regulatory standards and permit conditions.

Summary of Sections:

SWAPCA 400-130 Use of Emission Reduction Credits - this section identifies the requirements and procedures for use of emission reduction credits once they have been deposited in the emission reduction credit bank maintained by SWAPCA.

SWAPCA 400-131 Deposit of Emission Reduction Credits into Bank - this section describes the requirements and procedures for depositing emission reduction credits into the credit bank maintained by SWAPCA.

SWAPCA 400-136 Maintenance of the Bank - this section identifies the requirements for SWAPCA to maintain the emission reduction credit bank, how the credits are to be issued and describe how to manage credits that are expired beyond the five year time limit.

SWAPCA 400-141 Prevention of Significant Deterioration (PSD) - this section describes the requirements for those sources which would be subject to the federal PSD permitting requirements and provides reference to the appropriate federal regulations.

SWAPCA 400-171 Public Involvement - this section describes the requirements for public notice of SWAPCA permitting actions and the process by which public involvement is to be administered. This section also identifies those documents which are required to be subject to a public notice process and those that are not required to be subject to public notice.

SWAPCA 400-180 Variance - this section describes the requirements and procedures for obtaining a variance from the SWAPCA board of directors for an existing permit or the established regulations.

SWAPCA 400-230 Regulatory Actions and Civil Penalties - this section identifies the different types of common regulatory orders issued by SWAPCA and identifies the enforcement and civil penalty authorities of SWAPCA.

SWAPCA 400-250 Appeals - this section identifies the requirements and procedures for appeals to any SWAPCA decision or regulatory order issued by the agency.

SWAPCA 400-280 Powers of Authority - this section identifies the powers and authority vested in SWAPCA under RCW 70.94.141 and 43.21B.240.

APPENDIX A SWAPCA Method 9 - Visual Opacity Determination Method - this section describes the procedure for performing visual opacity readings as part of compliance and enforcement activities by agency staff. This procedure is also to be used by sources in SWAPCA jurisdiction for self determination of compliance with regulatory standards and permit conditions.

Short Explanation of Rule, its Purpose, and Anticipated Effects and Changes:

SWAPCA 400-130 Use of Emission Reduction Credits - this is an existing rule. Proposed modifications are to reorganize this section for clarity and to make changes in the program to conform to federal guidelines on emission reduction credit banking so credits deposited by sources can be used to satisfy federal program requirements. This section is being changed to describe only the process of using ERCs. The existing discussion on acquisition is being moved to

SWAPCA 400-131. The most significant change in this process is to change the time for use of an ERC from ten years to five years as required by the federal program guidelines.

SWAPCA 400-131 Deposit of Emission Reduction Credits into Bank - this is an existing rule. Proposed modifications are to restructure the section for clarity and describe only the actions involved in depositing emission reduction credits into the credit bank. The section has been rewritten for clarity.

SWAPCA 400-136 Maintenance of the Bank - this is an existing rule. Proposed modifications are to rewrite the section to only address the activities surrounding how SWAPCA maintains credits in the bank, how they are to be assigned, procedures for public involvement, annual review of the bank and expiration of credits older than five years.

SWAPCA 400-141 Prevention of Significant Deterioration (PSD) - this is an existing rule. The proposed modification is to update the adoption date of the federal rules from 1993 to 1998 by incorporation by reference. No substantial changes in this program are proposed.

SWAPCA 400-171 Public Involvement - this is an existing rule. Proposed changes are clarifications to change the reference from SWAPCA 401 to chapter 173-401 WAC because SWAPCA adopts chapter 173-401 WAC by reference and has no separate rule. There are no substantive changes proposed in this section.

SWAPCA 400-180 Variance - this is an existing rule. Proposed changes are for clarification. The reference to "this chapter" is being changed to "SWAPCA regulations" for clarity. No substantial changes are proposed.

SWAPCA 400-230 Regulatory Actions and Civil Penalties - this is an existing rule. Proposed changes are to change the date at which a source is considered to be in default of payment of registration fees. The date is being changed from July 31 of each year to June 30 to better align this activity with the required fiscal year of SWAPCA.

SWAPCA 400-250 Appeals - this is an existing rule. Proposed changes are to change the reference to RCW 43.21B.120 to accurately reflect the proper citation of RCW 43.21B.230. No substantial changes in this section are proposed.

SWAPCA 400-280 Powers of Authority - this is an existing rule. Proposed changes are to add another subsection which identifies the requirement that SWAPCA may not hold adjudicative proceedings as provided in RCW 43.21B.240.

APPENDIX A SWAPCA Method 9 - Visual Opacity Determination Method - this is a new section. This section is proposed to describe the procedure for performing visual opacity readings as part of compliance and enforcement activities by agency staff. This procedure is also to be used by sources in SWAPCA jurisdiction for self determination of compliance with regulatory standards and permit conditions. SWAPCA previously relied on the ecology method for visual determinations, however, the ecology method makes recommendations for the reader to take pictures and record humidity which is not necessary to take an accurate visual reading. This rule making will document the method used by SWAPCA in current visual readings.

Citation of Existing Rules Affected by this Order: See Purpose above.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 98-15-144 on July 22, 1998.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 9, 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.

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

March 3, 1999

Robert D. Elliott
Executive Director

AMENDATORY SECTION

SWAPCA 400-130 ~~Acquisition and~~ Use of Emission Reduction Credits

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption by Board 12/16/86; Amended by Board 9/21/93; 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

~~((1) **Applicability.** The owner(s) or operator(s) of any source of emission shall maintain its ability to use said emission and credits through approval and registration with the Authority. If the owner or operator of said emission source fails to maintain or renew its annual registration 6 months beyond the due date or fails to pay its operating permit fee 6 months beyond the due date and has not applied for emission reduction credits, then said amount of emission reductions credit shall revert back to the Authority. The Authority shall keep said credits in a credit bank to be used by the Authority in the best interest of the area.~~

~~(2) **Conditions for Establishing a Credit Bank.**~~

~~(a) Only those quantifiable emissions that are considered surplus over and above those allowed in the Washington State Implementation Plan shall be available for said credit bank.~~

~~(b) Surplus emissions shall not have been transferred to another entity for use.~~

~~(c) Emission reduction credits established under SWAPCA 400-131 or used under SWAPCA 400-136 for a specific source shall not be included in the bank for public allocation unless specifically requested by the owner(s) or operator(s) of the source making the emissions reduction.~~

~~(3) **Use of Credits.**~~

~~(a) The Authority may authorize, at its discretion, the use of said particulate credits and volatile organic compound credits from the regional emission credit bank for other new air contaminant sources within the specific nonattainment~~

~~area in the region to satisfy any emission offset requirements. (Refer to SWAPCA 400-110 (3)(e) and WAC 173-400 (6)(d))~~

~~(b) The Authority has established its policy and procedure for distribution of said credits as contained in (4) Maintenance of the Bank.~~

~~(4) **Maintenance of the Bank.**~~

~~(a) The Authority shall maintain an emission inventory of all allowed and actual emissions in each of the nonattainment areas by pollutant or in the case of ozone, it shall be volatile organic compounds and oxides of nitrogen.~~

~~(b) The emission credits contained in the bank shall be discounted by 10% to allow for minor emissions increases in nonattainment areas by minor sources each of which would emit less than one ton per year. Minor emitting sources shall be ineligible to receive or expend an emission reduction credit as identified in SWAPCA 400-131 or 400-136.~~

~~(c) The Control Officer shall not provide greater than 10% of the available emission credit in the bank to a single applicant. Any exceptions shall be considered on a case-by-case basis by the Board of Directors after a public notice at the next regularly scheduled meeting.~~

~~(d) When the Control Officer issues credits for a new or modified source, the amount of emission credits shall be removed from the bank and a Regulatory Order allocating the emission credits shall be issued. The applicant shall start a continuous program of construction or process modification within 18 months. If the applicant does not exercise the approval, the emission credit shall expire and revert to the bank. If there is a six month delay in construction after the start of a continuous program to construct or modify a source or emissions unit the remaining amount of the emission reduction credit shall be reviewed by the Control Officer and if it is determined that the unused portion of the credit will not, in all likelihood be used in the next year, the Control Officer shall notify the applicant that the credit has expired and shall revert to the bank. The applicant shall reapply, as needed, for use of the emission reduction credits when a continuous program of construction or modification begins.~~

~~(5) **Annual Review.** The Authority shall review the content and administration of this section annually to ensure regulatory consistency and equity of impact as a portion of the Washington State Implementation Plan review. The results of the review shall be reported to the Board with recommendations for correction if the Control Officer deems that such corrections are necessary to properly administer the emission credit bank.)~~

(1) **Applicability.** The owner(s) of any emission reduction credits (ERCs) shall maintain its ability to use said ERCs through approval and registration with the Authority. An ERC shall be considered an emission unit and subject to registration. If the owner of said ERCs fails to maintain or renew its annual registration 6 months beyond the due date or fails to pay its operating permit fee 6 months beyond the due date or has not applied for emission reduction credits, then said amount of emission reductions credit shall revert back to the Authority. The Authority may keep said credits in a credit bank to be used by the Authority in the best interest of the area or credits may be dissolved by the Authority.

(2) Permissible use. An ERC may be used to satisfy the requirements for authorization of a bubble under SWAPCA 400-120, as a part of a determination of "net emissions increase," as an offsetting reduction to satisfy the requirements for new source review per SWAPCA 400-111, 400-112, SWAPCA 400-113(3) or SWAPCA 400-113(6), or to satisfy requirements for PSD review per SWAPCA 400-113(4). The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(3) Conditions of use. An ERC may be used only for the contaminant(s) for which it was issued and in the area for which it was issued except in the case of transportable pollutants which will be determined on a case by case basis and per interagency agreement for interstate transfers. The Authority may impose additional conditions of use of ERCs to account for temporal and spatial differences between the emissions unit(s) that generated the ERC and the emissions unit(s) that use the ERC. An ERC may not be used in place of a growth allowance as required under SWAPCA 400-111.

(4) Procedures to use ERC.

(a) Individual use. When an ERC is used under subsection (2) of this section, an application must be submitted to the Authority and the Authority must issue a Regulatory Order for use of the ERC(s).

(b) Sale or transfer of an ERC. An ERC may be sold or otherwise transferred to a person other than the person to whom it was originally issued. An application for the sale or transfer must be submitted by the original ERC owner to the Authority. After receiving an application, the Authority shall reissue a Regulatory Order to the new owner. The Authority shall update the ERC bank to reflect the availability or ownership of ERCs. No discounting shall happen as part of this type of transaction.

(5) Expiration of ERC. An unused ERC and any unused portion thereof shall expire five years after the date the emission reduction was accomplished and not the date of the Regulatory Order.

(6) Maintenance of ERCs. The Authority has established its policy and procedure for maintenance of said credits in 400-136 Maintenance of Emission Reduction Credits in Bank.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-131 Issuance of Emission Reduction Credits Deposit of Emission Reduction Credits into Bank

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.850 RCW. Originally adopted by Board as 400-120 on 3/20/84; renumbered to 400-131 in 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

((1) Applicability. The owner(s) or operator(s) of any source(s) may apply to the Authority for an emission reduction credit (ERC) if the source proposes to reduce its actual emissions rate for any contaminant regulated by state or federal law or regulations established to implement such law(s) for which the emission requirement may be stated as an

allowable limit in weight of contaminant per unit time for the emissions unit(s) involved.

(2) Time of application. The application for an ERC must be made prior to or within one hundred eighty days after the emission reduction has been accomplished.

(3) Conditions. An ERC may be authorized provided the following conditions have been demonstrated to the satisfaction of the Authority:

(a) The quantity of emissions in the ERC shall be less than or equal to the old allowable emissions rate or the old actual emissions rate, whichever is the lesser, minus the new allowable emissions rate.

(b) The ERC application must include a description of all the changes that are required to accomplish the claimed emissions reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent shutdown of equipment, specified control practices and any other pertinent supporting information.

(c) The ERC must be large enough to be readily quantifiable relative to the source strength of the emissions unit(s) involved.

(d) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction under SWAPCA 400-112(5) nor as part of a bubble transaction under SWAPCA 400-120 nor to satisfy NSPS, NESHAPS, BACT, LAER or other applicable emission standard.

(e) Concurrent with or prior to the authorization of an ERC, the applicant shall have received a regulatory order or permit that establishes total allowable emissions from the source or emissions unit of the contaminant for which the ERC is requested, expressed as weight of contaminant per unit time.

(f) The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(4) Additional information. Within thirty days after the receipt of an ERC application, supporting data and documentation, the Authority may require the submission of additional information needed to review the application.

(5) Approval. Within thirty days after all required information has been received, the Authority shall approve or deny the application, based on a finding that conditions in subsection (3)(a) through (f) of this section have been satisfied or not. If the application is approved, the Authority shall:

(a) Issue a regulatory order or equivalent document to assure that the emissions from the source will not exceed the allowable emission rates claimed in the ERC application, expressed in weight of pollutant per unit time for each emission unit involved. The regulatory order or equivalent document or Order shall include any conditions required to assure that subsection (3)(a) through (f) of this section will be satisfied. If the ERC depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit operation of the affected equipment; and,

(b) Issue a certificate of emission reduction credit. The certificate shall specify the issue date, the contaminant(s) involved, the emission decrease expressed as weight of pol-

lutant per unit time, the nonattainment area involved, if applicable, and the person to whom the certificate is issued.)

(1) Applicability. The owner(s) or operator(s) of any source(s) may apply to the Authority for an emission reduction credit (ERC) if the source proposes to reduce its actual emissions rate for any contaminant regulated by state or federal law or regulations established to implement such law(s) for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions unit(s) involved.

(2) Time of application. The application for an ERC must be made prior to or within one hundred eighty days after the emission reduction has been accomplished.

(3) Conditions. An ERC may be authorized provided the following conditions have been demonstrated to the satisfaction of the Authority.

(a) No part of the emission reductions claimed for credit shall have been required pursuant to an adopted rule.

(b) The quantity of emissions reductions claimed for credit shall be less than or equal to the old allowable emissions rate or the old actual emissions rate, whichever is the lesser, minus the new allowable emissions rate.

(c) The ERC application must include a description of all the changes that are required to accomplish the claimed emissions reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent shutdown of equipment, specified control practices and any other pertinent supporting information.

(d) The quantity of emission reductions claimed must be greater than 1 ton/year and be readily quantifiable for the emissions unit(s) involved.

(e) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction under SWAPCA 400-112(5) nor as part of a bubble transaction under SWAPCA 400-120 nor to satisfy NSPS, NESHAPS, BACT, MACT, RACT, LAER or other applicable emission standard.

(f) Concurrent with or prior to the authorization of an ERC, the applicant shall have received a regulatory order or permit that establishes total allowable emissions from the source or emissions unit of the contaminant for which the ERC is requested, expressed as weight of contaminant per unit time.

(g) The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(4) Additional information. Within thirty days after the receipt of an ERC application, supporting data and documentation, the Authority may require the submission of additional information needed to review the application.

(5) Approval. Within thirty days after all required information has been received, the Authority shall approve or deny the application, based on a finding that conditions in subsection (3)(a) through (f) of this section have been satisfied or not. If the application is approved, the Authority shall:

(a) Issue a regulatory order or equivalent document to assure that the emissions from the source will not exceed the

allowable emission rates claimed in the ERC application, expressed in weight of pollutant per unit time for each emission unit involved. The regulatory order or equivalent document shall include any conditions required to assure that subsection (3)(a) through (f) of this section will be satisfied. If the ERC depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit operation of the affected equipment; and,

(b) Issue a Regulatory Order with emission reduction credit. The Regulatory Order shall specify the issue date, the contaminant(s) involved, the emission decrease expressed as weight of pollutant per unit time, the nonattainment area involved, if applicable, and the person to whom the Regulatory Order is issued.

(6) Maintenance and use of ERCs. The Authority has established its policy and procedure for maintenance of said ERCs in SWAPCA 400-136. The Authority has established its policy and procedure for use of ERCs in SWAPCA 400-130.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-136 Use of Emission Reduction Credits Maintenance of Emission Reduction Credits in Bank

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.850 RCW. Original Board adoption as 400-125 4/17/84; renumbered to 400-136 in 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

~~((1) Permissible use.~~ An ERC may be used to satisfy the requirements for authorization of a bubble under SWAPCA 400-120, as a part of a determination of "net emissions increase," as an offsetting reduction to satisfy the requirements for new source review per SWAPCA 400-111, 400-112, SWAPCA 400-113(3) or SWAPCA 400-113(6), or to satisfy requirements for PSD review per SWAPCA 400-113(4).

~~(2) Surrender of ERC certificate.~~ When an ERC is used under subsection (1) of this section, the certificate for the ERC must be surrendered to the Authority. If only a portion of the ERC is used, the amended certificate will be returned to the owner.

~~(3) Conditions of use.~~ An ERC may be used only for the contaminant(s) for which it was issued. The Authority may impose additional conditions of use to account for temporal and spatial differences between the emissions unit(s) that generated the ERC and the emissions unit(s) that use the ERC.

~~(4) Sale of an ERC.~~ An ERC may be sold or otherwise transferred to a person other than the person to whom it was originally issued. Within thirty days after the transfer of ownership, the certificate must be surrendered to the Authority. After receiving the certificate, the Authority shall reissue the certificate to the new owner. The Authority shall update the ERC bank to reflect the availability of ERCs.

~~(5) Time of use.~~ An unused ERC and any unused portion thereof shall expire ~~((ten))~~ five years after the date of

original issue. The ten year time period shall restart with each ERC transaction involving the use, lease or sale of emission reduction credits. The emission reduction credits shall be discounted at the applicable ratio, if any, on a one time basis at the time of original issue. Emission reduction credits shall not be discounted each time a transaction is completed.

(6) Discount due to change in SIP. If reductions in emissions beyond those identified in the Washington State Implementation Plan are required to meet an ambient air quality standard, if the standard cannot be met through controls on operating sources, and if the plan must be revised, an ERC may be discounted by the Authority after public involvement per SWAPCA 400-171. Any such discount shall not exceed the percentage of additional emission reduction needed to reach attainment.))

(1) Applicability. The Authority shall maintain a bank for the purpose of administering emission reduction credits (ERCs) pursuant to the provisions of RCW 70.94.850.

(2) Conditions for ERC Bank.

(a) ERCs established under SWAPCA 400-131 or used under SWAPCA 400-130 shall be available for said credit bank.

(b) ERCs shall not have been used, sold or transferred to another entity for use; e.g. ERCs cannot be banked or used by two sources at one time.

(c) ERCs established under SWAPCA 400-131 or used under SWAPCA 400-130 for a specific source shall be allocated privately and not be included in the bank for public allocation unless 1) specifically requested by the owner(s) of the ERCs or 2) if the owner of the ERCs fails to maintain registration with the Authority.

(3) Maintenance of the Bank.

(a) The Authority shall maintain an emission inventory of all allowed and actual emissions (including any growth allowances identified in a Maintenance Plan) in each of the nonattainment or maintenance areas by pollutant or in the case of ozone, it shall be volatile organic compounds and oxides of nitrogen.

(b) The ERCs contained in the bank shall be discounted by 10% to allow for minor emissions increases in nonattainment areas by minor sources each of which would emit less than one ton per year. Minor emitting sources shall be ineligible to receive or expend an emission reduction credit as identified in SWAPCA 400-131 or 400-130. ERCs shall be discounted at the applicable ratio on a one time basis at the time of deposit into the bank. ERCs shall not be discounted each time a transaction is completed. If reductions in emission beyond those identified in the Washington State Implementation Plan are required to meet an ambient air quality standard, if the standard cannot be met through controls on operating sources, and if the plan must be revised, ERCs may be discounted by the Authority over and above the initial 10% without compensation to the holder after public involvement per SWAPCA 400-171. Any such discount shall not exceed the percentage of additional emission reduction needed to reach or maintain attainment status.

(c) The Control Officer shall not provide greater than 25% of the available emission credit in the bank to a single applicant. Any exceptions shall be considered on a case-by-

case basis by the Board of Directors after a public notice at the next regularly scheduled meeting.

(d) When the Control Officer issues credits for a new or modified source, the amount of emission credits shall be removed from the bank and a Regulatory Order allocating the emission credits shall be issued. The applicant shall start a continuous program of construction or process modification within 18 months. If the applicant does not exercise the approval, the emission credit shall expire and revert to the bank. If there is a six month delay in construction after the start of a continuous program to construct or modify a source or emissions unit the remaining amount of the emission reduction credit shall be reviewed by the Control Officer and if it is determined that the unused portion of the credit will not, in all likelihood be used in the next year, the Control Officer shall notify the applicant that the credit has expired and shall revert to the bank. The applicant shall reapply, as needed, for use of the emission reduction credits when a continuous program of construction or modification begins.

(4) Annual Review. The Authority shall review the content and administration of this section annually to ensure regulatory consistency and equity of impact as a portion of the Washington State Implementation Plan review. The results of the review shall be reported to the Board with recommendations for correction if the Control Officer deems that such corrections are necessary to properly administer the emission credit bank.

(5) Issuance and use of ERCs. The Authority has established its policy and procedure for deposit of ERCs in SWAPCA 400-131. The Authority has established its policy and procedure for use of ERCs in SWAPCA 400-130.

(6) Expiration of Public Credits.

(a) Emissions reduction credits deposited in the bank for public allocation (public bank) as the result of the shutdown of the Carborundum facility expired on July 8, 1996 as provided in Regulatory Order SWAPCA 86-843 establishing such credits.

(b) Emission reduction credits deposited in the bank for public allocation as the result of Board Resolution 1988-3 amended by Board Resolution 1989-3 expire on January 24, 1999.

(c) Credits and Regulatory Orders/certificates assigned to sources from this public bank expired on July 8, 1996.

(d) Each source which had credits assigned from the public bank by issuance of a Regulatory Order shall be approved for the total of previous emissions plus any additional amount approved under a Regulatory Order assigning public credits to that source effective July 8, 1996.

(e) Emission reduction credits deposited into the public bank shall not be available to be assigned to any source after July 8, 1996.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Southwest Air Pollution Control Authority and appears in the Register pursuant to the requirements of RCW 34.08.040.

PERMANENT

AMENDATORY SECTION**SWAPCA 400-141 Prevention of Significant Deterioration (PSD)**

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

Section 40 CFR 52.21, Subparts (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (r), (t), (v), and (w), Prevention of Significant Deterioration of Air Quality, as in effect on (~~(March 3, 1993)~~) July 1, 1998, are incorporated by reference with the following additions and modifications:

(1) **Administrator.** In 40 CFR 52.21 (b)(17), federally enforceable, (f)(1)(v), (f)(3), and (f)(4)(i), exclusions from increment consumption, (g), redesignation, (1) and (2), air quality models, (p)(2), federal land manager, and (t), disputed permits or redesignations, the word "Administrator" shall be construed in its original meaning. In 40 CFR 52.21 (b)(3)(iii) Administrator shall mean the Administrator of EPA, Director of Ecology and Control Officer of the Authority.

(2) **Contemporaneous.** Subpart 40 CFR 52.21 (b)(3)(ii) is changed to read: "An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date ten years before construction on the particular change commences and the date that the increase from the particular change occurs. If a decrease occurred more than one year prior to the date of submittal of the Notice of Construction application for the particular change it can only be credited if the decrease has been documented by an emission reduction credit."

(3) **Public participation.** Subpart 40 CFR 51.166(q) public participation, as in effect (~~(March 3, 1993)~~) July 1, 1998 is hereby incorporated by reference except that in 40 CFR 51.166 (q)(2)(iv), the phrase "specified time period" shall mean thirty days and the word "Administrator" shall mean the EPA Administrator.

(4) **Section 40 CFR 51.166 Subpart (p)(1).** Sources Impacting Federal Class I areas -additional requirements - Notice to EPA, as in effect on (~~(March 3, 1993)~~) July 1, 1998, is herein incorporated by reference.

(5) **Secondary emissions.** Subpart 40 CFR 52.21 (b)(18) is changed to read: Emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains coming to or from the new or modified stationary source; and

(b) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(6) **Significant.** The definition of "significant" in 40 CFR 52.21 (b)(23) is changed to exclude from the list of pollutants which may trigger PSD review any pollutant listed under FCAA §112.

[Note - SWAPCA has not been delegated authority by Ecology for the PSD program.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION**SWAPCA 400-171 Public Involvement**

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

(1) **Applicability.** The Authority shall provide public notice for a preliminary determination of a regulatory order prior to issuance of the final approval or denial of any of the following types of applications or other actions:

(a) Notice of Construction application for any new or modified source or emissions unit that results in a significant increase in emissions (actual or potential to emit) of any pollutant regulated by state or federal law (significant as defined in SWAPCA 400-030). Furthermore, public notice for each regulatory order for a non-significant increase may be provided at the discretion of the Control Officer; or

(b) Any application or other proposed action for which a public hearing is required by PSD rules; or

(c) Any order to determine RACT; or

(d) Any order to establish a compliance schedule or a variance; or

(e) The establishment, disestablishment or redesignation of a nonattainment area, or the changing of the boundaries thereof; or

(f) Any order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation; or

(g) Any order to authorize a bubble; or

(h) An order issued under SWAPCA 400-091 which establishes limitations on a source's potential to emit for the purpose of opting out of the Title V Air Operating Permit program (~~(SWAPCA)~~) WAC 173-401; or

(i) Any Notice of Construction application or other proposed action made pursuant to this regulation in which there is a substantial public interest according to the discretion of the Control Officer;

except:

(j) Any Notice of Construction application or other proposed action which results in a reduction of emissions from a previously established emission limit in an order issued by the Authority that has previously been subjected to public notice, or other permitting authority, may not require public notice in accordance with this section. This exemption does not apply to those sources opting out of the Title V Air Operating Permit program (~~(SWAPCA)~~) WAC 173-401.

(k) Any Notice of Construction application or other proposed action which does not result in a net emissions increase (actual or potential to emit) unless otherwise required by the Authority.

(l) Public notice for a preliminary determination of a regulatory order may run concurrently with immediate approval to operate provided that a corporate officer of the source sub-

mits an affidavit that they understand the liability associated with the action and agree to implement any necessary changes that would have otherwise resulted from the public comment process.

(2) **Public notice.** Public notice shall be made only after all information required by the Authority has been submitted and after applicable preliminary determinations, if any, have been made. Public notice shall include:

(a) Availability for public inspection in at least one location near the proposed project, of the nonproprietary information submitted by the applicant and of any applicable preliminary determinations, including analyses of the effect(s) on air quality.

(b) Publication in a newspaper of general circulation in the area of the proposed project of notice:

(i) Giving a brief description of the proposal;

(ii) Advising of the location of the documents made available for public inspection;

(iii) Advising of a thirty-day period for submitting written comment to the Authority;

(iv) Advising that a public hearing may be held if the Authority determines within a thirty-day period that significant public interest exists.

(c) A copy of the notice shall be sent to the EPA Regional Administrator.

(d) Public participation procedures for Notice of Construction applications that are processed in coordination with an application to issue or modify a Title V Air Operating Permit shall be conducted as provided in ((SWAPCA)) WAC 173-401.

(3) **Public comment.** No final decision on any application or action of any of the types described in subsection (1) of this section, shall be made until the public comment period has ended and any comments received have been considered. Unless a public hearing is held, the public comment period shall be the thirty-day period for written comment published as provided above. If a public hearing is held, the public comment period shall extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.

(4) **Public hearings.** The applicant, any interested governmental entity, any group or any person may request a public hearing within the thirty-day period published as above. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. The Authority may, at the discretion of the Control Officer, hold a public hearing if it determines significant public interest exists. Any such hearing(s) shall be held upon such notice and at a time(s) and place(s) as the Authority deems reasonable.

(5) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, such procedures may be used in lieu of the provisions of this section.

(6) **Public information.** Copies of Notices of Construction, regulatory orders, and modifications thereof which are issued hereunder shall be available for public inspection on request at the Authority.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-180 Variance

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.181 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 2.07); Amended by Board 12/18/79; Amended by Board 4/17/84; Repealed and renumbered to 400-180 93-21-005 filed 10/7/93, effective 11/8/93, previous 400-180 (Maintenance of Pay was deleted; 95-17-084 filed 8/21/95, effective 9/21/95)]

Any person who owns or is in control of a plant, building, structure, establishment, process, or equipment may apply to the Authority for a variance from provisions of ((this chapter)) SWAPCA regulations governing the quality, nature, duration, or extent of discharges of air contaminants in accordance with the provisions of RCW 70.94.181.

(1) **Jurisdiction.** Sources in any area over which the Authority has jurisdiction shall make application to the Authority. Variances to state rules shall require approval of Ecology prior to being issued by the Authority. The Board of Directors may grant a variance only after public involvement per SWAPCA 400-171.

(2) **Full faith and credit.** Variances granted in compliance with state and federal laws by the Authority for sources under its jurisdiction shall be accepted as variances to this regulation.

(3) **EPA concurrence.** No variance or renewal shall be construed to set aside or delay any requirements of the Federal Clean Air Act except with the approval and written concurrence of the USEPA.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-230 Regulatory Actions & Civil Penalties

[Statutory Authority: Chapter 70.94.141 RCW, 70.94.211 RCW, 70.94.332 RCW, 70.94.425 RCW, 70.94.431, and 70.94.435 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 2 & 3); Amended by Board renumbered to 400-130 12/18/79; Amended by Board renumbered to 400-200 4/17/84; Amended by Board 12/16/86; Amended by Board 1/21/92, 92-04-030 filed 1/28/92; 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

(1) The Authority shall have the power to issue such orders as necessary to effectuate the purpose of RCW 70.94 as provided in, including but not limited to: RCW 70.94.141, RCW 70.94.152, RCW 70.94.153, and RCW 70.94.332. The Authority may issue orders for establishing limits and controls for sources of emissions to the ambient air or otherwise controlling activities that may violate any ambient air quality regulations, including but not limited to the following:

(a) **Order of Approval.** An Order of Approval may be issued by the Authority to provide approval for a Notice of Construction application. An Order of Approval shall contain the following, as appropriate: reference to applicable regulations, emissions limitations, control and process equipment operating conditions and limits, testing requirements, monitoring and reporting requirements, and other conditions considered necessary by the Authority. An Order of Approval which constitutes the final determination of the Authority, shall be issued within sixty (60) calendar days of a complete application or for those projects subject to public notice, as promptly as possible after the 30 calendar day pub-

lic notice requirements have been satisfied. An Order of Approval may not identify all applicable regulations. All Orders of Approval may be subject to the public notice and comment procedures set forth in SWAPCA 400-171 (2), (3), and (4).

(b) **Order of Denial.** An Order of Denial may be issued by the Authority in response to a Notice of Construction application that is incomplete, not feasible, proposes inadequate control technology, or otherwise would result in violation of any ambient air quality regulation, control technology requirement, or emission standards in the area in which the equipment would be located and operated. All Orders of Denial shall be subject to the public notice and comment procedures set forth in SWAPCA 400-171 (2), (3), and (4).

(c) **Order of Violation.** An Order of Violation may be issued by the Authority to document specific regulation(s) alleged to be violated and establish the facts surrounding a violation. An Order of Violation may be prepared by the Authority only after formal written notice has been served on the source as provided in (2) below. The Order of Violation shall not be subject to the public notice and comment period set forth in SWAPCA 400-171.

(d) **Order of Prevention.** An Order of Prevention may be issued by the Authority to a source to prevent installation or construction of an emission unit, performance of an activity, or actions that may otherwise endanger public health that are on site, in the process of being installed, or have been installed, constructed or operated without prior Authority review and approval or actions are being conducted in addition to a previous Authority approval without prior approval. An Order of Prevention shall not be subject to the public notice and comment period set forth in SWAPCA 400-171.

(e) **Consent Order.** A Consent Order may be issued by the Authority to establish emission limits, operation and maintenance limits or controls, monitoring or reporting requirements, testing requirements, or other limits or controls as necessary that are determined by the Authority to be necessary. Actions identified in a Consent Order may be necessary to demonstrate compliance with applicable regulations, provide measures whereby a source may take the necessary steps to achieve compliance, establish a schedule for activities, or provide other information that the Control Officer deems appropriate. The Consent Order shall be agreed to and signed by an appropriate officer of the company or source for which the Consent Order is prepared and the Control Officer, or designee, of the Authority. Installation, construction, modification or operation of a source shall be subject to the New Source Review requirements of SWAPCA 400-110. A Consent Order shall not be subject to the public notice and comment period set forth in SWAPCA 400-171 at the discretion of the Control Officer.

(f) **Compliance Schedule Order.** A Compliance Schedule Order may be issued by the Authority to a source to identify specific actions that must be implemented to establish, maintain, and/or demonstrate compliance with applicable regulations and identify the schedule by which these actions must be completed. All Compliance Schedule Orders shall be subject to the public notice and comment period set

forth in SWAPCA 400-171 (2), (3), and (4). Refer to SWAPCA 400-161 for further guidance.

(g) **Order of Discontinuance.** The Authority may issue an Order of Discontinuance for any source that has discontinued operations and/or has not maintained their source registration for emission units. (Refer to SWAPCA 400-100 (2)(d)). An Order of Discontinuance may also be issued to a source that continues to operate in violation of applicable regulations and requirements. Such issuance may require that the source cease operations that result in emissions to the ambient air that are in violation of applicable regulatory orders, requirements and regulations.

(i) Any source that fails to maintain registration fees (i.e., payment of registration fees by ~~(July 31)~~ June 30 of each year), may be issued an Order of Discontinuance. The Order of Discontinuance shall identify the source location and emission units and identify the most current registration activity.

(ii) The Order of Discontinuance shall provide for discontinuance of operations at that source or facility and all previous authorizations, orders, agreements or stipulations shall be superseded, directly or indirectly, by the Order of Discontinuance without specific identification in the Order of Discontinuance.

(iii) The Order of Discontinuance shall be subject to the public notice and comment procedures set forth in SWAPCA 400-171 (2), (3), and (4).

(iv) For sources that have ceased doing business in SWAPCA jurisdiction, or the state of Washington, the Authority shall make a reasonable effort to establish contact with the source. If the Authority is unable to establish contact with the source, the Authority shall issue an Order of Discontinuance via certified mail, return receipt requested, to the last known address. Lack of response by the source or return of the notification by the US Postal Service shall be considered de facto evidence that the source has discontinued operations.

(v) The source shall have 30 calendar days from the date of the final regulatory order after public notice in which to pay past due and current registration fees. If the source fails to pay current registration fees, the source or facility shall be considered discontinued and shall be required to submit a Notice of Construction application under the New Source Review procedures of SWAPCA 400-110 prior to resuming or restarting operations.

(vi) Facilities that terminate operations and discontinue paying registration fees, and are later sold with the intent of restart, in whole or in part, shall be subject to the New Source Review requirements of SWAPCA 400-110.

(vii) Sources that continue to operate in violation of established regulatory orders and regulations, the Authority may issue an Order of Discontinuance that is effective immediately.

(h) **Corrective Action Order.** The Authority may issue a Corrective Action Order to any source within its jurisdiction, including an unregistered source, to provide measures to correct or rectify a situation that has immediate or eminent threat to person(s) or the public or that may be in violation or have the potential of being in violation of federal, state and local regulations or may pose a threat to the public health,

welfare or enjoyment of personal or public property. The Corrective Action Order may specify specific actions that must be implemented to demonstrate compliance with applicable regulations and identify dates by which these actions must be completed. All actions and dates identified in the Corrective Action Order shall be fully enforceable. Corrective Action Orders shall be issued to correct immediate problems. Corrective Action Orders shall not be subject to the public notice and comment period set forth in SWAPCA 400-171.

(i) **Administrative Order.** An Administrative Order may be issued to a source by the Authority to provide for implementation of items not addressed above, that are identified by the Control Officer. An Administrative Order may contain emission limits, operating and maintenance limitations and actions, schedules, resolutions by the Board of Directors, provide for establishing attainment or nonattainment boundaries, establish working relationships with other regulatory agencies, establish authority for enforcement of identified actions, and other activities identified by the Authority. All Administrative Orders shall be subject to the public notice and comment procedures set forth in SWAPCA 400-171 (2), (3), and (4).

(j) **Resolutions.** A Resolution may be issued by the Authority as a means to document or record a Board of Directors decision, authorize or approve budget transactions, establish policies, or other actions as determined by the Authority. Resolutions shall not be subject to the public notice and comment procedures set forth in SWAPCA 400-171.

(2) The Authority may take any of the following regulatory actions to enforce its regulations to meet the provisions of RCW 43.21B.300 which is incorporated herein by reference.

(a) **Enforcement Actions by the Authority—Notice of Violation.** At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431, the Authority shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this regulation, or the rule, regulation, regulatory order or permit requirement alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the Authority may require that the alleged violator or violators appear before it for the purpose of providing the Authority information pertaining to the violation or the charges complained of. Every Notice of Violation shall offer to the alleged violator an opportunity to meet with the Authority prior to the commencement of enforcement action. Enforcement action may be commenced by the Authority by issuance of a regulatory order as provided in SWAPCA 400-230(1).

(b) **Civil Penalties.**

(i) In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of Chapter 70.94 or 70.120 RCW, or any of the rules in force under such chapters may incur a civil penalty in an amount as set forth in RCW 70.94.431. Each such violation shall be a separate and distinct offense, and in case of a con-

tinuing violation, each day's continuance shall be a separate and distinct violation. Any person who fails to take action as specified by an order issued pursuant to this regulation shall be liable for a civil penalty as set forth by RCW 70.94.431 for each day of continued noncompliance.

(ii) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal. The maximum penalty amounts established in RCW 70.94.431 may be increased annually to account for inflation as determined by the State Office of the Economic and Revenue Forecast Council.

(iii) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300. Section 113 (e)(2) of the 1990 Clean Air Act Amendments provides that the number of "days of violation" is to be counted beginning on the first proven day of violation and continuing every day until the violator demonstrates that it achieved continuous compliance, unless the violator can prove by preponderance of the evidence that there were intervening days on which no violation occurred. This definition applies to all civil and administrative penalties.

(iv) All penalties recovered under this section by the Authority, shall be paid into the treasury of the Authority and credited to its funds.

(v) To secure the penalty incurred under this section, the Authority shall have a lien on any equipment used or operated in violation of its regulations which shall be enforced as provided in RCW 60.36.050. The Authority shall also be authorized to utilize a collection agency for nonpayment of penalties and fees.

(vi) In addition to other penalties provided by this regulation, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(3) **Assurance of Discontinuance.** The Control Officer may accept an assurance of discontinuance as provided in RCW 70.94.435 of any act or practice deemed in violation of this regulation as written and certified to by the source. Any such assurance shall specify a time limit during which discontinuance or corrective action is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of its regulations or any order issued thereunder which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the Superior Court.

(4) **Restraining Orders & Injunctions.** Whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of its regulations, the Control Officer, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is

alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(5) **Emergency Episodes.** The Authority may issue such orders as authorized by SWAPCA 435 via Chapter 70.94 RCW, whenever an air pollution episode forecast is declared.

(6) **Compliance Orders.** The Authority may issue a compliance order in conjunction with a Notice of Violation or when the Control Officer has reason to believe a regulation is being violated, or may be violated. The order shall require the recipient of the Notice of Violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated and completed.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-250 Appeals

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.221 RCW. Original Board adoption 12/18/79 as 400-140; Amended by Board renumbered to 400-220 4/17/84; renumbered to 400-250 93-21-005, filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

(1) Any decision or regulatory order issued by the Authority may be appealed to the Board of Directors as provided herein or appealed directly to the Pollution Control Hearings Board as provided by RCW 43.21B and WAC 371-08. In addition, Orders of Approval and permits issued in accordance with the PSD program may be appealed to the EPA Environmental Appeals Board, to the extent authorized in 40 CFR 124. If appealed to the Board of Directors, the procedure shall be as follows:

(a) The decision, Notice of Violation, or Order issued by the Control Officer shall become final unless, not later than 15 calendar days after the date the Order is served upon the owner or applicant, the owner or applicant petitions the Control Officer for reconsideration, with reasons for the reconsideration. If the Control Officer refuses to reconsider, the Control Officer shall so notify the owner or applicant in writing, giving reasons for the decision. Such ruling on the petition shall become final unless not later than 15 calendar days after such notice of refusal is served, the owner or applicant appeals to the Board setting forth the reasons for the appeal.

(b) The Control Officer may reverse or modify the Order and issue such an Order in replacement thereof as deemed proper. Such Order also may be appealed to the Board of Directors as in (a) above.

(c) Any failure of the Control Officer to act upon a petition for reconsideration 15 calendar days after the petition is delivered to the Authority, shall be considered as a refusal to reconsider.

(d) In lieu of a petition for reconsideration, the owner or applicant may appeal directly to the Board of Directors within the time specified in (a) above.

(2) The Board shall promptly hear and consider all appeals after providing reasonable notice to the appellant. The Board shall, within 30 calendar days of the hearing sustain, reverse or modify the Order of the Control Officer as it

deems proper. Such ruling of the Board shall be communicated to the appellant in writing and the appellant if aggrieved, may appeal de novo to the Pollution Control Hearings Board as provided in RCW 43.21B.~~((+20))~~ 230 and WAC 371-08.

(3) It is the intent of the Board in establishing this regulation concerning appeals to provide for a method of resolving issues at the Authority level. Consequently, Decisions and Orders of the Control Officer on compliance, new source review, or any other matter regulated herein except violations shall not be considered as commencing any appeal period for appeals to the Pollution Control Hearings Board. Such appeal period shall commence only when the final Order is issued by the Board of Directors and served upon the person aggrieved as provided in RCW 43.21B.120.

(4) Nothing contained herein shall be construed as denying the exclusive jurisdiction of the Pollution Control Hearings Board on violations as provided by RCW 43.21B.~~((+20-))~~

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-280 Powers of Authority

[Statutory Authority: Chapter 70.94.141 RCW. 95-17-084 filed 8/21/95, effective 9/21/95]

In addition to any other powers vested in the Authority, consistent with RCW 70.94.141, the Authority shall have the power to:

(1) Adopt, amend, and repeal its own rules and regulations, implementing RCW 70.94 and consistent with it, after consideration at a public hearing held in accordance with RCW 42.30. Rules and regulations shall also be adopted in accordance with the notice and adoption procedures set forth in RCW 34.05.320, those provisions of RCW 34.05.325 that are not in conflict with RCW 42.30, and with the procedures of RCW 34.05.340, 34.05.355 through 34.05.380, and with RCW 34.08, except that rules shall not be published in the Washington Administrative Code. Judicial review of rules adopted by the Authority shall be in accordance with Part V of RCW 34.05.

(2) Hold hearings relating to any aspect of or matter in the administration of RCW 70.94 not prohibited by the provisions of Chapter 62, Laws of 1970 ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath.

(3) Issue such orders as may be necessary to effectuate RCW 70.94 and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in Chapter 62, Laws of 1970 ex. sess.

(4) Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere.

(5) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract, or otherwise.

PERMANENT

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within the jurisdiction of the Authority.

(7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of RCW 70.94.

(8) Encourage and conduct studies, investigations and research relating to air pollution and its causes, effects, prevention, abatement and control.

(9) Collect and disseminate information and conduct educational and training programs relating to air pollution.

(10) Advise, consult, cooperate and contract with agencies and departments and the educational institutions of the state, other political subdivisions, industries, other states, interstate or interlocal agencies, and the United States government, and with interested persons or groups.

(11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with RCW 70.94, ordinances, resolutions, rules and regulations in force pursuant thereto, or any other provision of law.

(12) Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out any of the functions of RCW 70.94.

except:

(13) SWAPCA may not hold adjudicative proceedings pursuant to the Administrative Procedures Act (RCW 34.05). Such hearings shall be held by the Pollution Control Hearings Board as provided at RCW 43.21B.240.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Southwest Air Pollution Control Authority and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

APPENDIX A

SWAPCA METHOD 9

VISUAL OPACITY DETERMINATION METHOD

1. Principle

The opacity of emissions from stationary sources is determined visually by a qualified observer.

2. Procedure

The observer must be certified in accordance with the provisions of Section 3 of 40 CFR Part 60, Appendix A, Method 9, as in effect on July 1, 1998.

The observer shall stand at a distance sufficient to provide a clear view of the emissions with the sun oriented in the 140° sector to his back. Consistent with maintaining the above requirement, the observer shall, as much as possible,

make his observations from a position such that his line of vision is approximately perpendicular to the plume direction, and when observing opacity of emissions from rectangular outlets (e.g., roof monitors, open baghouses, noncircular stacks), approximately perpendicular to the longer axis of the outlet. The observer's line of sight should not include more than one plume at a time when multiple stacks are involved, and in any case, the observer should make his observations with his line of sight perpendicular to the longer axis of such a set of multiple stacks (e.g., stub stacks on baghouses).

The observer shall record the name of the plant, emission location, type of facility, observer's name and affiliation, and the date on a field data sheet. The time, estimated distance to the emission location, approximate wind direction, estimated wind speed, description of the sky condition (presence and color of clouds), and plume background are recorded on a field data sheet at the time opacity readings are initiated and completed.

Opacity observations shall be made at the point of greatest opacity in the portion of the plume where condensed water vapor is not present. The observer shall not look continuously at the plume, but instead shall observe the plume momentarily at 15 second intervals.

When condensed water vapor is present within the plume as it emerges from the emission outlet, opacity observations shall be made beyond the point in the plume at which condensed water vapor is no longer visible. When water vapor in the plume condenses and becomes visible at a distinct distance from the emission outlet, the opacity of emissions should be evaluated at the emission outlet prior to the condensation of water vapor and the formation of the steam plume.

Opacity observations shall be recorded to the nearest 5 percent at 15 second intervals on an observational record sheet. Each momentary observation recorded shall be deemed to represent the average opacity of emissions for a 15 second period.

3. Analysis

The opacity of the plume is determined by individual visual observations. Opacity shall be reported as the range of values observed during any consecutive 60 minutes. The opacity standard is exceeded if there are more than 12 observations, during any consecutive 60 minute period, for which an opacity greater than the standard is recorded.

4. References

Federal Register, Vol. 36, No. 247, page 24895, December 23, 1971.

"Criteria for Smoke and Opacity Training School 1970 - 1971" Oregon-Washington Air quality Committee."

"Guidelines for Evaluation of Visible Emissions" EPA 340/1-75-007."

Notes: 1) The difference between the SWAPCA Method 9 and WDOE Method 9 or WDOE Method 9A is the SWAPCA method does not recommend that the observer make note of the ambient relative humidity, ambient temperature, the point in the plume that the observations were made, the estimated depth of the plume at the point of observation, and the color and condition of the plume. In addition, the SWAPCA method does not recommend that pictures be taken.

2) The difference between the SWAPCA Method 9 and EPA Method 9 is in the data reduction section. The SWAPCA method establishes a three minute period in any one hour period where opacity can not exceed an opacity limit. For the SWAPCA method, 13 readings in a 1 hour period, or less, above the established opacity limit, no matter how much, constitutes a violation. The EPA method is an arithmetic average of any 24 consecutive readings at 15 second intervals. These values are averaged and this average value can not exceed the established opacity limit.

WSR 99-07-030
PERMANENT RULES
SOUTHWEST AIR
POLLUTION CONTROL AUTHORITY

[Filed March 10, 1999, 10:21 a.m.]

Date of Adoption: October 15, 1998.

Purpose: The purpose of these changes was to add a new section (SWAPCA 400-099) to document SWAPCA's per capita fee assessment as provided for under RCW 70.94.093 and to document necessary fee increases in both the per capita and New Source Review programs (SWAPCA 400-110).

Citation of Existing Rules Affected by this Order: Amending SWAPCA 400-099 and 400-110.

Statutory Authority for Adoption: RCW 70.94.093 and 70.94.141.

Adopted under notice filed as WSR 98-15-044 on July 8, 1998.

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

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

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

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

March 3, 1999

Robert D. Elliott
Executive Director

NEW SECTION

SWAPCA 400-099 Per Capita Fees

[Statutory Authority: Chapter 70.94.093 RCW]

Each component city or town and county shall pay such proportion of the supplemental income to the Authority as determined by either one of two methods as provided under RCW 70.94.093. The first method is based on the assessed valuation of property within such city or town and county

limits bears to the total assessed valuation of taxable property within the jurisdiction of SWAPCA. The second method is based on the total population of such city or town and county bears to the total population of the jurisdiction of SWAPCA. In addition, a combination of the two methods is allowable provided that such combination is shared at 50 percent each. The SWAPCA Board of Directors has elected to use the second method based on population (per capita). The "per capita" assessment has been established at 30 cents per person for calendar year 1999 and is to include an ongoing annual adjustment based on the consumer price index. The population shall be determined by the most recent census, estimate or survey by the federal bureau of census or any state board or commission authorized to make such a census, estimate or survey.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SWAPCA 400-110 New Source Review

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.152 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 3); Amended by Board 12/18/79; Amended by Board 8/18/81; Amended by Board 3/20/84; 92-06-015 filed 2/25/92, effective 3/25/92; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

(1) Applicability.

(a) New Source Review (NSR) means that if the new source, modification or substantial alteration or replacement meets the definition of "new source" then that new source or modification must demonstrate that all applicable emission standards have been or will be met by the proposed modification or new source. A complete Notice of Construction application shall be submitted for each source required to submit an application under the requirements of this section. Confidential information shall be identified as set forth in SWAPCA 400-270.

Before the Authority may review a Notice of Construction application, a filing fee of (~~(\$75.00)~~ **\$300.00**) and a review fee, as shown in Table A shall be submitted by the applicant. If offsetting emission reductions or other types of review identified in Table B are required to be performed by the Authority as a result of the proposed installation, alteration, or modification, an additional review fee shall be paid. (Total Fee = Filing Fee+ Review Fee [Table A] + Additional Review Fee [Table B]).

Notice of Construction application review fees based on emissions are to utilize actual or approved emissions, after controls, as supported by test data or emission factors, not potential to emit. Other review fees as noted in the fee tables are based on design capacities of the source equipment. Where a source may fall under multiple categories, only one fee per application shall apply; Table A fees are not considered additive as they apply to an application. In general, the fee determination shall be based on the primary emission unit or activity of the new, modified or altered source.

TABLE A
Notice of Construction Application Review Fees

i.	Fuel Burning Equipment (Million Btu/hr heat input @ design capacity):	((Fuel Change))	(New Installation))	
	2 or more but less than 5	((\$25.00)	\$100.00)	<u>\$300.00</u>
	5 or more but less than 10	((50.00)	200.00)	<u>400.00</u>
	10 or more but less than 30	((100.00)	350.00)	<u>550.00</u>
	30 or more but less than 50	((200.00)	500.00)	<u>700.00</u>
	50 or more but less than 100	((300.00)	1,000.00)	<u>1200.00</u>
	100 or more but less than 250	((400.00)	2,500.00	
	250 or more but less than 500	((500.00)	4,000.00	
	500 or more	((600.00)	6,000.00	
ii.	Discharge from control equipment or from uncontrolled process equipment (Actual Cubic Feet per Minute - ACFM):			
	Less than 5	\$((100.00)	<u>300.00</u>	
	5 or more but less than 5,000	((200.00)	<u>400.00</u>	
	5,000 or more but less than 20,000	((300.00)	<u>500.00</u>	
	20,000 or more but less than 50,000	((400.00)	<u>600.00</u>	
	50,000 or more but less than 100,000	((500.00)	<u>700.00</u>	
	100,000 or more but less than 250,000	1,000.00		
	250,000 or more but less than 500,000	2,000.00		
	500,000 or more	4,000.00		
iii.	Refuse Burning Equipment (Incinerators)(Tons/day):			
	0.5 or more but less than 5	\$((100.00)	<u>500.00</u>	
	5 or more but less than 12	1,000.00		
	12 or more but less than 250	3,000.00		
	250 or more		4,000.00	
iv.	Storage Tanks, Reservoirs, or Containers (Gallons-total capacity): (Other than gasoline or diesel fuel dispensing facilities)			
	250 or more but less than 10,000	\$((100.00)	<u>300.00</u>	
	10,000 or more but less than 40,000	((500.00)	<u>700.00</u>	
	40,000 or more but less than 100,000	1,000.00		
	100,000 or more	2,000.00		
v.	Gasoline Dispensing Facilities			
	Stage I	\$((100.00)	<u>300.00</u>	
	Stage II	((200.00)	<u>400.00</u>	
	Stages I & II, combined	((200.00)	<u>500.00</u>	
	((Installation of storage tanks greater than 2000 gallons	100.00))		
	Toxics review for gasoline facility	500.00	<u>1500.00</u>	

PERMANENT

vi.	Other (Not classified in Subsection i., ii., iii., or iv. above)	\$ ((+)) 200.00/ton of emission	
vii.	Toxic Air Contaminants	\$ ((+)) 200.00 up to one ton and \$100.00 for each additional ton	
viii.	Major Source or Major Modification	\$5,000.00	
ix.	Synthetic minor application (including, but not limited to: Title V, HAP)	Not to exceed \$5,000.00	
x.	Particulate Matter and Fugitive Emissions from Rock Crushing, Material Transfer and Ship Loading (Emissions - tons per year)		
	1.0 or more but less than or equal to 10	\$ ((100.00))	<u>300.00</u>
	More than 10 but less than or equal to 50	((500.00))	<u>700.00</u>
	More than 50 but less than or equal to 100	1,000.00	
	More than 100 but less than 250	2,500.00	
	250 or greater	5,000.00	
xi.	Modifications to an Existing Order	\$ ((200.00))	<u>300.00</u>
xii.	Installation or Operation of a Temporary, Substitute or Emergency Source	\$ ((300.00))	<u>500.00</u>

TABLE B
Other Review Fees

The following fees are considered additive to the filing and review fees assessed for Notice of Construction applications (Table A). These fees apply to activities that may be requested of and performed by the Authority with or without submittal of a Notice of Construction application and are not part of the activities normally performed by the Authority as part of the Notice of Construction application review.

xiii.	Emission Offset Analysis <u>or Bubble</u>	\$ ((200.00))	<u>400.00</u>
xiv.	Emission Reduction Credit (ERC) Application (Deposit or withdrawal)	\$ ((200.00))	<u>400.00</u>
xv.	State Environmental Policy Act (SEPA) - Lead Agency	\$1000.00	
xvi.	Environmental Impact Statement (EIS) Review	\$500.00	
xvii.	RACT/BACT/MACT/BART/LAER Determination	((2,000.00))	<u>\$50.00/hr</u>
xviii.	Variance request	\$500.00	

(b) A Notice of Construction application that meets the minimum requirements for New Source Review must be filed by the owner or operator and an Order of Approval issued by the Authority prior to the establishment of any new source or emission unit or modification which is listed in SWAPCA 400-100 or required to obtain an Operating Permit under RCW 70.94.161.

(c) The Authority may require that:

- (i) a Notice of Construction application be filed by the owner or operator of a proposed new source or modification,
- (ii) the source meets all New Source Review requirements, and
- (iii) an Order of Approval be issued by the Authority prior to the establishment of any new source or emission unit

or modification, other than a single family or a duplex dwelling.
(d) New Source Review of a modification shall be limited to the emission unit or units proposed to be added to an existing source or modified and the air contaminants whose emissions would increase as a result of the modification.

(e) New Source Review is not required for those sources whose facility wide combined emissions (potential to emit) do not exceed the limits specified in SWAPCA 400-101 or whose emission unit capacities are less than the minimum quantities specified in Table A of SWAPCA 400-110 (1)(a). The owner or operator of an exempt facility shall maintain sufficient documentation acceptable to the Authority to substantiate that the source is entitled to exemption under this section. An emission unit exempt from registration under

PERMANENT

SWAPCA 400-100 or 400-101 may be exempt from New Source Review requirements.

(f) New Source Review is not required when the following conditions are met:

(i) Performance of routine maintenance or repair that involves the replacement of like-in-kind air pollution control equipment or controls. This includes upgrades of parts or components where due to wear or breakage, parts or components must be replaced and exact replacement parts or components are no longer available from the original equipment manufacturer or after market vendors. In no case shall the replacement parts result in an increase in actual emissions above allowable emissions;

(ii) A process change is made that does not result in an emission of a different type not previously approved or an increase in capacity and total air pollutant emissions;

(iii) A process change is made that does not result in an emission of a different type of toxic air pollutant, as provided in SWAPCA 460, not previously approved and individual

toxic air pollutant emissions do not exceed the Small Quantity Emission Rates specified in the Small Quantity Emission Rate tables in SWAPCA 460-080 (annual rate);

(iv) A raw material composition change that does not result in individual toxic air pollutant emissions that exceed the Small Quantity Emission Rates specified in the Small Quantity Emission Rate tables in SWAPCA 460-080 (annual rate);

(g) Any source required to submit a Notice of Construction application for New Source Review is required to demonstrate that all applicable emission standards have been or will be met by the proposed modification or new source. Examples of applicable emissions standards may include, but not be limited to: RACT, BACT, LAER, BART, MACT, NSPS, NESHAPS, and any ambient air quality standards as identified in Table C. Requirements for new and modified sources and replacement or alteration of control equipment are further addressed in SWAPCA 400-111, 400-112, 400-113, 400-114, and 400-151.

TABLE C
Emission Concentration Regulatory Standards and Significance Levels

Pollutant	Averaging Period	Class II Significant Impact Criteria µg/m ³ (ppm)	Class I PSD Increments µg/m ³ (ppm)	Class II PSD Increments µg/m ³ (ppm)	NAAQS		Washington
					Primary Ambient Standards µg/m ³ (ppm)	Secondary Ambient Standards µg/m ³ (ppm)	Ambient Standards µg/m ³ (ppm)
Carbon Monoxide (CO) (WAC 173-475)	8-Hour	500	—	—	10,000 ^b (9.0)	10,000 ^b (9.0)	10,000 ^b (9.0)
	1-Hour	2,000	—	—	40,000 ^b (35.0)	40,000 ^b (35.0)	40,000 ^b (35.0)
Nitrogen Dioxide (NO ₂) (WAC 173-475)	Annual ^a (arithmetic mean)	1	2.5	25	100 (0.05)	100 (0.05)	100 (0.05)
Ozone (O ₃) (WAC 173-475)	1-Hour ^e	—	—	—	(0.12)	(0.12)	(0.12)
<u>Ozone (O₃) (40 CFR Part 50) (62 FR 38856)</u>	8-Hour ^f	—	—	—	<u>(0.08)</u>	<u>(0.08)</u>	
Sulfur Dioxide (SO ₂) (WAC 173-474)	Annual ^a	1	2	20	80 (0.03)	—	53 (0.02)
	24-Hour	5	5	91	365 ^b (0.14)	—	260 ^b (0.10)
	3-Hour	25	25	512	—	1,300 ^b (0.50)	—
	1-Hour	—	—	—	—	—	1,065 ^b (0.40) ^d
Total Reduced Sulfur (TRS)	1-Hour	—	—	—	—	—	—
Total Suspended Particulates (TSP) (WAC 173-470)	Annual ^a (geometric mean)	1	5	19	75	60 ^c	60
	24-hour	5	10	37	260 ^b	150 ^b	150 ^b
Particulate Matter less than 10 µm (PM ₁₀) (WAC 173-470)	Annual (geometric mean)	1	—	17	50	50	50
	24-Hour ⁱ	5	—	30	150 ^b	150 ^b	150 ^b
<u>Particulate Matter less than 2.5 µm (40 CFR Part 50) (62 FR 38652)</u>	Annual ^a	—	—	—	<u>15</u>	<u>15</u>	—
	24-Hour ^b	—	—	—	<u>65</u>	<u>65</u>	—
Lead	Quarterly Average	—	—	—	1.5	1.5	1.5

PERMANENT

Pollutant	Averaging Period	Class II Significant Impact Criteria µg/m ³ (ppm)	Class I PSD Increments µg/m ³ (ppm)	Class II PSD Increments µg/m ³ (ppm)	NAAQS		Washington
					Primary Ambient Standards µg/m ³ (ppm)	Secondary Ambient Standards µg/m ³ (ppm)	Ambient Standards µg/m ³ (ppm)
<p>µg/m³ = micrograms per cubic meter; ppm = parts per million</p> <p>^a Never to be exceeded.</p> <p>^b Not to be exceeded more than once per year.</p> <p>^c This is not a standard, rather it is to be used as a guide in assessing whether implementation plans will achieve the 24-hour standard.</p> <p>^d Also, 0.25 ppm not to be exceeded more than twice in seven days.</p> <p>^e Not to be exceeded on more than 1 day per calendar year as provided in WAC 173-475</p> <p>^f Based on the three year average of the annual fourth-highest daily maximum 8-hour average ozone concentration at each monitor.</p> <p>^g Based on the 3-year average of annual arithmetic mean PM_{2.5} concentrations.</p> <p>^h Based on the 3-year average of the 98th percentile of 24-hour PM_{2.5} concentrations at each monitor within an area.</p> <p>ⁱ Based on the 99th percentile of 24-hour PM₁₀ concentrations at each monitor.</p> <p>Annual standards never to be exceeded; short term standards not to be exceeded more than once per year unless otherwise noted. Sources include the EPA New Source Review Workshop Manual, 40 CFR 52.21 and individual WAC Chapters.</p>							

The significant impact criteria are used to determine if a proposed project or modification will cause a significant deterioration in ambient air quality for Class II areas. If a proposed project impacts (i.e., changes in ambient concentrations resulting from the proposed project or modification alone) are predicted to be less than the significant impact criteria, then the air quality analysis is complete at that point. If the ambient impact of a proposed project or modification exceeds these levels, compliance with available PSD increments and AAQS must then be demonstrated. If a proposed project or modification exceeds the significant ambient concentrations for Class II areas, monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

(2) **Completeness determination.** Within thirty (30) calendar days of receipt of a Notice of Construction application, the Authority shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary, based upon review of information already supplied, to complete the application as provided under RCW 70.94.152. For a project subject to PSD review under SWAPCA 400-141 a completeness determination includes a determination that the application provides all information required to conduct PSD review. The Authority may request additional clarification of information submitted from the source after a completeness determination has been made for a Notice of Construction application.

(3) **Final determination/Regulatory Orders.**

(a) Within sixty (60) calendar days of receipt of a complete application, the Authority shall either issue a final decision on the application or, for those projects subject to public notice, issue a preliminary determination and initiate notice and comment procedures under SWAPCA 400-171 on a proposed decision, followed as promptly as possible by a final decision. An owner or operator seeking to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70.94.161 and the Notice of Construction application required by this section. A Notice of Construction application designated for integrated review

shall be processed in accordance with ((SWAPCA)) WAC 173-401 procedures and deadlines.

(b) Every final determination on a Notice of Construction application that results in the issuance of an Order of Approval by the Authority shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Authority.

(c) If the new source is a major stationary source or the change is a major modification, the Authority shall submit any control technology determination(s) included in a final Order of Approval to the RACT/BACT/LAER clearinghouse maintained by EPA.

(4) **Appeals.** An Order of Approval, any conditions contained in an Order of Approval, the denial of a Notice of Construction application, or any other regulatory order issued by the Authority, may be appealed to the Board of Directors as specified in SWAPCA 400-220 of this regulation or appealed directly to the Pollution Control Hearings Board within 30 calendar days of receipt as provided in Chapter 43.21B RCW. The Authority 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 application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board and, where applicable, to the EPA Environmental Appeals Board.

(5) **Portable sources.** For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location without filing a Notice of Construction application for each location provided that:

(a) The source/emissions units are registered with the Authority.

(b) The source/emissions units have an Order of Approval as a portable source.

(c) The owner(s) or operator(s) notifies the Authority of intent to operate at the new location at least ten business days prior to starting the operation.

(d) The owner(s) or operator(s) supplies sufficient information including production quantities and hours of operation, to enable the Authority to determine that the operation

PERMANENT

will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards.

(e) The owner(s) and/or resident(s) of immediately adjacent properties shall be notified by the owner(s) or operator(s) of the portable source in writing at least 10 business days prior to commencement of operations at the proposed location with copies mailed to the Authority. Written notification to the adjacent landowners/residents shall be by certified mail with return receipt requested. Such written notification shall include a complete description of the proposed operation, the associated emissions control provisions and equipment, the total estimated project emissions, the name, address and phone number of the person in charge of the operation, and the address and phone number for SWAPCA. Written notification shall indicate that all comments shall be directed to the Authority.

(6) **Compliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

(7) **Expiration.** Approval to construct or modify a stationary source shall become invalid if construction is not commenced within eighteen months after the date of issuance of an Order of Approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The Authority may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date. The Authority may specify an earlier date for commencement of construction in an Order of Approval.

(8) **Temporary, Emergency, or Substitution Sources.**

(a) A temporary source shall be considered to be a new source. The Authority may require that a Notice of Construction application and applicable review fees be submitted before reviewing a request for a temporary, emergency or substitution source. The Authority may provide approval for special situations for a source without meeting the requirements for New Source Review when one or more of the following conditions are met:

(i) The temporary source is needed to replace a previously approved similar source where the approved source is non-functional due to breakdown or other similar circumstances beyond the control of the owner or operator. This may include replacement steam or power supply units where facilities have an immediate need to continue production or service to public or private industries, or have a need for an extended or unscheduled shutdown of equipment that is of a duration not otherwise planned for. The Authority may provide written approval for a temporary source that may include but not be limited to emission limits, operational or maintenance requirements or limitations, monitoring and reporting requirements, and testing requirements. Installation of a temporary source due to poor or improper maintenance or operations is required to submit a Notice of Con-

struction application for permanent replacement within 30 days of installation.

(ii) The temporary source is necessary to support public or private needs in the event of a local or regional disaster when proper planning could not be accommodated. In no event shall the temporary source be authorized for operations for durations greater than three months. Written approval shall be provided by the Authority that may contain but not be limited to: emission limits, operation and maintenance requirements and limitations, monitoring and reporting requirements, and testing requirements. For operations greater than three months the owner or operator shall submit a Notice of Construction application under New Source Review requirements (SWAPCA 400-110) for approval from the Authority.

(iii) The temporary source is a one time special need, urgent application, that can not otherwise be accommodated through the New Source Review process due to the critical nature of the source and time constraints. As a condition of approval under this expedited approval process, a new source of this type could not request to be allowed or expected to operate within the jurisdiction of the Authority for the following three years. Written approval shall be provided by the Authority that may contain but not be limited to: emission limits, operation and maintenance requirements and limitations, monitoring and reporting requirements and testing requirements. In no case shall approval be provided for operation greater than three months. For operations greater than three months, the owner or operator shall submit a Notice of Construction application under the New Source Review requirements of SWAPCA 400-110.

(b) An emergency source is the result of an emergency situation that could not otherwise be planned for. The Authority shall provide written approval for an emergency source provided that the owner or operator has provided sufficient documentation or demonstration of the need for the source to the satisfaction of the Control Officer. The written approval may include but not be limited to: emission limits, operation and maintenance requirements and limitations, monitoring and reporting requirements, and testing requirements. In no case shall approval be provided for operations greater than three months.

(c) A substitute source is the same as a temporary source as in (a) above. A substitute source may be of a different manufacturer and model number and size and may result in increased emissions from installation from previously approved equipment on a short term basis. The Authority shall provide written approval for a substitute source that may include but not be limited to: emission limits, operational or maintenance requirements or limitations, monitoring and reporting requirements, and testing requirements. In no event shall the substitute source be authorized for operations for durations greater than three months. For operations greater than three months, the owner or operator shall submit a Notice of Construction application under the New Source Review requirements of SWAPCA 400-110.

~~((9) Gasoline dispensing facilities.~~

~~(a) Owners or operators of gasoline dispensing facilities shall submit a Notice of Construction application for all new or upgraded facilities as defined in SWAPCA 491 prior to~~

installation, construction or modification. New Source Review fees shall apply for all Notice of Construction applications as identified in SWAPCA 400-110. Installation of vapor control equipment and compliance schedules shall be as provided in SWAPCA 491. Applications for installation of Stage II equipment shall include a Stage I application if the tanks, spill/overflow collection, cathodic protection or Stage I controls are to be replaced, changed or modified as part of the Stage II activity.

(b) All gasoline vapor control equipment installed at gasoline dispensing facilities shall be certified by the California Air Resources Board (CARB) and shall have a CARB Executive Order issued for the vapor control equipment.

(c) Notice of Construction application for a gasoline dispensing facility shall be submitted to the Authority prior to installation, construction, or upgrade of gasoline dispensing equipment, control equipment, or facilities.

(d) The Authority shall provide written notification to the applicant within 30 calendar days of receipt of the application if the application is complete and in accordance with applicable requirements. An Order of Approval may not be issued for a Notice of Construction for gasoline dispensing facilities and the public notice and comment procedures may not be required if the Notice of Construction application provides for certified or approved equipment and controls as identified in (b) above. The applicant may begin construction, upgrade, or operation upon receipt of written notification of approval of the application from the Authority. Written approval from the Authority may contain additional testing, monitoring and reporting requirements.

(e) Within 10 calendar days of installation of a new facility, Stage I or Stage II controls, or upgrades as provided in SWAPCA 491-020, the owner or operator shall notify the Authority in writing that the activities as identified in the Notice of Construction and associated testing are complete. Test results shall be submitted to SWAPCA within 14 calendar days of testing.

(f) All new facilities with Stage I gasoline vapor recovery systems shall have a back pressure/blockage test performed at the time of installation to ensure proper connection and absence of leaks.

(g) All new installations of Stage II vapor recovery controls shall have a static pressure decay test performed at the time of installation in accordance with CARB draft TP-201.3 or an Authority approved equivalent. Identification of the test method shall be included in the Notice of Construction application and results of the testing shall be submitted to the Authority with the notification provided in (c) above. The Authority may specify other or additional test requirements in the written Order of Approval. This testing shall be performed annually by each new facility to ensure proper operation. Results of the testing shall be submitted to SWAPCA as provided in (c) above.

(h) All vacuum assisted Stage II vapor recovery controls shall be performance tested by performance of an air to liquid ratio test at the time of installation. Such testing is in addition to the back pressure/blockage testing and static pressure decay test of items (f) and (g) above and shall be performed in accordance with the CARB Executive Order certifying the equipment, CARB draft test procedure TP-201.5, or an

Authority approved equivalent. Identification of the preferred test method shall be included in the Notice of Construction application and results of the testing shall be submitted to the Authority with the notification provided in (c) above. The Authority may specify other or additional test requirements in the written Order of Approval.

(i) Stage I and Stage II vapor recovery equipment shall be maintained in proper working order at all times. All Stage I and Stage II vapor recovery equipment shall be maintained in accordance with the CARB Executive Order(s) certifying the equipment or system. Whenever a Stage I or Stage II gasoline vapor recovery system or component is determined to be defective or not operating properly, the owner or operator shall immediately take the system out of service until repairs are made. Systems shall not be returned to service until the defective system is operating properly.

(j) Delivery rates for the gasoline dispensing systems shall be limited to the rates approved in the CARB Executive Order certifying the equipment or system, and in no case shall any delivery system exceed 10 gallons per minute as provided by EPA in the Federal Register, Volume 58, Number 55, page 16019.

(k) The owner or operator shall submit gasoline throughput figures annually (on a calendar basis) to the Authority by January 31 of each year.

(l) The owner or operator of a gasoline dispensing facility and/or the delivery person shall not permit the loading of gasoline into a gasoline storage tank equipped with vapor recovery fittings from a transport tank equipped with vapor recovery fittings unless the vapor recovery system is attached to the transport tank and operated satisfactorily at all times when fuel is unloaded.

(m) Pressure/vacuum valves shall be installed as required by the CARB Executive Orders that certify the particular Stage I or Stage II vapor recovery equipment. Relief set points shall be adhered to as provided in the applicable CARB Executive Orders and local fire ordinances.

(n) Any alteration of the equipment, parts, design, or operation of the nozzles or gasoline dispensing system as certified by CARB is prohibited, and shall not be performed without submittal of a Notice of Construction application and prior approval from the Authority.

(o) No person or entity shall sell, offer for sale, supply, offer for supply, dispense, transport, or introduce into commerce, for use as a fuel in any motor vehicle any gasoline which contains lead or lead additives after December 31, 1995 as provided at Section 211(n) of the 1990 Federal Clean Air Act Amendments.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Air Pollution Control Authority and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 99-07-032
PERMANENT RULES
SOUTHWEST AIR
POLLUTION CONTROL AUTHORITY

[Filed March 10, 1999, 10:22 a.m.]

Date of Adoption: February 4, 1999.

Purpose: The purpose of the proposed changes was to increase the registration fees collected by SWAPCA to pay for existing programs. The fee increase proposed did not result in an increase in the budget, it merely accounted for reduction in federal grant money.

Citation of Existing Rules Affected by this Order: Amending SWAPCA 400-100.

Statutory Authority for Adoption: [No information supplied by agency.]

Adopted under notice filed as WSR 98-15-044 on July 8, 1999 [1998].

Changes Other than Editing from Proposed to Adopted Version: SWAPCA originally proposed doubling the registration fee from \$100 per emission unit to \$200. As a result of public comment, the total dollars to be collected remained unchanged, however, the methodology for assessing the fee amount was changed from a flat fee concept to a "polluter pays" concept.

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.

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

March 3, 1999

Robert D. Elliott

Executive Director

AMENDATORY SECTION

SWAPCA 400-100 Registration Requirements and Operating Permit Fees

[Statutory Authority: Chapter 70.94.141 RCW, 70.94.151 RCW, 70.94.162 RCW, 70.94.200 RCW, and 70.94.395 RCW. Original Board adoption 10/29/69 (Regulation 2 Sec 3); Amended by Board 12/18/79; Amended by Board 8/18/81; Amended by Board 3/20/84; 92-04-030 filed 1/28/92, effective 2/28/92; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95]

(1) **Applicability.** All sources or emission units that emit contaminants to the ambient air shall be registered with the Authority in accordance with this section as set forth in RCW 70.94.151 except those sources or emission units specifically exempted by SWAPCA 400-100(3) and SWAPCA 400-101.

(2) **General requirements.**

(a) A unique registration number shall be assigned to all sources required to be registered with SWAPCA and a separate registration fee shall be provided for each air contaminant emission unit; provided that, an owner has the option to register a process with a detailed inventory of air contaminant sources and emissions related to the process. A registration fee shall not be collected for exempt emission units identified at SWAPCA 400-101.

~~((b) Each registration submittal shall be certified for truth, accuracy and completeness by the owner or operator.))~~

(b)(e)) Registration information shall be provided on forms supplied by the Authority and the forms shall be verified by the source and returned to the Authority with payment in full within the time specified by the Authority.

(c)(d)) Annual registration fees that are unpaid after ~~(July 31)~~ June 30 for the effective year shall be considered to be in default and the source shall be considered to be out of business and in violation of item (d) ~~((above))~~ below for failure to report closure. At the discretion of the Control Officer, all Orders of Approval for existing equipment shall become invalid for this source and the source shall be required to submit a Notice of Construction and applicable fees in accordance with SWAPCA 400-110 prior to resuming operations. Prior to taking actions to 'un-register' a source, the source must be notified by certified letter. The registration program covers the period of July 1 through June 30. Sources or emission units operating less than six months in the current registration period that are terminated, shall not be liable for registration fees. This does not apply to temporary or portable stationary sources.

(d)(e)) A report of closure or discontinuance shall be filed with the Authority within ninety days after operations producing emissions permanently cease at any source. (Refer to SWAPCA 400-230 for issuance of an Order of Discontinuance.)

(3) **Registration Fees.** Before the Control Officer may register any emission unit, the use of which may emit contaminants to the atmosphere, an annual registration fee of ~~\$(+100.00))~~ 75.00 for each emission unit, plus \$25 per ton of each criteria air pollutant and VOC (combined) for fiscal year 1998/1999, plus \$10 per ton of total toxic air pollutants greater than 1.0 ton, shall be paid. The \$25 per ton of each criteria air pollutant and VOC shall be adjusted in fiscal year 1999/2000, and beyond, to \$39 per ton. ~~((For new stationary sources, registration fees for the first year are included as part of the fees collected for a Notice of Construction application and shall not be considered in addition to those fees.))~~

(a) Exceptions:

(i) An annual registration fee of \$50.00 shall be charged to each gasoline transport tank.

(ii) The registration fee for a small operation may be waived or reduced by the Control Officer provided sufficient demonstration of circumstances is presented, subject to the discretion of the Control Officer.

(iii) Emissions units and activities specifically exempted under SWAPCA 400-101 are not required to comply with the requirements of this section.

(iv) Operating Permit Program sources, as defined in RCW 70.94.030(17) shall pay an operating permit fee in

accordance with SWAPCA 400-100(4). Operating Permit Program sources, as defined in RCW 70.94.030(17) are not required to comply with the registration requirements of this section after EPA grants interim or final approval of the SWAPCA Operating Permit Program pursuant to 40 CFR Part 70.

(4) **Operating Permit Fees.** Fee determination and certification for sources subject to 70.94.161 RCW requirements.

(a) **Applicability.** The owner or operator of all sources subject to the requirement to obtain an Operating Permit under 40 CFR 70 or 70.94.161 RCW, shall pay an annual fee, or the equivalent over some other period as approved, subject to the discretion of the Control Officer, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Operating Permit Program requirements as specified in this section.

(b) **Pollutants for which fees will be assessed.**

(1) A volatile organic compound.

(2) Each pollutant regulated under Section 7411 or 7412 of the 1990 Federal Clean Air Act Amendments.

(3) Each pollutant for which a national primary ambient air quality standard has been promulgated except that carbon monoxide shall be excluded from this reference. PM_{10} emissions will be utilized for purposes of calculating particulate matter emissions when such data is provided by the 40 CFR Part 70 source. Source test data is required to demonstrate the PM_{10} portion of total particulate matter emissions.

(4) Emissions of each regulated pollutant emitted in excess of 7500 tons from a source shall be excluded from fee assessment.

(c) **Program cost projections.** The Authority shall prepare an Operating Permit Program budget each year based on a projected workload evaluation. Only fee eligible activities as specified in SWAPCA 400-100(f) and Ecology's development and oversight costs, as provided in RCW 70.94.162 shall be considered in the workload analysis. The projected budget shall be submitted to the Authority's Technical Advisory Council, as described in SWAPCA 400-172, for comments. The Technical Advisory Council shall be given an opportunity to provide input regarding the projected budget. The Control Officer shall evaluate all comments and revise the projected budget where deemed appropriate. After consideration of the comments, the Control Officer shall submit the proposed budget to the Board of Directors for approval. The approved budget shall be used in the equations below to determine the Operating Permit Program fees. The Authority shall publish the proposed and approved budgets and workload analysis in the Permit Register.

(d) **Three part fee assessment methodology.** Operating Permit Program fees shall be determined using a three part fee assessment methodology as described below:

(1) **Participation Fee.** Fees sufficient to cover one-third of the Board approved Operating Permit Program budget shall be assessed such that each source shall pay an equal share. The total Operating Permit Program budget shall be divided by three. This amount shall be further divided by the number of 40 CFR Part 70 sources within the Authority's jurisdiction. Participation fees shall be equal in amount for

each 40 CFR Part 70 source. The participation portion of the fee shall be assessed according to the following formula:

$PF = B+3+n$, where;

PF = Participation fee portion of total fee;

B = The total Authority budget for the Operating Permit Program;

n = The number of 40 CFR Part 70 sources.

(2) **Emissions Fee.** Fees sufficient to cover one-third of the budget shall be assessed such that each source shall pay an amount equal to that source's portion of the total annual emissions of the fee applicable pollutants from all 40 CFR Part 70 sources within the Authority's jurisdiction. The total Operating Permit Program budget shall be divided by three. The ratio of each source's annual emissions (in tons) to the total annual emissions of fee applicable pollutants emitted by all 40 CFR Part 70 sources within the Authority's jurisdiction shall be paid by the owner or operator of each source. The emissions portion of the fee shall be assessed according to the following formula:

$EF = B+3*SE+TE$, where:

EF = Emissions fee portion of total fee;

B = The total Authority budget for the Operating Permit Program;

SE = The sum of annual emissions of fee applicable pollutants in tons per year from the individual 40 CFR Part 70 source;

TE = The sum of annual emissions of fee applicable pollutants in tons per year from all 40 CFR Part 70 sources.

(3) **Complexity Fee.** Fees sufficient to cover one-third of the budget shall be assessed such that each 40 CFR Part 70 source shall pay an amount equal to that source's portion of the total emissions units at all 40 CFR Part 70 sources within the Authority's jurisdiction. The total Operating Permit Program budget shall be divided by three. The ratio of each source's emissions units to the total number of emissions units located at all 40 CFR Part 70 sources within the Authority's jurisdiction shall be paid by the owner or operator of each source. The complexity portion of the fee shall be assessed according to the following formula:

$CF = B+3*SU+TU$, where:

CF = Complexity fee portion of total fee;

B = The total Authority budget for the Operating Permit Program;

SU = The number of emission units at a source;

TU = The number of emissions units at all 40 CFR Part 70 sources.

(4) **Total Fee.** The amount of the annual assessed fees for each 40 CFR Part 70 source shall be the sum of the participation, emissions and complexity fee portions ($PF+EF+CF = \text{Total Fee}$). The sum of the total fees for all 40 CFR Part 70 sources within the Authority's jurisdiction shall be equal in amount to the Board adopted budget for the Operating Permit Program.

(e) **Accountability.**

(1) The sum of the fees assessed by the Authority to all sources required to obtain Operating Permits within the Authority's jurisdiction shall not exceed the cost of developing and administering the program. All fees collected from permit program sources as provided in RCW 70.94.162, shall be deposited in a dedicated air operating permit account. Such fees shall be used exclusively to support and administer the operating permit program.

(2) The Authority shall keep a record of all reasonable (direct and indirect) costs to develop and administer the Operating Permit Program as specified in 40 CFR Part 70. This information shall be used by the Authority to develop the Operating Permit Program budget specified in section (3) above. The information obtained from tracking revenues, time and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

(3) In the event that the assessed fees exceed the cost of developing and administering the Operating Permit Program, such excess fees shall be used to develop and administer the Operating Permit Program in the next subsequent year. The amount of the excess fees shall be deducted from the projected budget of the next subsequent year prior to fee assessment for the subsequent year.

(f) Fee eligible activities.

(1) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision or permit renewal;

(2) Source inspections, testing and other data gathering activities necessary for development of a permit, permit revision or renewal;

(3) Acting on an application for a permit, permit revision or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision or renewal, preparing a draft permit and fact sheet and preparing a final permit, but excluding the costs of developing BACT, LAER, BART or RACT requirements for criteria and toxic air pollutants;

(4) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(5) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(6) Reviewing compliance certifications and emission reports, conducting related compilation and reporting activities;

(7) Conducting compliance inspections, complaint investigations and other activities necessary to ensure that a source is complying with permit conditions;

(8) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the Pollution Control Hearings Board (PCHB) and all costs of judicial enforcement;

(9) The share attributable to permitted sources to the development and maintenance of emissions inventories;

(10) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(11) Training for permit administration and enforcement;

(12) Fee determination, assessment and collection, including the costs of necessary administrative dispute resolution and enforcement;

(13) Required fiscal audits, periodic performance audits and reporting activities;

(14) Tracking of time, revenues and expenditures and accounting activities;

(15) Administering the permit program including costs of clerical support, supervision and management;

(16) Provision of assistance to small business under jurisdiction of SWAPCA as required under Section 507 of the Federal Clean Air Act; and

(17) Other activities required by operating permit regulations issued by EPA under the Federal Clean Air Act.

(g) Late Fee Payments. Fees shall be paid in accordance with the schedule of payment agreed upon in advance by the Control Officer and each operating permit source. Delinquent fees are subject to a late fee equal to three times the operating permit fee. The penalties authorized by this subsection are additional to and in no way prejudice SWAPCA's ability to exercise other civil and criminal remedies, including authority to revoke a source's operating permit for failure to pay all or part of its permit fee.

(h) Schedules of Payment. A source shall be allowed to pay its annual operating permit fees in one, two or four installments. Each schedule of payment shall specify the terms and dates of payments.

(i) Transfer of Ownership. Transfer of ownership of a source shall not affect that source's obligation to pay operating permit fees. Any liability for fee payment, including payment of delinquent fees and other penalties shall survive any transfer of ownership of a source.

(5) Inspections.

(a) Periodic onsite inspections of emission units and sources shall be allowed to verify compliance with applicable requirements, regulations, orders or rules governing the processes, equipment, or emissions from a source as set forth in RCW 70.94.200.

(b) Authority personnel or representatives shall have the authority to enter at reasonable times upon any private or public property excepting non-multiple unit private dwellings housing two families or less for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants to the atmosphere.

(c) No person shall refuse entry or access to Authority personnel who request entry for the purpose of inspection, who present appropriate credentials.

(d) No person shall obstruct, hamper or interfere with any such inspection.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Southwest Air Pollution Control Authority and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 99-07-034
PERMANENT RULES
DEPARTMENT OF
NATURAL RESOURCES
 (Board of Natural Resources)

[Order 640—Filed March 11, 1999, 3:17 p.m.]

Date of Adoption: January 5, 1999.

Purpose: To establish criteria for determining when to exchange aquatic tidelands and shorelands, and to implement the requirement of RCW 79.90.457.

Citation of Existing Rules Affected by this Order: This is a new section in chapter 332-30 WAC.

Statutory Authority for Adoption: RCW 79.90.457.

Adopted under notice filed as WSR 98-19-108 on September 23, 1998 and WSR 98-21-093 on October 21, 1998.

Changes Other than Editing from Proposed to Adopted Version: **RCW 34.05.325 (6)(i), Department of Natural Resources reason for adopting WAC 332-30-170.**

- In 1971 the legislature prohibited the sale of state-owned aquatic lands to private individuals. However, sales before 1971 left a patchwork of public and private ownerships. In 1995, the legislature recognized that exchanging certain aquatic lands could benefit the public.
- The legislature authorized the department to exchange state-owned tidelands and shorelands with private and other public landowners, if the exchange is in the public interest and will actively contribute to the public benefits established in RCW 79.90.455:
 - (1) Encouraging direct public use and access;
 - (2) Fostering water-dependent uses;
 - (3) Ensuring environmental protection;
 - (4) Utilizing renewable resources.
 - (5) Generating revenue in a manner consistent with these benefits.
- The legislature, in RCW 79.90.457, specified that: "(t)he board of natural resources shall adopt rules which establish criteria for determining when a proposed exchange is th [in] the public interest and actively contributes to the public benefits established in RCW 79.90.455."

RCW 34.05.325(6)(ii), differences between proposed rule and adopted rule.

RCW 34.05.325(6)(iii), comments received and responses.

Comments and Revisions on the Shorelands and Tidelands Exchange Rule: The department received comments from John Woodring, Mason Morisset and the Suquamish and Tulalip tribes. The Board of Natural Resources and the Assistant Attorney Generals provided suggestions. The department incorporated many of these comments, removed some repetition, and clarified some language. The summary below does not address deletion of repetitive wording, or minor changes to clarify language. The comments are organized by rule section. Comments that did not result in changes to rule language are discussed at the end of this section.

WAC 332-30-170 Introduction

Added: The phrase "*pursuant to RCW 79.90.457.*" This is to clarify that transactions to clear title under other laws (e.g. transactions under RCW 79.94.150) are not addressed by this rule.

Subsection (1)

Added: The language "*if the proposed exchange meets the eligibility criteria set forth in this rule. To be eligible, the exchange must satisfy the condition in (a) and (b) of this subsection.*" This is to make clear what constitutes an eligible transaction.

Subsection (1)(a)

Deleted: The requirement that the Economic Cost Analysis and Environmental Cost Accounting be included in the economic analysis. We concluded that the phrase "*accomplished through a methodology accepted by the department,*" could accomplish the same results without limiting our options.

Subsection (1)(b)

Changed: The word "*parcel*" to "*tidelands or shorelands.*" This language will address the potential ambiguity on whether uplands would be considered in exchange.

Subsection (1)(c)

Moved: To subsection (2) Evaluation Criteria (a) and reordered the list of evaluation criteria to clarify what the department staff will consider in determining the greatest public benefits.

Subsection (2)(a)(i)

Deleted: The phrase "*state approved watershed natural resource management planning groups(s).*" Specific reference to these groups was deemed not to be appropriate because there are no standards for habitat/environmental designations by these groups.

Subsection (2) introduction

Added: The phrase "*Subject to available funding.*" This language was added to make clear that the department need only consider exchanges when supported by available funding.

Added: The sentence "*The department will give priority and preference to proposed exchanges which in the department's judgement 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.*" The Board of Natural Resources suggested this language to clarify that the department be able to consider multiple eligibility criteria. This language also addresses the board's question of when an exchange would be in "the public interest."

Created a new subsection (2)(b) and listed criteria that department staff must consider in evaluating the least negative impacts from a proposed exchange.

Subsection (2)(b)(iv)

Added: The sentence "*The department will solicit comments on a proposed exchange from affected tribes.*" The Tulalip Tribes were concerned that a change of ownership would change tribal access. This language makes clear the

department's intent to solicit comments from affected tribes. The requirement that a proposed exchange have no negative impact on treaty rights addresses their concerns on treaty rights, cumulative impacts on treaty rights and tribal consent to exchanges affecting treaty rights.

Subsection (3)

Changed heading to: Recommendation to the Board of Natural Resources.

Deleted: The sentence *"In addition to considering the enhanced public benefits that may be associated with a proposed exchange, the department must also consider any associated negative impacts to public benefits and resources, including impacts affecting the management of state resources."* This language was incorporated into the revised subsection (2)(b).

Added: The sentences *"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."* The Suquamish Tribe commented that there should be language in the rule requiring documentation of the recommendation.

Comments and Issues Not Addressed in the Rule:

Filled Shorelands and Tidelands: John Woodring suggested adding language specifically allowing the exchange of filled tidelands and shorelands. We did not add this language. The current rule draft does not prohibit exchange of filled tidelands and shorelands. No specific language is necessary.

Filled Bedlands: John Woodring asked that if DNR felt it had authority to exchange filled bedlands we also add that language as part of this rule making. We did not add this language. This rule should be limited to exchanges authorized under RCW 79.90.457 so we did not add language on filled bedlands. An exchange involving filled bedlands would not be eligible under the current version of the rule.

Cultural Resources: The Tulalip Tribes' Fisheries, Wildlife and Enforcement Department and tribal attorney, Mr. Mason Moriset felt that the rule did not adequately address nor protect cultural resources. We did not add this language in response to these requests. Cultural resources on private lands are protected by statute. In the process of evaluating exchanges and consulting with the tribes, we will take the impacts of proposed exchanges on cultural resources into consideration.

SEPA: The Tulalip Tribes also feel that the SEPA environmental checklist for this rule making did not adequately address possible impacts of tideland exchanges. The Tulalips argue that Part B of the checklist which deals with specific project impacts on environmental elements was not sufficiently completed. However, the exchange rule is a non-project action. Part D is the supplemental sheet for non-project actions. We filled out Part D. This section recognized the possibility of both positive and negative environmental impacts resulting from uses of the land following an exchange (generally land exchanges are categorically exempt from SEPA under WAC 197-11-800). This is a

major policy issue which does not have to be addressed within the language of the proposed rule.

Procedural Issues: The Suquamish Tribe requested language in the rule on procedures for the structure of an exchange application, time lines for administrative review, a requirement that DNR must consider all submitted proposals and a detailed methodology for determining the economic value of the land. Program staff spoke with Scott Wheat, tribal attorney. In that discussion Mr. Wheat agreed that we could address these issues in the application process and materials rather than in rule.

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

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

March 10, 1999

Jennifer M. Belcher

Commissioner of Public Lands

NEW SECTION

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. 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. 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.

(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.

WSR 99-07-041

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed March 15, 1999, 9:16 a.m.]

Date of Adoption: March 8, 1999.

Purpose: Meet criteria supporting Governor Locke's Executive Order 97-02.

Citation of Existing Rules Affected by this Order: Repealing 6 [WAC 308-93-550, 308-93-560, 308-93-570, 308-93-580, 308-93-590 and 308-93-600]; and amending 3 [WAC 308-93-520, 308-93-530, and 308-93-540].

Statutory Authority for Adoption: RCW 88.02.070.

Other Authority: RCW 88.02.100.

Adopted under notice filed as WSR 99-02-012 on December 28, 1998.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 6.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 6.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 3, Repealed 6; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

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

March 8, 1999

Fred Stephens

Director

AMENDATORY SECTION (Amending Order 736-DOL, filed 11/18/83)

WAC 308-93-520 Owner deceased—((Community property agreement)) Release of interest by personal representative. ((If the prior owner of record of a vessel is deceased and a valid community property agreement exists, the surviving spouse may release the interest of the deceased's estate in the vessel. The following shall be attached to any application for certificate of title:

- (1) A copy of the community property agreement;
- (2) A certified copy of the death certificate.)) **(1) What is a personal representative?**

A personal representative is an individual named in the last will and testament or appointed and confirmed by the court to manage the estate of a deceased person.

(2) How is the interest of the owner of record released on a vessel ownership document if an owner is deceased?

Interest is released by the signature of the personal representative on vessel ownership documents. Any unreleased registered or legal owners shall remain as such on the new certificate of ownership issued by the department.

(3) What do I need as proof of legal authority to release interest in a vessel acquired from an estate of a deceased person?

If the estate is:

(a) Administered:

- (i) Certified letters of testamentary; or
- (ii) Letter of administration; or
- (iii) Certificate of county clerk.

(b) Joint tenants with rights of survivorship:
Certified copy of death certificate.

(c) Community property:

- (i) Certified copy of the death certificate; and
- (ii) A copy of the community property agreement; or
- (iii) Affidavit of inheritance.

(d) Estate not administered:

- (i) Certified copy of death certificate; and
- (ii) Affidavit of inheritance; or
- (iii) Affidavit of succession.

AMENDATORY SECTION (Amending Order 736-DOL, filed 11/18/83)

WAC 308-93-530 Owner incompetent—Release of interest. ((On any application for certificate of title where the former owner of record of the vessel has been declared legally incompetent, the incompetent's interest in the vessel shall be released by signature of the court appointed guardian. A certified copy of the court order appointing the guardian shall be attached to the application.)) **Who is eligible to release interest on a vessel ownership document if the owner is declared incompetent?**

Only the court appointed guardian may release interest in a vessel owned by an individual who has been declared incompetent. The release of interest must be accompanied by a certified copy of the court order appointing the guardian.

AMENDATORY SECTION (Amending Order 736-DOL, filed 11/18/83)

WAC 308-93-540 Owner bankrupt—Release of interest. ((On any application for certificate of title where the prior owner's interest has been terminated through bankruptcy proceedings, the interest of the bankrupt in the vessel may be released by his/her trustee. If the release is by his/her trustee, a certified copy of the court order appointing the trustee shall be attached to the application.)) **Who has the authority to release interest in a vessel when an owner has been declared bankrupt?**

A trustee appointed by the court has the authority to release interest on a vessel for the owner who has been declared bankrupt. The release of interest shall be accompanied by a certified copy of the court order appointing the trustee.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-93-550	Owner deceased—Signature of personal representative.
WAC 308-93-560	Owner deceased—Estate administered.
WAC 308-93-570	Owner deceased—No will left.
WAC 308-93-580	Owner deceased—To spouse "in lieu of homestead."
WAC 308-93-590	Owner deceased—In name of estate.
WAC 308-93-600	Owner deceased—Estate not administered.

**WSR 99-07-050
PERMANENT RULES
WASHINGTON STATE PATROL**

[Filed March 15, 1999, 3:19 p.m.]

Date of Adoption: February 23, 1999.

Purpose: To amend WAC 446-20-600 Fees, to allow the state patrol to accept credit card payments for electronic background check requests and add taking inked fingerprints as a service the state patrol will provide for a nonrefundable fee of ten dollars.

Citation of Existing Rules Affected by this Order: Amending WAC 446-20-600.

Statutory Authority for Adoption: RCW 43.43.742 through 43.43.845 and chapter 10.97 RCW.

Adopted under notice filed as WSR 99-03-081 on January 20, 1999.

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

PERMANENT

Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

March 10, 1999

Annette M. Sandberg
Chief

AMENDATORY SECTION (Amending WSR 96-18-017, filed 8/26/96, effective 9/26/96)

WAC 446-20-600 Fees. (1) A nonrefundable fee of ten dollars shall accompany each request for conviction records submitted for a name and date of birth background check or a twenty-five dollar fee if the request is submitted by fingerprint card at the state level pursuant to RCW 43.43.830 through 43.43.845, and chapter 10.97 RCW unless through prior arrangement, an account is authorized and established.

(2) A nonrefundable FBI fee of twenty-four dollars shall be charged for fingerprint cards submitted for federal searches. It shall be the responsibility of the Washington state patrol to collect all fees due and forward fingerprint cards and fees to the FBI.

(3) A nonrefundable fee of ten dollars shall be charged for taking inked fingerprint impressions by the Washington state patrol. Fees are to be deposited in the Washington state patrol fingerprint identification account.

(4) All fees are to be made payable to the Washington state patrol and are to be remitted by cashier's check, money order or check written on a business account. Credit cards may be used only for payment of electronic requests. The Washington state patrol identification and criminal history section shall adjust the fee schedule as may be practicable to ensure that direct and indirect costs associated with the provisions of these chapters are recovered.

((4)) (5) Pursuant to the provisions of RCW 43.43.838 and chapter 28A.410 RCW, no fees will be charged to a nonprofit organization, or volunteers in school districts and educational service districts for background checks.

WSR 99-07-051

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed March 15, 1999, 3:21 p.m.]

Date of Adoption: February 23, 1999.

Purpose: To amend WAC 446-16-070 Report contents, 446-16-080 Report time limitations, 446-16-100 Prosecuto-

rial agencies and 446-16-110 Courts; to add the option of electronic transfer of disposition reports on approved forms; require that the process control number (PCN) be included on dispositions if known; and updates the persons responsible for transmission of completed disposition information.

Citation of Existing Rules Affected by this Order: Amending WAC 446-16-070, 446-16-080, 446-16-100, and 446-16-110.

Statutory Authority for Adoption: Chapter 10.98 RCW as amended by SSB 6535, 1998 regular session.

Adopted under notice filed as WSR 99-03-080 on January 20, 1999.

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 4, 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 4, Repealed 0.

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

March 10, 1999

Annette M. Sandberg
Chief

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-16-070 Report contents—General. The report of disposition shall be made on forms provided by the section (~~The name of the subject about which the report is made, the designated fingerprints of the subject, the name of the original contributor of the fingerprint or arrest record, and the original arrest number shall be entered on the disposition report exactly the same~~) or shall be transferred electronically on forms approved by the section. The disposition report shall include all arrest details as they (appear) appeared on the fingerprint card or arrest record previously forwarded to the section. The state identification number and Process Control Number (PCN) should be indicated on the disposition report if known.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-16-080 Report time limitations. All of the information requested on the disposition report shall be completed and the report mailed or electronically transferred to the Washington state patrol identification and criminal history section, within 10 days of the date that a disposition becomes effective.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-16-100 Prosecutorial agencies—Reporting responsibilities. (1) The prosecutor or ~~((city attorney shall complete the disposition report))~~ county clerk shall promptly transmit the completed disposition information to the section if ((he)) the prosecutor determines not to file charges or the case is not otherwise acted upon by a judicial body. In such cases, the prosecutor or ~~((city attorney))~~ county clerk shall mail or transfer the completed disposition report to the section within 10 days from the date that it is determined no further judicial action will be taken on the charges.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-16-110 Courts—Reporting responsibilities. Where the disposition of criminal charges occurs as a result of action taken by or within the jurisdiction of any court in the state of Washington, the disposition of such charges shall be reported to the identification and criminal history section pursuant to rules of the supreme court of the state of Washington on forms approved by the supreme court and supplied by the section. However, in a county where the judicial information system or other secure method of electronic transfer of information has been implemented between the court and the section, the court may electronically provide the disposition information to the section.

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 6.

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

March 12, 1999

Larry Davis

Executive Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 180-16-221 Assignment of classroom teachers within districts.
- WAC 180-16-222 Exceptions to classroom teacher assignment policy.
- WAC 180-16-226 Superintendent of public instruction annual report to state board of education.
- WAC 180-16-231 Assignment of principals and vice-principals within districts.
- WAC 180-16-236 Assignment of educational staff associates.
- WAC 180-16-238 Assignment of persons providing instruction of braille to students.

WSR 99-07-054

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed March 16, 1999, 9:13 a.m.]

Date of Adoption: March 12, 1999.

Purpose: Rule is no longer necessary because of changed circumstances.

Citation of Existing Rules Affected by this Order: Repealing WAC 180-16-221, 180-16-222, 180-16-226, 180-16-231, 180-16-236, and 180-16-238.

Statutory Authority for Adoption: RCW 28A.150.220(4).

Adopted under preproposal statement of inquiry filed as WSR 99-03-001 on January 6, 1999.

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 6.

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

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

WSR 99-07-056

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed March 16, 1999, 11:18 a.m.]

Date of Adoption: March 16, 1999.

Purpose: This change adopts the 1999 versions of NIST Handbook 130 and Handbook 44 as required by RCW 19.94.195. The change modifies NIST Handbook 44 by extending the dates for Section UR 2.2, Ticket Printer, Customer Ticket two years to January 1, 2001.

Statutory Authority for Adoption: RCW 19.94.195.

Adopted under notice filed as WSR 99-04-111 on February 3, 1999.

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

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

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

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

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

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

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

March 16, 1999

James M. Jesernig

Director

AMENDATORY SECTION (Amending WSR 98-13-072, filed 6/15/98, effective 7/16/98)

WAC 16-662-105 Adoption—Weighing and measuring equipment requirements—Package checking—Packaging and labeling—Method of sale—Price verification.

(1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment shall be those contained in the ((+1998)) 1999 Edition of the National Institute of Standards and Technology (NIST) Handbook 44, published by the U.S. Department of Commerce, entitled the *National Institute of Standards and Technology Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices*.

(2) The procedures for checking the accuracy of the net contents of packaged goods shall be those contained in the Third Edition of National Bureau of Standards (NBS) Handbook 133 published by the United States Department of Commerce, entitled the *National Bureau of Standards Handbook 133 - Third Edition - Checking the Net Contents of Packaged Goods* as modified by NIST Handbook 133 Supplements 1, 2, 3, and 4, issued in 1990, 1991, 1992, and 1994 respectively.

(3) The requirements for packaging and labeling, method of sale of commodities, and the examination procedures for price verification shall be those contained in the ((+1998)) 1999 Edition of National Institute of Standards and Technology Handbook 130, entitled the *NIST Handbook 130 - Uniform Laws And Regulations in the areas of legal metrology and motor fuel quality*, specifically:

(a) Weights and measures requirements for all food and nonfood commodities in package form shall be the *Uniform Packaging and Labeling Regulation* requirements as adopted by the National Conference on Weights and Measures and published in NIST (National Institute of Standards and Technology) Handbook 130, 1998 Edition.

(b) Weights and measures requirements for the method of sale of food and nonfood commodities shall be those found in the *Uniform Regulation for the Method of Sale of Commodities* as adopted by the National Conference on Weights and Measures and published in NIST (National Institute of Standards and Technology) Handbook 130, ((+1998)) 1999 Edition.

(c) Weights and measures requirements for price verification shall be the *Examination Procedures for Price Verification* as adopted by the National Conference on Weights and Measures and published in NIST (National Institute of Standards and Technology) Handbook 130, ((+1998)) 1999 Edition.

AMENDATORY SECTION (Amending WSR 97-12-075, filed 6/4/97, effective 7/5/97)

WAC 16-662-110 Modifications to NIST Handbook 44. The following modifications are made to Handbook 44, identified in WAC 16-662-105:

(1) General Code:

(a) Section G-T. Tolerances. In paragraphs (b), (c), and (d) of subsection G-T.1. "Acceptance Tolerances", change "30 days" to "90 days."

(b) Section G-UR. User Requirements. In the last sentence of subsection G-UR.4.1. "Maintenance of Equipment", change "device user" to "device owner or operator."

(2) Scale Code: Section UR.3. Use Requirements. At the end of subsection UR.3.7.(a) add "and homeowner refuse."

(3) Vehicle-Tank Meters Code: Section UR.2.2 Ticket Printer: Customer Ticket. Change the effective dates in brackets at the end of the section to read as follows (Nonretroactive as of June 30, 1999. To become retroactive as of January 1, 2001.)

(4) Appendix D Definitions, Direct Sale. Replace with the following: "A sale in which both parties in the transaction are present when the quantity is being determined."

WSR 99-07-059

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed March 17, 1999, 9:37 a.m.]

Date of Adoption: November 18, 1998.

Purpose: The current preferential loading WAC for Washington state ferries (WSF) needed to be streamlined, updated and made current with changing state policies, enabling legislation and WSF customer needs.

Citation of Existing Rules Affected by this Order: Amending WAC 468-300-700 Preferential loading.

Statutory Authority for Adoption: RCW 47.56.030, 47.60.140, 47.60.326.

Adopted under notice filed as WSR 98-20-092 on October 7, 1998.

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

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

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

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

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

Effective Date of Rule: Thirty-one days after filing.
 March 17, 1999
 Tom Green, Chair
 Transportation Commission

AMENDATORY SECTION (Amending Order 81, filed 2/16/96, effective 3/18/96)

WAC 468-300-700 Preferential loading. In order to protect public health, safety and commerce; to encourage more efficient use of the ferry system; and to reduce dependency on single occupant private automobiles:

(1) Preferential loading privileges on vessels operated by Washington state ferries (WSF), exempting vehicles from the standard first-come first-served rule, shall be granted in the order set forth below:

(a) ~~Emergency vehicles involved in or returning from their particular operations, and medical personnel traveling to unscheduled emergency calls (but not when returning from such calls, and not when traveling to or from their place of employment or to or from operations or procedures, whether emergency or not, which are scheduled enough in advance to allow ferry travel without preferential loading);~~

~~(b) Vehicles transporting persons with severe illnesses or severe disabilities such that the delay in loading which would otherwise cause health risks to those persons;~~

~~(c) Public or pupil transportation vehicles owned or operated by public or private transportation operators providing transit or charter service under a certificate of public convenience and necessity issued by the utilities and transportation commission of the state of Washington or owned and operated by a local school district or private school system;~~

~~(d) Commuter vanpools which are certified in the manner set forth in WAC 468-300-020;~~

~~(e) Commuter car pools which shall consist of a minimum number of persons as determined by ferry system management; and such minimum number shall in no case be less than three; and a formal registration system may be required by ferry system management;~~

~~(f)) An emergency medical vehicle, medical unit, aid unit, or ambulance dispatched to and returning from an emergency or nonemergency call while in service. Up to one additional vehicle may accompany a qualifying emergency medical vehicle or authorized med-evac when going to, but not when returning from, an emergency.~~

~~(b) A public police or fire vehicle only when responding to an emergency call, but not when returning from either an emergency or a nonemergency call. However, these vehicles will receive priority loading when they are returning from either an emergency or nonemergency call to Vashon Island or the San Juan Islands.~~

~~(c) A public utility or public utility support vehicle only when responding to an emergency call, but not when returning from either an emergency or a nonemergency call.~~

~~(d) Where a vehicle occupant states that an extended wait would cause detrimental health risks to a vehicle occupant, that vehicle will be allowed preferential loading whenever the afflicted occupant has provided a medical form certified by a physician that such preferential loading is required.~~

However, when that vehicle occupant has not submitted the proper medical form, preferential loading will be permissible based upon appropriate terminal staff determination.

(e) Preferential loading may be granted for vehicles carrying passengers needing to attend to a family member subject to risk of physical threat/harm or medical emergencies which requires the customer's timely access to the vessel's destination.

(f) A visibly marked school vehicle owned, operated, or sponsored by a school** when operating on regular schedules preapproved by the WSF or when advance notice is provided to each affected WSF terminal (**as defined in RCW 28A.150.010 (K-12), RCW 28A.150.020 (public schools), RCW 28A.195.010 (K-12 private schools), and RCW 28B.195.070 (secondary schools)).

(g) A visibly marked, preapproved or regularly scheduled publicly or privately owned public transportation vehicle** operating under a Washington state utilities and transportation commission certificate for public convenience and necessity (**as defined in RCW 81.68.010 (regular route/fixed termini), RCW 81.70.010 (charter and excursion)).

(h) A visibly marked nonprofit or publicly supported transportation vehicle** having provided each affected WSF terminal with advance notice and displaying a WSF permit making it readily identifiable as a public transportation vehicle (**as defined in chapter 81.66 RCW (private, nonprofit special needs)).

(i) A visibly marked and randomly scheduled private for profit transportation vehicle** operating under a Washington state utilities and transportation commission certificate for public convenience and necessity traveling on routes where WSF is the only major access for land-based traffic only when that private for profit transportation vehicle has provided each affected WSF terminal with a preapproved schedule and/or advance notice of its proposed sailing(s), (**as defined in chapter 81.68 RCW (regular route/fixed termini), chapter 81.70 RCW (charter and excursion), chapter 81.66 RCW (private nonprofit special needs), chapter 46.72 RCW (private, for hire)).

(j) A ride-sharing vehicle for persons with special transportation needs** transporting a minimum of three elderly and/or disabled riders or two elderly and/or disabled riders and an attendant displaying WSF ride-share registration program permit only when the operator of that vehicle has provided each affected WSF terminal with advance notice of its proposed sailing(s) (**as defined in RCW 46.74.010 (ride sharing for persons with special transportation needs)).

(k) A visibly marked, public ride-share vehicle** owned by a transit agency and leased out to members of the public through the transit agency's registration program only when the operator of that vehicle has provided each affected WSF terminal with advance notice of its proposed sailing(s) (**as defined in RCW 46.74.010 (commuter ride sharing)).

(l) A privately owned commuter ride-share vehicle** that visibly displays WSF approved identification markings readily identifiable by the public. There must be a minimum of three occupants in any such vehicle to receive preferential loading. Any such ride-share vehicle must be registered and

in good standing in the WSF ride-share registration program (**as defined by RCW 46.74.010 (commuter ride sharing)).

(m) Specific to the Anacortes-San Juan Islands routes, a vehicle((s)) carrying livestock and traveling on routes where Washington state ferries is the only major access for land-based traffic, where such livestock (i) is raised for commercial purposes and is recognized by the department of agriculture, county agriculture soil and conservation service, as raised on a farm; or (ii) is traveling to participate in a 4H event sanctioned by ((the)) a county extension agent((;

~~(g) Commercial vehicles traveling on routes where Washington state ferries is the only major access for land-based traffic, provided that the vehicles are carrying wholesale perishable article(s) of commerce to be bought or sold in commercial activity or to be used in the production of other such articles;~~

~~(h) Overweight or oversize vehicles requiring transport at special times due to tidal conditions, vessel assignments, or availability of space;~~

~~(i) Specific to the Mukilteo-Clinton ferry route, vehicles engaged in the delivery of U.S. mail. Vehicles must have documentation from the U.S. Postal Service showing they are in the actual process of delivering mail).~~

(n) Specific to the Seattle-Bainbridge and Edmonds-Kingston ferry routes, where a vehicle occupant claims that an extended wait would cause detrimental health risks to their livestock en route to veterinarian services not available in the local community, that vehicle will be allowed preferential loading whenever the vehicle occupant has provided a medical form certified by a veterinarian that such preferential loading is required.

(o) Specific to the Fauntleroy-Vashon, Seattle-Bainbridge, Mukilteo-Clinton, and Anacortes-San Juan ferry routes, any mail delivery vehicle with proper documentation from the U.S. Postal Service showing that such vehicle is in the actual process of delivering mail.

(p) Specific to the Anacortes-San Juan Islands routes, a vehicle 20 ft. and over in length and 10,000 lbs. or greater in weight, provided that the vehicle is carrying or returning from carrying article(s) of commerce for purchase or sale in commercial activity.

(q) An oversized or overweight vehicle (20 ft. and over in length, and/or over 8 1/2 ft. in width, and 80,000 lbs. or greater in weight) requiring transport at special times due to tidal conditions, vessel assignments, or availability of space.

(r) A scheduled bicycle group as determined by WSF only when a representative of that group has provided WSF with advance notice of the proposed travel schedule.

(2) ((Such)) Preferential loading privileges shall be subject to the following conditions:

(a) Privileges shall be granted only where physical facilities are deemed by ((ferry system)) WSF management to be adequate to allow granting the privilege and achieving an efficient operation((;)).

(b) Subject to specified exceptions, documentation outlining qualifications for preferential loading and details of travel will be required in advance from all agencies, companies, or individuals requesting such privileges((;)).

(c) Privileges may be limited to specified time periods as determined by ((ferry system)) WSF management((;)).

(d) Privileges may require a minimum frequency of travel, as determined by ((ferry system)) WSF management((;)).

(e) Privileges may be limited to a specific number of vehicle deck spaces and passenger capacity for any one sailing((;and;)).

(f) Privileges may require arriving at the ferry terminal at a specified time prior to the scheduled sailing.

(3) To obtain more information about the documentation required and conditions imposed under subsection (2) of this section, call ((Washington state ferries')) WSF's general information number, (206) 464-6400, or a terminal on a route for which the preferential boarding right is requested.

WSR 99-07-061

PERMANENT RULES

PUGET SOUND AIR

POLLUTION CONTROL AGENCY

[Filed March 17, 1999, 9:43 a.m.]

Date of Adoption: March 11, 1999.

Purpose: To exempt obscurants during military training exercises from the agency's opacity standard; specify the method used by the agency to determine if odors are sufficient to constitute a nuisance; establish a process for determining if the appropriate control technology is being used by existing sources; and clarify the agency's dust control requirements.

Citation of Existing Rules Affected by this Order: Repealing Section 9.12 of Regulation I; and amending Sections 3.03, 3.04, 8.04, 9.03, 9.11, and 9.15 of Regulation I.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 99-04-104 on February 3, 1999.

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.

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

March 15, 1999

Gerald S. Pade

Air Pollution Engineer

AMENDATORY SECTION**REGULATION I SECTION 3.03 GENERAL REGULATORY ORDERS**

(a) **Purpose.** The Board may, by regulatory order, apply to a specific source or sources any applicable provision of chapter 70.94 RCW or the rules adopted thereunder.

(b) **Public Involvement Process.** The Board may issue a regulatory order after the following public involvement process has been completed:

(1) Public notice of the proposed order shall be published in a newspaper of general circulation in the area where the source that is the subject of the order is located. Notice shall also be sent to the U.S. Environmental Protection Agency Regional Administrator. The public notice shall include, at a minimum, the following information:

(A) The name and address of the owner or operator and the source;

(B) A brief description of the purpose of the proposed order and the requirements included in the proposed order;

(C) The deadline for submitting written comments to PSAPCA; and

(D) The opportunity for a public hearing if PSAPCA determines that there is significant public interest in the proposed order.

(2) The initial public comment period shall be at least 30 days.

(3) During the initial 30-day public comment period, any person may request a public hearing be held. Any such request shall be submitted in writing to the Agency, shall indicate the interest of the entity filing it, and describe why a hearing is warranted. The Agency may, at its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held before a hearing officer and upon such notice and at a time and place as the Agency deems reasonable. The hearing officer shall hear testimony at the public hearing and prepare a written summary of the testimony received at the hearing. The Agency shall provide at least 30 days prior notice of any hearing. If a public hearing is held, the public comment period shall extend through the hearing date.

(c) **Board Action.** The Board shall only issue an order under this section after:

(1) The public comment period has ended;

(2) Any public hearing scheduled has been held; and

(3) The Board has considered all information and data related to the proposed order received by PSAPCA, including all written comments received and any summary of testimony prepared by the hearing officer.

The Board shall take action on a proposed order at a Board meeting. Unless otherwise ordered by the Board, an order issued under this section shall be effective on the date the Board approves the order.

(d) **Appeals.** Orders issued by the Board under this section may be appealed to the Pollution Control Hearings Board pursuant to Section 3.17 of Regulation I and RCW 43.21B.310.

(e) **Fees.** The Agency shall assess a fee of \$1,000.00 to cover the costs of processing and issuing a general regulatory

order under this section. The Agency shall also assess a fee equal to the cost of providing public notice in accordance with Section 3.03(b) of this regulation. These fees shall be due and payable within 30 days of the date of the invoice and shall be deemed delinquent if not fully paid within 90 days of the invoice.

AMENDATORY SECTION**REGULATION I SECTION 3.04 (~~GENERAL REGULATORY ORDER FEES~~) REASONABLY AVAILABLE CONTROL TECHNOLOGY**

~~((a) The applicant must pay a fee of \$1,000.00 to the Agency when submitting an application for a general regulatory order under Section 3.03 of Regulation I; and~~

~~(b) The applicant must pay to the Agency a fee equal to the cost of providing public notice in accordance with Section 3.03(b) of Regulation I.))~~

(a) Reasonably Available Control Technology (RACT) is required for all existing sources.

(b) RACT for each source category containing 3 or more sources shall be determined by rule, except as provided in Section 3.04(c) of this regulation.

(c) Source-specific RACT determinations may be performed under any of the following circumstances:

(1) For replacement of existing control equipment under Section 6.07 (c)(4) of this regulation;

(2) When required by the federal Clean Air Act;

(3) For sources in source categories containing fewer than 3 sources;

(4) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or

(5) When a source-specific RACT determination is needed to address either specific air quality problems, for which the source is a significant contributor, or source-specific economic concerns.

(d) Under any of the circumstances listed in Section 3.04(c) of this regulation, the Control Officer or a duly authorized representative shall have the authority to perform a source-specific RACT analysis or to order the owner or operator to perform the analysis and submit the results to the Agency.

(e) In the event that the Agency performs a source-specific RACT analysis of a source, the Agency shall assess a fee against that source to cover the cost of performing the analysis. The fee for an analysis performed by the Agency shall be \$5,000.00. (Replacement of control equipment under Section 3.04 (c)(1) shall be subject to the notice of construction review fees under Section 6.04, in lieu of a RACT fee under this section.) This fee shall be due and payable within 30 days of the date of the invoice and shall be deemed delinquent if not fully paid within 90 days of the invoice.

(f) Where current controls are determined to be less than RACT, the Agency shall define RACT for that source or source category and issue a rule or a regulatory order under Section 3.03 of this regulation requiring the installation of RACT.

(g) Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance shall be considered RACT for purposes of permit issuance or renewal.

AMENDATORY SECTION

REGULATION I SECTION 8.04 GENERAL CONDITIONS FOR OUTDOOR FIRES

(a) The provisions of Sections ((9-03-)) 9.05((;)) and 9.15 of Regulation I shall not apply to outdoor fires.

(b) Nothing contained in Article 8 shall be construed to allow outdoor fires in those areas in which open burning is prohibited by laws, ordinances, or regulations of the state or any city, county, or fire district.

(c) Nothing contained in Article 8 shall relieve the applicant from obtaining permits required by any state or local fire protection agency or from compliance with the Uniform Fire Code.

AMENDATORY SECTION

REGULATION I SECTION 9.03 EMISSION OF AIR CONTAMINANT: VISUAL STANDARD

(a) It shall be unlawful for any person to cause or allow the emission of any air contaminant for a period or periods aggregating more than 3 minutes in any 1 hour, which is:

(1) Darker in shade than that designated as No. 1 (20% density) on the Ringelmann Chart, as published by the United States Bureau of Mines; or

(2) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in Section 9.03 (a)(1).

(b) The density or opacity of an air contaminant shall be measured at the point of its emission, except when the point of emission cannot be readily observed, it may be measured at an observable point of the plume nearest the point of emission.

(c) This section shall not apply when the presence of uncombined water is the only reason for the failure of the emission to meet the requirements of this section.

(d) This section shall not apply to solid fuel burning devices, permitted fire training facilities, permitted obscurant usage during military training operations, outdoor fires, motor vehicles when operated on public roads, aircraft, or equipment subject to Section 9.04.

(e) This section shall not apply to equipment with an alternate opacity standard issued under Section 3.03 or Section 6.07 that is based upon a correlation with the particulate concentration and that accurately indicates a violation of the applicable particulate emission standards in Section 9.09.

AMENDATORY SECTION

REGULATION I SECTION 9.11 EMISSION OF AIR CONTAMINANT: DETRIMENT TO PERSON OR PROPERTY

(a) It shall be unlawful for any person to cause or allow the emission of any air contaminant in sufficient quantities

and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

(b) ((A Notice of Violation of this section may be issued based upon an affidavit from the person making the complaint and verification by the Control Officer or a duly authorized representative.)) With respect to odor, the Agency may take enforcement action under this section if the Control Officer or a duly authorized representative has documented all of the following:

(1) The detection by the Control Officer or a duly authorized representative of an odor at a level 2 or greater, according to the following odor scale:

level 0 - no odor detected;

level 1 - odor barely detected;

level 2 - odor is distinct and definite, any unpleasant characteristics recognizable;

level 3 - odor is objectionable enough or strong enough to cause attempts at avoidance; and

level 4 - odor is so strong that a person does not want to remain present;

(2) An affidavit from a person making a complaint that demonstrates that they have experienced air contaminant emissions in sufficient quantities and of such characteristics and duration so as to unreasonably interfere with their enjoyment of life and property; and

(3) The source of the odor.

(c) Nothing in this Regulation shall be construed to impair any cause of action or legal remedy of any person, or the public for injury or damages arising from the emission of any air contaminant in such place, manner or concentration as to constitute air pollution or a common law nuisance.

REPEALER

REGULATION I SECTION 9.12 ODOR AND NUISANCE CONTROL MEASURES

AMENDATORY SECTION

REGULATION I SECTION 9.15 FUGITIVE DUST((+ EMISSION STANDARD)) CONTROL MEASURES

~~(((a) It shall be unlawful for any person to cause or allow the emission of fugitive dust unless such person uses the best available control technology to control the emissions.~~

~~(b) It shall be unlawful for any person to cause or allow a vehicle to be operated on a paved roadway open to the public:~~

~~(1) Unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, and except road construction and maintenance by public agencies.~~

~~(2) With a load of dirt, sand, gravel, or other material susceptible to being dropped, spilled, or otherwise escaping therefrom unless it is covered or has adequate freeboard so as to prevent spillage.~~

PERMANENT

~~(3) With deposits of mud, dirt, or other debris on the vehicle's body, fenders, frame, undercarriage, wheels, or tires:~~

~~Deposits of particulate matter on a paved roadway open to the public shall be prima facie evidence of a violation of Section 9.15(b).~~

~~(e) It shall be unlawful for any person to cause or allow the emission of fugitive dust from any refuse burning equipment, fuel burning equipment, equipment used in a manufacturing process, or control equipment.~~

~~(d) It shall be unlawful for any person to cause or allow the emission of fugitive dust in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.))~~

(a) It shall be unlawful for any person to cause or allow visible emissions of fugitive dust unless reasonable precautions are employed to minimize the emissions. Reasonable precautions include, but are not limited to, the following:

(1) The use of control equipment, enclosures, and wet (or chemical) suppression techniques, as practical, and curtailment during high winds;

(2) Surfacing roadways and parking areas with asphalt, concrete, or gravel;

(3) Treating temporary, low-traffic areas (e.g., construction sites) with water or chemical stabilizers, reducing vehicle speeds, constructing pavement or rip rap exit aprons, and cleaning vehicle undercarriages before they exit to prevent the track-out of mud or dirt onto paved public roadways; and

(4) Covering or wetting truck loads or allowing adequate freeboard to prevent the escape of dust-bearing materials.

(b) Compliance with the provisions of this section shall not relieve any person from the responsibility to comply with Section 9.11 of this regulation.

WSR 99-07-062
PERMANENT RULES
PUGET SOUND AIR
POLLUTION CONTROL AGENCY

[Filed March 17, 1999, 9:47 a.m.]

Date of Adoption: March 11, 1999.

Purpose: To ensure PSAPCA's new source review requirements are consistent with federal requirements.

Citation of Existing Rules Affected by this Order: Amending Sections 1.07, 6.03, 6.04, 6.06, and 6.07 of Regulation I.

Statutory Authority for Adoption: Chapter 70.94 RCW. Adopted under notice filed as WSR 99-04-105 on February 3, 1999.

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.

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

March 15, 1999

Margaret L. Corbin
Air Pollution Engineer

AMENDATORY SECTION

REGULATION I SECTION 1.07 DEFINITIONS

When used herein:

(a) **ACTUAL EMISSIONS** means the average rate at which the source actually emitted air contaminants during the 2-year period preceding a specific date, and which is representative of normal source operations. To account for unusual circumstances such as strikes, the Control Officer may approve or require the use of another time period that is more representative of normal operations than is the immediately preceding 2-year period.

(b) **AGENCY** means the Puget Sound Air Pollution Control Agency.

(c) **AIR CONTAMINANT** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(d) **AIR POLLUTION** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. Air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

(e) **ALLOWABLE EMISSIONS** means the emission rate calculated using the maximum rated capacity of the source (unless the source is subject to a federally enforceable permit that limits the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) Any applicable standard under 40 CFR Parts 60, 61, and 63;

(2) Any applicable emission standard under Regulation I, II, or III;

(3) Any applicable State Implementation Plan emission standard, including those with a future compliance date; or

(4) Any applicable emission standard specified in an Order of Approval or operating permit, including those with a future compliance date.

(f) **AMBIENT AIR** means the portion of the atmosphere, external to buildings, to which the general public has access.

(g) **BEST AVAILABLE CONTROL TECHNOLOGY** means technology that will result in an emission standard, including a visible emission standard, based on the maximum degree of reduction which the Agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts,

and other costs, determines is achievable for such source through application of production processes, available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques for control of each air contaminant. In no event shall application of the best available control technology result in emissions of any air contaminant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. The Agency may prescribe a design, equipment, work practice, or operational standard, or combination thereof, to meet the requirements of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means that achieve equivalent results.

(h) **BOARD** means the Board of Directors of the Puget Sound Air Pollution Control Agency.

(i) **COMBUSTIBLE REFUSE** means solid or liquid combustible waste material.

(j) **COMMENCED CONSTRUCTION** means that the owner or operator has all the necessary preconstruction approvals or permits and either has begun, or has caused to begin, a continuous program of actual on-site construction of the source or has entered into binding agreements or contractual obligations to undertake construction of the source which cannot be canceled or modified without substantial loss to the owner or operator.

(k) **CONTROL EQUIPMENT** means any device which prevents or controls the emission of any air contaminant.

(l) **CONTROL OFFICER** means the Air Pollution Control Officer of the Puget Sound Air Pollution Control Agency.

(m) **EMISSION** means a direct or indirect release of any air contaminant into the ambient air.

(n) **EMISSION STANDARD** means a requirement established under the Federal Clean Air Act (FCAA) or chapter 70.94 RCW that limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice, or operational standard promulgated under the FCAA or chapter 70.94 RCW.

(o) **EQUIPMENT** means any stationary or portable device or any part thereof that emits or may emit any air contaminant into the atmosphere.

(p) **FACILITY** means the sum total of all of the pollutant emitting activities that belong to the same industrial grouping (as defined by major groups in the Standard Industrial Classification Manual, NTIS Order No. PB 87-100012), are located on one or more contiguous or adjacent properties, and are owned or operated by the same person or persons under common control.

(q) **FUEL BURNING EQUIPMENT** means equipment that produces hot air, hot water, steam, or other heated fluids by external combustion of fuel.

(r) **FUGITIVE DUST** means particulate matter or any visible air contaminant other than uncombined water that is not collected by a capture system and emitted from a stack, but is released to the atmosphere at the point of generation.

(s) **FUGITIVE EMISSION** means an emission that does not pass and that could not reasonably pass through a stack, chimney, or other functionally equivalent opening.

(t) **GASOLINE** means a volatile organic compound having a true vapor pressure greater than 1.5 pounds per square inch (10.3 kPa) at 68°F (20°C), that is a liquid at a temperature of 68°F (20°C) and a barometric pressure of 29.92 inches of mercury (101.325 kPa), and is used as a fuel for internal combustion engines.

(u) **GASOLINE STATION** means any site dispensing gasoline into fuel tanks of motor vehicles, marine vessels, or aircraft from stationary storage tanks.

(v) **HAZARDOUS AIR POLLUTANT** means any air pollutant listed in or pursuant to section 112(b) of the federal Clean Air Act, 42 U.S.C. §7412.

((+)) (w) **INSTALLATION** means the placement, assemblage, or construction of equipment or control equipment at the premises where the equipment or control equipment will be used, and includes all preparatory work at such premises.

((+)) (x) **LOWEST ACHIEVABLE EMISSION RATE** means that rate of emissions that reflects either the most stringent emission standard that is contained in the implementation plan of any state for such class or category of source unless the owner or operator of the proposed source demonstrates that such emission standards are not achievable, or the most stringent emission standard that is achieved in practice by such class or category of source, whichever is more stringent.

((+)) (y) **MAJOR MODIFICATION** means a modification of a major source that would increase the actual emissions of any air contaminant for which the area is designated nonattainment by more than the following:

Air Contaminant	Tons/Year
Carbon Monoxide	100.0
Volatile Organic Compounds	40.0
Nitrogen Oxides	40.0
PM ₁₀	15.0
Sulfur Dioxide	40.0
Lead	0.6

In determining whether the thresholds defining a major modification have been exceeded, the emissions permitted under Orders of Approval issued to the facility since the designation of nonattainment that were not major modifications, and all fugitive emission increases that can be reasonably quantified shall be included. Any emission reduction credits banked by the facility since the designation of nonattainment may be subtracted from this amount provided that any credits so applied are then considered to have been used. For modifications of an individual piece of equipment, the baseline shall be the source's actual emissions or allowable emissions, whichever is smaller. (Note: volatile organic compounds and nitrogen oxides are the air contaminants for which an area is designated nonattainment for ozone.)

((+)) (z) **MAJOR SOURCE** means a facility that emits or has the potential to emit 100 tons per year or more of any air contaminant subject to regulation under the federal Clean Air

PERMANENT

Act. In determining whether the threshold defining a major source has been exceeded all fugitive emissions that can be reasonably quantified shall be included. Any emission reduction credits banked by the facility may be subtracted from this amount provided that any credits so applied are then considered to have been used.

((aa)) MAJOR SOURCE OF HAZARDOUS AIR POLLUTANTS means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of hazardous air pollutants or 25 tons per year or more of any combination of hazardous air pollutants, unless the U.S. EPA Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

((bb)) MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY EMISSION LIMITATION FOR NEW SOURCES means the emission limitation that is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and that reflects the maximum degree of reduction in emissions that the Agency, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

((cc)) ((z)) MODIFICATION means any physical change in, or change in the method of operation of, a source, except an increase in the hours of operation or production rates (not otherwise prohibited) or the use of an alternative fuel or raw material that the source is approved to use under an Order of Approval or operating permit, that increases the amount of any air contaminant emitted or that results in the emission of any air contaminant not previously emitted.

((dd)) ((aa)) MOTOR VEHICLE means any operating vehicle or one capable of being operated that has its own self-contained sources of motive power, is designed for the transportation of people or property, and is of the type for which a license is required for operation on a highway.

((ee)) ((bb)) MULTIPLE CHAMBER INCINERATOR means a furnace for the destruction of waste consisting of three or more refractory-lined combustion chambers in series, physically separated by refractory walls, interconnected by gas passage ports or ducts, and employing adequate design parameters necessary for maximum combustion of the material to be burned.

((ff)) ((ee)) NONATTAINMENT AREA means a geographic area designated by the United States Environmental Protection Agency that violates a primary or secondary national ambient air quality standard.

((gg)) ((dd)) OWNER OR OPERATOR means the person who owns, leases, supervises, or operates the equipment or control equipment.

((hh)) ((ee)) PARTICULATE MATTER means any material, except water in an uncombined form, that is, has been, or is likely to become airborne and exists as a liquid or a solid at a temperature of 68°F (20°C) and a barometric pressure of 29.92 inches of mercury (101.325 kPa).

((ii)) ((ff)) PERSON means and includes any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or governmental agency.

((jj)) ((gg)) PM₁₀ means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

((kk)) ((hh)) POTENTIAL TO EMIT means the maximum capacity of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the facility to emit an air contaminant, including control equipment and restrictions on the hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable.

((ll)) ((ii)) REASONABLY AVAILABLE CONTROL TECHNOLOGY means the lowest emission standard that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. Reasonably available control technology is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls.

((mm)) ((jj)) REFUSE BURNING EQUIPMENT means equipment employed to burn any solid or liquid combustible refuse.

((nn)) ((kk)) SOURCE means a building, structure, equipment, control equipment, or facility that emits or may emit any air contaminant into the atmosphere.

((oo)) ((hh)) STANDARD CONDITIONS means a temperature of 68°F and a barometric pressure of 29.92 inches of mercury.

((pp)) ((mm)) TOTAL ALLOWABLE EMISSIONS means allowable emissions, including the emissions from all Orders of Approval issued to the facility since the designation of nonattainment that were not major modifications, and all fugitive emissions that can be reasonably quantified.

((qq)) ((nn)) TOXIC AIR CONTAMINANT or TAC means an air contaminant listed in Appendix A of Regulation III.

((rr)) ((oo)) TRUE VAPOR PRESSURE means the equilibrium partial pressure of an organic liquid (determined by methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from External Floating Roof Tanks", May 1996).

((ss)) ((pp)) URBANIZED AREA means those portions of King, Pierce, Kitsap, and Snohomish Counties designated as urbanized areas by the U.S. Department of Commerce, Bureau of the Census.

((tt)) ((qq)) VOLATILE ORGANIC COMPOUND or VOC means an organic compound that participates in atmospheric photochemical reactions. This excludes all compounds determined to have negligible photochemical reactivity by

the U.S. Environmental Protection Agency and listed in 40 CFR 51.100(s) in effect July 1, 1998.

AMENDATORY SECTION

REGULATION I SECTION 6.03 NOTICE OF CONSTRUCTION

(a) It shall be unlawful for any person to cause or allow the construction, installation, establishment, or modification of an air contaminant source, except those sources that are excluded in Section 6.03(b), unless a "Notice of Construction and Application for Approval" has been filed with and approved by the Agency.

(b) Except when part of a new major source or major modification in a nonattainment area, or when constructing or reconstructing a major source of hazardous air pollutants, the following air contaminant sources do not need a "Notice of Construction and Application for Approval" approved by the Agency prior to construction, installation, establishment, or modification:

(1) Ventilating systems, including fume hoods, not designed to prevent or reduce air contaminant emissions.

(2) Fuel burning equipment that has a maximum input rate of:

(A) less than 0.5 million Btu per hour (0.15 million joules per second) burning waste-derived fuel; or

(B) less than 10 million Btu per hour (3 million joules per second) burning natural gas, propane, or butane; or

(C) less than 1 million Btu per hour (0.3 million joules per second) burning any other fuel.

(3) Insecticide, pesticide, or fertilizer spray equipment.

(4) Internal combustion engines less than the size thresholds of the proposed United States Environmental Protection Agency (EPA) New Source Performance Standards (NSPS) 40 CFR Part 60 Subpart FF (Stationary Internal Combustion Engines, 44 FR 43152 7/23/79) or the promulgated EPA NSPS 40 CFR Part 60 Subpart GG (Stationary Gas Turbines).

(5) Laboratory equipment used exclusively for chemical or physical analyses.

(6) Laundry dryers without control equipment.

(7) Dryers or ovens used solely to accelerate evaporation.

(8) Routing, turning, carving, cutting, and drilling equipment used for metal, wood, plastics, rubber, leather, or ceramics which does not release air contaminants to the ambient air.

(9) Storage tanks:

(A) that do not store substances capable of emitting air contaminants; or

(B) with a rated capacity of 1,000 gallons (3,780 liters) or less used for storage of gasoline; or

(C) with a rated capacity of less than 10,000 gallons (38,000 liters) used for storage of volatile organic compounds; or

(D) with a rated capacity of less than 40,000 gallons (150,000 liters) used for storage of volatile organic compounds with a true vapor pressure less than 0.01 kPa (0.002 psia).

(10) Sanitary or storm drainage systems.

(11) Welding, brazing, or soldering equipment.

(12) Asphalt roofing and laying equipment (not including manufacturing or storage).

(13) Restaurants and other retail food-preparing establishments.

(14) Cold solvent cleaners using a solvent with a true vapor pressure less than or equal to 4.2 kPa (0.6 psia).

(15) Retail printing operations (not including web presses).

(16) Spray painting or blasting equipment used at a temporary location to clean or paint bridges, water towers, buildings, or similar structures.

(17) Any source that has been determined through review by the Control Officer not to warrant a "Notice of Construction and Application for Approval", due to the minimal amount and nature of air contaminants produced and potential to contribute to air pollution, with special reference to effects on health, economic and social factors, and physical effects on property. The owner or operator shall submit to the Control Officer, the information necessary to make this determination. The Control Officer shall notify the owner or operator in writing whether a "Notice of Construction and Application for Approval" is required for the source.

(c) Each Notice of Construction and Application for Approval shall be submitted on forms provided by the Agency and shall be accompanied by a set of plans that fully describes the proposed source, the means for prevention or control of the emissions of air contaminants, the appropriate fee as required by Section 6.04, and any additional information required by the Board or Control Officer to demonstrate that the proposed source will meet the requirements of Section 6.07.

(d) Within 30 days of receipt of a Notice of Construction and Application for Approval, the Agency shall notify the applicant in writing if any additional information is necessary to complete the application.

AMENDATORY SECTION

REGULATION I SECTION 6.04 NOTICE OF CONSTRUCTION REVIEW FEES

A. Notice of Construction and Application for Approval is incomplete until the Agency has received a fee as shown below:

General (not classified below) for each Piece of Equipment or Control Equipment	\$500
Minor NOC Change	\$500
NOC Applicability Determination	\$200
Relocation of Previously Permitted Portable Source to a New Address, except soil thermal desorption units	\$500
Asphalt Concrete Plant	\$1,000
Coffee Roaster	\$1,000
Composting Facility	\$2,500
Dry Cleaner (per machine)	\$300
Gasoline Station	\$500
Landfill Gas System	\$2,500

PERMANENT

Refuse Burning Equipment: (rated capacity)	
12 tons per day or less	\$5,000
greater than 12 tons per day but less than 250 tons per day.	\$20,000
250 tons per day or greater	\$50,000
Spray-Painting Operation (per booth)	\$500
Storage Tanks excluding those at gasoline stations: (gallons)	
less than 20,000	\$300
20,000 or more	\$1,000
Soil Thermal Desorption Unit (initial)	\$3,000
Relocation of Approved Desorption Unit to New Address.	\$1,000
Additional Charges: SEPA Threshold Determination	\$250
Air Toxics Review (under Regulation III, Section 2.07 (c) (2)).	\$500
Air Toxics Review (under Regulation III, Section 2.07 (c) (3)).	\$5,000
Major Source, Major Modification, or Emission Increases greater than Prevention of Significant Deterioration Thresholds (see Regulation I, Section 6.07(d)).	\$5,000
<u>Construction or reconstruction of a major source of hazardous air pollutants (see Regulation I, Section 6.07 (f))</u>	\$2,500
Opacity/Grain Loading Correlation	\$5,000
Emissions Units Subject to an NSPS or NES-HAP (except residential wood heaters, asbestos renovation or demolition, and perchloroethylene dry cleaning)	\$1,000
Public Notice (plus publication fees)	\$500

AMENDATORY SECTION

REGULATION I SECTION 6.06 PUBLIC NOTICE

(a) The Agency shall provide public notice for any proposed Order of Approval if:

(1) The proposed installation or modification would increase the emissions of any air contaminant by more than the following:

Air Contaminant	Tons/Year
Carbon Monoxide.	100.0
VOC	40.0
Nitrogen Oxides	40.0
PM ₁₀	15.0
Sulfur Dioxide	40.0
Lead	0.6
Fluorides	3.0
Sulfuric Acid	7.0
Total Reduced Sulfur	10.0

(2) The applicant requests a limit on the potential to emit;

(3) The applicant requests to bank emission reduction credits;

(4) The applicant requests approval of a risk analysis;

(5) The proposed installation or modification is construction or reconstruction of a major source of hazardous air pollutants subject to the requirements in Section 6.07(f):

~~((5))~~ (6) The proposed installation or modification involves refuse burning equipment; or

~~((6))~~ (7) The Control Officer determines that there may be substantial public interest in the proposal.

(b) Public notice shall be published in a newspaper of general circulation in the area of the proposed project and shall include the following:

(1) The name and address of the owner or operator and the facility;

(2) A brief description of the proposal;

(3) The locations at which copies of the preliminary determination and a summary of information considered in making such preliminary determination are available for public inspection;

(4) The deadline for submitting written comment; and

(5) That a public hearing may be held if the Agency determines within a 30-day period that significant public interest exists.

(c) Notice shall also be sent to the U.S. Environmental Protection Agency Regional Administrator.

(d) The cost of providing public notice shall be borne by the applicant.

(e) The Agency shall not make a final decision on any application until the public comment period has ended and any comments received have been considered. Unless a public hearing is held, the public comment period shall be the 30-day period for written comment published as provided above. If a public hearing is held, the public comment period shall extend through the hearing date.

(f) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the 30-day period published as provided above. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. The Agency may, at its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held upon such notice and at a time and place as the Agency deems reasonable. The Agency shall provide at least 30 days prior notice of any hearing.

AMENDATORY SECTION

REGULATION I SECTION 6.07 ORDER OF APPROVAL - ORDER TO PREVENT CONSTRUCTION

(a) Within 60 days of receipt of a complete Notice of Construction and Application for Approval, or as promptly as possible after the close of the public comment period if subject to the public notice requirements of Section 6.06 of this Regulation, the Board or Control Officer shall issue an Order of Approval or ~~((an Order to Prevent Construction))~~ notify the applicant of an intent to disapprove the application in

accordance with Section 6.07(h). A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required by Article 7 of this Regulation provided that any such application shall be processed in accordance with the operating permit program procedures and deadlines.

(b) An Order of Approval may provide such conditions of operation as are reasonably necessary to assure compliance with all applicable emission standards.

(c) No Order of Approval shall be issued unless the Notice of Construction and Application for Approval demonstrates to the Board or Control Officer that:

(1) The operation of the source at the location proposed will not cause or contribute to a violation of an ambient air quality standard;

(2) The source will meet the requirements of all applicable emission standards;

(3) Best available control technology is employed for the installation of new sources and the modification of existing sources; and

(4) Reasonably available control technology is employed for the replacement of existing control equipment.

(d) No Order of Approval shall be issued for a new major source or major modification in a nonattainment area unless the Notice of Construction and Application for Approval also demonstrates to the Board or Control Officer that:

(1) For those air contaminants for which the area is designated nonattainment, lowest achievable emission rate is employed for each new source at a new major source, and each new or modified source involved in a major modification;

(2) All existing major sources owned or operated by the applicant in the state of Washington are in compliance with all applicable emission standards under the federal Clean Air Act or are on an approved compliance schedule;

(3) Offsets in the form of emission reduction credits (banked pursuant to Section 6.08 of this Regulation) in an amount greater than or equal to 1.10 times the proposed total allowable emissions from the new major source, or the increase from current actual emissions to the proposed total allowable emissions for a major modification, have been obtained from sources in the same nonattainment area and occur by the time the new major source or major modification begins operation; and

(4) The benefits of the proposed new major source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, installation, or modification. (This demonstration, which shall include an analysis of alternative sites, sizes, production processes, and environmental control techniques, may be in the form of an environmental impact statement prepared under the State Environmental Policy Act or the National Environmental Policy Act.)

(e) No Order of Approval shall be issued for a new or modified source of toxic air contaminants, except for sources exempted by Section 2.01 of Regulation III, unless the Notice of Construction and Application for Approval demonstrates to the Board or Control Officer that:

(1) The toxic air contaminant emissions from the source will not result in the exceedance of any acceptable source impact level listed in Appendix A of Regulation III; or

(2) The emissions from the source will not cause air pollution. This demonstration shall be performed in accordance with Section 2.07 of Regulation III and requires approval from the Department of Ecology.

(f) No Order of Approval shall be issued for the construction or reconstruction (as defined in 40 CFR section 63.41) of a major source of hazardous air pollutants, excluding sources listed below in Section 6.07 (f)(1) and (2), unless the Notice of Construction and Application for Approval demonstrates to the Board or Control Officer that the maximum achievable control technology emission limitation for new sources is employed. Maximum achievable control technology shall be determined in accordance with principles in 40 CFR section 63.43(d).

(1) Major sources of hazardous air pollutants specifically regulated or exempted under a standard issued pursuant to sections 112 (d), (h), or (j) of the federal Clean Air Act and incorporated in 40 CFR Part 63; or

(2) Major sources listed in 40 CFR sections 63.40 (c), (e), or (f).

~~((f))~~ (g) An Order of Approval shall expire unless the owner or operator has commenced construction of the source within 18 months of the date of its issuance or if construction is discontinued for a period of more than 18 months.

~~((g) An Order to Prevent Construction shall set forth the objections in detail with references to the provisions of this Regulation that would not be met. Such Order shall become final unless, no later than 15 days after the date the Order is served, the applicant petitions for a reconsideration of the Order, with reasons for the reconsideration. The Control Officer shall consider the petition, and shall within 30 days give written Order of Approval or final disapproval of the Notice of Construction setting forth the reasons for disapproval.)~~

(h) An Intent to Disapprove an Application and any subsequent Order to Prevent Construction shall set forth the grounds on which the Intent to Disapprove or Order is based with references to the provisions of this Regulation that would not be met. A final Order to Prevent Construction shall be issued unless, no later than 60 days after the date the Intent to Disapprove is served, the applicant petitions for reconsideration of the Intent to Disapprove, setting forth the reasons for the reconsideration. The Control Officer shall consider the petition, and shall within 30 days of receipt of the petition, issue an Order of Approval or final Order to Prevent Construction, setting forth the reasons for disapproval.

WSR 99-07-063

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed March 17, 1999, 9:54 a.m., effective June 17, 1999]

Date of Adoption: March 17, 1999.

PERMANENT

Purpose: Chapter 296-62 WAC, General occupational health standards.

Topic: Emergency washing facilities.

Currently WISHA compliance and consultation officers rely on WAC 296-62-130, WRD 12.35, WRD 91-13A, and ANSI Z358.1-1990 to verify compliance with emergency washing facility requirements. WAC 296-62-130 does not contain the policies outlined in the WISHA regional directives nor those in the ANSI Z358.1-1990, but it does exceed the OSHA standard. OSHA consistently provides the ANSI as their reference for details on emergency eyewash and shower equipment even though it is not referred to in their standard. The department is adopting the amendments to the current rule to explicitly incorporate some ANSI requirements in order to eliminate this compliance requirement confusion and provide more specific information to the employer. ANSI Z358.1-1998 is also referenced for additional information. This action will replace WISHA Regional Directive 12.35 and WISHA Regional Directive 91-13A.

WAC 296-62-130 Emergency washing facilities. State-initiated amendments are made:

- To delete definition numbering as required by the Code Reviser's Office.
- To modify the definition of emergency washing facilities by adding the word "hand-held drench hoses." To delete definitions for "emergency shower," "eye/face wash," "eyewash," "personal eyewash," and "contact chemical agents."
- To add the definitions for chemicals ("corrosive," "strong irritant," and "toxic chemical"), that when present, could possibly necessitate the availability of emergency washing facilities.
- To changed "shall" to "must" for clarity.
- To add the requirement that emergency washing facilities be accessible and free of obstruction.
- To add specific requirements that apply to emergency showers.
- To add specific requirements that apply to emergency eyewash equipment.
- To add specific requirements that apply to personal eyewash equipment.
- To add specific requirements that apply to hand-held drench hoses.
- To add specific requirements for periodic inspections of plumbed and self-contained washing equipment.
- To add the note that equipment that meets ANSI standards will be in compliance with this proposed rule.
- To add the mailing address for the American National Standards Institute where copies of the ANSI standard can be obtained.

A public hearing was held on December 10, 1998, in Tumwater, Washington.

- There were a total of eight stakeholders in attendance.
- One stakeholder gave oral testimony.
- Six written comments were received.

Citation of Existing Rules Affected by this Order: Amending WAC 296-62-130 Emergency washing facilities.

Statutory Authority for Adoption: RCW 49.17.040.

Adopted under notice filed as WSR 98-21-069 on October 20, 1998.

Changes Other than Editing from Proposed to Adopted Version:

- To add specific requirements for annual inspection and testing that apply to emergency showers.
- To add specific requirements that apply to hand-held drench hoses.
- To add the mailing address for the American National Standards Institute where copies of the ANSI standard can be obtained.

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

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

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

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

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

Effective Date of Rule: June 17, 1999.

March 15, 1999

Gary Moore

Director

AMENDATORY SECTION (Amending Order 85-09, filed 4/19/85)

WAC 296-62-130 Emergency washing facilities. (1) Definitions.

((a)) "Emergency washing facilities" means emergency showers, eyewashes, eye/face washes, hand-held drench hoses, or other similar units.

~~((b)) "Emergency shower" means a unit that enables a user to have water cascading over the entire body. It shall deliver a minimum of 113.6 liters (30 gallons) per minute of water.~~

~~((c)) "Eye/face wash" means a device used to irrigate and flush both the face and eyes. It shall deliver not less than 11.4 liters (3 gallons) per minute of water for at least fifteen minutes.~~

~~((d)) "Eyewash" means a device to irrigate and flush the eyes. It shall deliver not less than 1.5 liters (0.4 gallons) per minute for at least fifteen minutes.~~

~~((e)) "Personal eyewash" means a portable, supplementary eyewash that supports plumbed units, self-contained units, or both, by delivering immediate flushing for less than fifteen minutes.~~

~~((f)) "Contact chemical agents" are defined in WAC 296-62-07003.)~~

"Corrosive" is a substance that can cause destruction of living tissue by chemical action, including acids with a pH of 2.5 or below or caustics with a pH of 11.0 or above.

"Strong irritant" means a chemical that is not corrosive, but causes a strong temporary inflammatory effect on living tissue by chemical action at the site of contact.

"Toxic chemical" means a chemical that produces serious injury or illness by absorption through any body surface.

(2) Facilities required.

(a) What requirements apply to accessing emergency washing facilities?

- Emergency washing facilities (~~shall~~) must be readily available (~~in the immediate work area for workers who may be exposed to harmful concentrations of contact chemical agents~~) and accessible.
- To be readily available and accessible, emergency washing facilities (~~shall~~) must be free of obstruction and require no more than ten seconds to reach. (~~They should be within a~~)
- The travel distance should be no (~~greater~~) farther than fifty feet (15.25 meters (~~50 feet~~)).

(b) What requirements apply to emergency showers?

- Emergency showers must be provided if there is a potential for substantial portions of the body to come into contact with corrosives, strong irritants, or toxic chemicals.
- The emergency showers must deliver water to cascade over the user's entire body at a minimum rate of twenty gallons (75.7 liters) per minute for fifteen minutes or more.

(c) What requirements apply to emergency eyewash?

- Emergency eyewash must be provided where there is the potential for an employee's eyes to be exposed to corrosives, strong irritants, or toxic chemicals.
- The emergency eyewash equipment must irrigate and flush both eyes simultaneously while the operator holds the eyes open.
- The on-off valve must be activated in one second or less and must remain on without the use of the operator's hands until intentionally turned off.
- The emergency eyewash equipment must deliver at least 0.4 gallons (1.5 liters) of water per minute for fifteen minutes or more.

(d) What requirements apply to personal eyewash equipment?

- Personal eyewash units are portable, supplementary units that support plumbed units or self-contained units, or both, by delivering immediate flushing for less than fifteen minutes.
- Such units must deliver potable water or other medically approved eye flushing solution.
- Personal eyewash equipment may be used to supplement (~~the requirement for~~) emergency washing facilities, however, (~~in no event shall it~~) they must not be used as a substitute. (~~Such units shall deliver potable water or other medically approved eye flushing solution.~~)

(e)) (e) What are the requirements for hand-held drench hoses?

- Hand-held drench hoses are single-headed emergency washing devices connected to a flexible hose and can be used to irrigate and flush the face or other parts of the body.
- Hand-held drench hoses may be used to supplement emergency washing facilities, however, they must not be used as a substitute.
- Hand-held drench hoses must deliver at least 3.0 gallons (11.4 liters) of water per minute for fifteen minutes or more.

(f) What periodic inspection requirements apply to plumbed and self-contained washing equipment?

- All plumbed emergency (~~washing~~) eyewash facilities (~~including personal eyewash equipment, shall be periodically~~) and hand-held drench hoses must be activated weekly and inspected annually to ensure that they function correctly and that the quality and quantity of water is satisfactory for emergency washing purposes.
- Emergency showers must be activated and inspected annually to ensure that they function correctly and that the quality and quantity of water is satisfactory for emergency washing purposes.
- All self-contained eyewash equipment and personal eyewash equipment must be inspected and maintained according to manufacturer instructions. Inspections for proper operation must be done annually. Sealed personal eyewashes must be replaced after the manufacturer's expiration date.

Note: Most manufacturers recommend fluid replacement every six months in self-contained eyewashes. The ANSI Standard can be obtained from the American National Standards Institute, 1430 Broadway, New York, New York 10018.

(3) Potable water. All emergency washing facilities using nonpotable water (~~shall~~) must have signs stating the water is nonpotable.

Note: For further information on the design, installation, and maintenance of emergency washing facilities, see American National Standards Institute (ANSI) publication Z358.1 - 1998, Emergency Eyewash and Shower Equipment. Emergency washing facilities that are designed to meet ANSI Z358.1 - 1998 also meet the requirements of this standard. The ANSI Standard can be obtained from the American National Standards Institute, 1430 Broadway, New York, New York 10018.

WSR 99-07-076

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 98-25—Filed March 17, 1999, 3:04 p.m.]

Date of Adoption: March 16, 1999.

Purpose: Repeal of chapter 317-100 WAC. This chapter was adopted by the Office of Marine Safety in compliance with the State Environmental Policy Act (SEPA), chapter 43.21C RCW. The Office of Marine Safety was abolished and its laws, rules, functions and authorities were transferred to the Department of Ecology July 1, 1997. The Department

of Ecology has its own SEPA rules making chapter 317-100 WAC unnecessary.

Citation of Existing Rules Affected by this Order: Repealing chapter 317-100 WAC.

Statutory Authority for Adoption: RCW 34.05.354, 43.21I.030.

Other Authority: Chapter 43.21A RCW.

Adopted under preproposal statement of inquiry filed as WSR 99-01-087 on December 16, 1998.

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 2.

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

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.

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

March 16, 1999

Tom Fitzsimmons
Director

WSR 99-07-078
PERMANENT RULES
HEALTH CARE AUTHORITY

(Basic Health Plan)

[Filed March 18, 1999, 11:27 a.m.]

Date of Adoption: March 18, 1999.

Purpose: Executive Order 97-02 requires that rules be reviewed for clarity. This revises rules for appealing a basic health or MHCS decision, to make them more understandable for basic health enrollees and to include additional detail.

Citation of Existing Rules Affected by this Order: Amending WAC 182-25-100, 182-25-105, and 182-25-110.

Statutory Authority for Adoption: RCW 70.47.050.

Adopted under notice filed as WSR 98-22-070 on November 3, 1998.

Changes Other than Editing from Proposed to Adopted Version: WAC 182-25-110(5) was revised for clarity and to add a timeline, in response to stakeholder input. Minor revisions to WAC 182-25-105 (4), (7)(a) and (10), for clarification, also in response to stakeholder input.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

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

March 17, 1999

Bob Blacksmith
for Elin S. Meyer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-07-002, filed 3/5/98, effective 4/5/98)

~~WAC 182-25-100 ((Appeals and mediation of grievances))~~ Where to find instructions for filing an appeal. ~~((1) HCA decisions regarding basic health plan eligibility, premium, enrollment, suspension, disenrollment or change of MHCS may be appealed pursuant to WAC 182-25-105.~~

~~(2) The HCA will not hear appeals of decisions regarding children covered under BHP plus. Those decisions must be appealed through the department of social and health services, according to the provisions of chapters 388-08 and 388-526 WAC, as amended.~~

~~(3) Decisions made by a MHCS, such as coverage disputes or benefits interpretation may be appealed pursuant to WAC 182-25-110.)~~ (1) WAC 182-25-105 and 182-25-110 cover appeals submitted by or on behalf of basic health plan enrollees or applicants. To appeal a decision regarding a child enrolled in BHP plus or a woman receiving maternity benefits through medical assistance, subscribers must contact the Washington state department of social and health services (DSHS) to request a fair hearing under chapters 388-08 and 388-526 WAC.

(2) WAC 182-25-105 covers appeals of decisions made by the health care authority, such as decisions regarding basic health plan eligibility, premium, premium adjustments or penalties, enrollment, suspension, disenrollment, or a member's selection of managed health care system (MHCS). Decisions which affect an entire group (for example, the disenrollment of an employer group) should be appealed for the entire group by the employer, home care agency, or financial sponsor, using these same rules.

(3) WAC 182-25-110 covers appeals of decisions made by the enrollee's managed health care system (MHCS), such as decisions regarding coverage disputes or benefits interpretation. The term MHCS, which is defined in WAC 182-25-010(22), refers to the health plan or carrier that provides BHP coverage.

AMENDATORY SECTION (Amending WSR 98-07-002, filed 3/5/98, effective 4/5/98)

~~WAC 182-25-105 ((Appeals of HCA decisions regarding BHP))~~ How to appeal health care authority

decisions. ~~((1) If a subscriber or applicant wishes to appeal a HCA decision regarding BHP eligibility, premium, enrollment, suspension, disenrollment or change of MHCS, he/she must send a letter of appeal, signed by the appealing party, to the HCA appeals committee no more than thirty days after the date the HCA's decision was sent to the subscriber or applicant. The letter should include the name, address and BHP account number of the enrollee and subscriber or the applicant and a statement of:~~

- ~~(a) The decision being appealed;~~
- ~~(b) Why the enrollee considers the decision to be incorrect; and~~
- ~~(c) The facts upon which the appeal is based, including any supporting documents.~~

~~(2) When the letter of appeal is received, the HCA appeals coordinator will contact the subscriber to explain his/her appeal rights and the appeal procedure used by the HCA appeals committee to conduct a brief adjudicative proceeding pursuant to RCW 34.05.482 through 34.05.494, as amended. Generally, the appeal will be limited to a review of submitted documents, but may also include a telephone or in-person conference. The HCA appeals committee will send its written initial decision to the subscriber or applicant within sixty days of receipt of the subscriber's or applicant's letter of appeal. The written initial decision will include reasons for the decision and information and instructions on further appeal rights. The appeals committee may also elect to convert the brief adjudicative proceeding to a formal adjudicative proceeding when it is more appropriate to resolve issues affecting the participants, and refer the appeal to the hearing officer.~~

~~(3) If the HCA appeals committee decision results in disenrollment, the enrollee may request a review hearing by the office of administrative hearings, pursuant to chapter 34.12 RCW and RCW 34.05.488 through 34.05.494, as amended. An enrollee or applicant may request review of all other initial decisions of the HCA appeals committee by a HCA hearings officer, pursuant to RCW 34.05.488 through 34.05.494, as amended. A request for review of the initial decision must be made in writing within twenty-one days after service of the written statement as required by RCW 34.05.485(3), as amended. Otherwise, the HCA appeals committee decision will be the final agency decision.~~

~~(4) An enrollee who has appealed a disenrollment decision will remain disenrolled pending the appeal decision, with the exception of enrollees who have filed a timely appeal of a disenrollment decision that was due to an issue of eligibility. In appeals of a disenrollment for ineligibility, the disenrollment will not become effective pending the appeal decision, provided:~~

~~(a) The enrollee otherwise remains eligible and continues to make all premium payments when due; and~~

~~(b) The enrollee has not demonstrated a risk to the safety or property of MHCS or health care authority staff, providers, patients or visitors.))~~ (1) Under this section, enrollees or applicants may file appeals of health care authority decisions regarding eligibility, premiums, premium adjustments or penalties, enrollment, suspension, disenrollment, or a member's selection of managed health care system (MHCS).

(2) To appeal a health care authority (HCA) decision, enrollees or applicants must send a letter of appeal to the HCA appeals committee. The letter of appeal must be signed by the appealing party and received by the HCA within thirty calendar days of the date of the decision. The letter of appeal must include:

(a) The name, mailing address, and BHP account number of the subscriber or applicant;

(b) The name and address of the enrollee or applicant affected by the decision, if that person is not the subscriber on the account;

(c) A copy of the HCA notice of the decision that is being appealed or, if the notice is not available, a statement of the decision being appealed; and

(d) A statement explaining why the appealing party believes the decision was incorrect, outlining the facts surrounding the decision and including supporting documentation.

(3) Upon receiving the letter of appeal, the HCA will send notification to the appealing party, confirming that the appeal has been received and indicating when a decision can be expected.

(4) The HCA will conduct appeals according to RCW 34.05.485. The HCA appeals committee or a hearings officer designated by the HCA will review and decide the appeal based on submitted documents unless the HCA and the appealing party agree to hold a hearing in person or by telephone.

(5) The HCA will send the appealing party written notification of the appeals committee's or hearings officer's initial decision within sixty days of receiving the letter of appeal. The notification will include the reasons for their initial decision, and instructions on further appeal rights.

(6) The initial decision of the appeals committee or hearings officer becomes the final decision unless the HCA receives a request for a review hearing from the appealing party within thirty days of the date of the decision. The appealing party may request review of the initial decision either verbally or in writing. The person requesting review must reference the initial decision and provide any additional written information that the appealing party would like considered in the review.

(a) If the appealing party requests a review of the appeals committee's or hearings officer's initial decision regarding a disenrollment, the office of administrative hearings will review the decision through a hearing conducted under chapter 34.12 RCW and RCW 34.05.488 through 34.05.494.

(b) If the appealing party requests a review of any decision of the appeals committee or hearings officer other than a disenrollment decision, a hearings officer designated by the HCA will review the decision through a hearing conducted under RCW 34.05.488 through 34.05.494.

(7) In a review under subsection (6)(a) or (b) of this section:

(a) The hearings officer will review and decide the appeal based on submitted documents unless the HCA and the appealing party agree to hold a hearing in person or by telephone.

(b) The review officer will make any inquiries necessary to determine whether the proceeding must become a formal

adjudicative proceeding under the provisions of chapter 34.05 RCW.

(8) If an enrollee submits a timely appeal of a disenrollment decision that was based on eligibility issues and not related to premium payments, the enrollee will remain enrolled during the appeal process, provided the enrollee:

(a) Otherwise remains eligible;

(b) Continues to make all premium payments when due;
and

(c) Has not demonstrated a danger or threat to the safety or property of the MHCS or health care authority or their staff, providers, patients or visitors.

(9) An enrollee who has appealed a disenrollment decision related to nonpayment of premium or any issue other than eligibility will remain disenrolled during the appeal process.

(10) If the appealing party disagrees with a review decision under subsection (6) of this section, the appealing party may request judicial review of the decision, as provided for in RCW 34.05.542. Request for judicial review must be filed with the court within thirty days of service of the final agency decision.

AMENDATORY SECTION (Amending WSR 96-15-024, filed 7/9/96, effective 8/9/96)

WAC 182-25-110 ((Appeals of MHCS decisions.))
How to appeal a managed health care system (MHCS) decision. ((1) Disputes arising between enrollees and the managed health care system in which they are enrolled, such as coverage disputes or benefits interpretation, are considered to be contractual disputes between those parties. Every MHCS is required to maintain a grievance/appeals process for enrollees, providing for resolution by MHCS personnel with authority to require corrective action, including but not limited to review by appropriate medical personnel of complaints regarding quality of care or access to urgently needed services. The MHCS will make available information on its grievance/appeals process through its customer service department.

(2) The enrollee must exhaust the grievance/appeals process through the MHCS.

(a) If an issue is not resolved through that process within a reasonable time, or if the MHCS has not replied in writing to the enrollee within thirty days of receiving his/her written grievance/appeal, the enrollee may send a letter of appeal to the HCA appeals committee, requesting the HCA to inquire as to the status of the grievance/appeal. The HCA may initiate informal dispute resolution aimed at achieving a resolution satisfactory to the MHCS and the enrollee. In the event informal dispute resolution is unable to resolve the issue, the grievance/appeal will be reviewed by the HCA appeals committee.

(b) If the MHCS decision is not satisfactory to the enrollee, and the enrollee has not previously requested HCA assistance with the issue, the enrollee may send a letter of appeal to the HCA appeals committee. The letter of appeal must be received by the HCA no more than thirty days after the MHCS written notice of the decision is sent.

(3) When the letter of appeal is received, the HCA appeals coordinator will contact the subscriber to explain his/her appeal rights and the appeal procedure used by the HCA appeals committee to conduct a brief adjudicative proceeding pursuant to RCW 34.05.482 through 34.05.494, as amended. Generally, the appeal will be limited to a review of submitted documents, but may also include a telephone or in-person conference. The HCA appeals committee will send its written initial decision to both parties in the appeal, including the reasons for the decision, within sixty days of scheduling the appeal and, if the decision supports the MHCS position, will advise the enrollee of further appeal rights. The appeals committee may also elect to convert the brief adjudicative proceeding to a formal adjudicative proceeding when it is more appropriate to resolve issues affecting the participants, and refer the appeal to the hearing officer. A HCA appeals committee decision which differs from the MHCS decision shall prevail and the MHCS shall perform in accordance to the HCA appeals committee decision.

(4)(a) If the HCA appeals committee agrees with the MHCS decision, the enrollee may request review of the HCA appeals committee decision by the HCA hearings officer. This request for review of the decision must be received no more than twenty-one days after the date of the HCA appeals committee decision.

(b) If the decision of the HCA appeals committee disagrees with the MHCS decision, the MHCS may request a dispute hearing with the HCA administrator, according to the terms of the contract between the MHCS and the HCA.)) (1) Enrollees who are appealing a MHCS decision, including decisions related to coverage disputes, denial of claims, or benefits interpretation, must first appeal the decision through their MHCS's grievance/appeals process. Under this section, the HCA may review MHCS decisions that have been the subject of a MHCS grievance/appeal process.

(2) Each MHCS must maintain a grievance/appeals process for enrollees and must provide enrollees with instructions for filing a grievance or appeal. This grievance/appeals process must comply with HCA contract requirements for timeliness in responding to complaints, including procedures for an expedited review if the enrollee is urgently in need of medical care. In addition, the MHCS grievance/appeal process must include review of MHCS decisions by:

(a) MHCS personnel who have the authority to require corrective action; and

(b) Appropriate medical personnel, if the appeal includes complaints regarding quality of care or access to urgently needed services.

(3) An enrollee who has appealed a MHCS decision may ask the HCA to initiate informal dispute resolution in either of the following circumstances:

(a) The appeal has not been resolved within the timelines established by the MHCS grievance/appeal process or agreed to by the MHCS and the appealing party; or

(b) The enrollee has not received a response from the MHCS within thirty days of initiating the appeal. The response from the MHCS may be a decision or, if a delay of the appeal decision is necessary, it may be notification of a delay. If the decision has been delayed, the notice must include the reason for the delay and the date the enrollee can

expect a decision from the MHCS. The HCA has the authority to determine if the delay is reasonable.

(i) If the HCA determines the delay to be unreasonable, the HCA will initiate informal dispute resolution.

(ii) If the HCA determines the delay to be reasonable, the HCA will not initiate informal dispute resolution unless the MHCS fails to issue a decision by the date indicated in the delay notice.

(4) Enrollees requesting informal dispute resolution must submit a written request to the HCA, which includes:

(a) The name, mailing address, and BHP account number of the subscriber;

(b) The name and address of the enrollee affected by the decision, if that person is not the subscriber on the account;

(c) A statement of the dispute and efforts to resolve it; and

(d) A statement, with facts and documentation, in support of the appealing party's opinion.

(5) When the HCA receives the request for informal dispute resolution, the HCA will notify the MHCS and will attempt to resolve the dispute. The HCA will notify the enrollee of the outcome of the informal dispute resolution or of the reason for a delay, within thirty days of receiving the request. If the issue has not been resolved to the satisfaction of the enrollee, the appealing party may ask the HCA appeals committee to review the MHCS decision. The request may be written or oral and must be received within thirty days of the date the HCA notifies the appealing party of the outcome of the informal dispute resolution. The appealing party may submit additional documentation with the request.

(6) Enrollees may appeal a final MHCS decision by sending a letter of appeal to the HCA appeals committee, asking for review of the final MHCS decision. The letter of appeal must be signed by the appealing party and received by the HCA within thirty days of the date of the final MHCS decision, and must include the information listed in subsection (4) of this section.

(7) The HCA will follow the procedures in WAC 182-25-105 (3) through (7) when conducting reviews of MHCS decisions. The MHCS must be given the opportunity to submit written comments or participate in any proceeding before the appeals committee or in any subsequent administrative review.

WSR 99-07-089

PERMANENT RULES

WESTERN WASHINGTON UNIVERSITY

[Filed March 19, 1999, 1:46 p.m.]

Date of Adoption: [No information supplied by agency.]

Purpose: To provide for enforcement of these regulations as infractions within university administrative structure rather than as a criminal offense in district court.

Citation of Existing Rules Affected by this Order: Amending chapter 516-13 WAC, Bicycle traffic and parking regulations and chapter 516-15 WAC, Skateboards and inline skates.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Adopted under notice filed as WSR 99-03-011 on January 8, 1999.

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

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

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

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

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

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

March 11, 1999

Gloria A. McDonald

Rules Coordinator

AMENDATORY SECTION (Amending WSR 96-24-016, filed 11/22/96, effective 1/1/97)

WAC 516-13-090 Enforcement. A bicycle rider who refuses to abide by these regulations (~~(will be asked to leave the campus. A person who refuses to obey the request is subject to being cited for criminal trespass under the provisions of chapter 9A.52 RCW. If a student refuses to abide by these regulations, a proceeding may be initiated under chapter 516-23 WAC, the Student Rights and Responsibilities Code. Enforcement described in this chapter does not preclude other established university disciplinary procedures)~~) set forth under WAC 516-13 may be issued a university notice of infraction (NOI) for one or more of the following infractions:

- (1) Failure to yield right of way to pedestrian;
- (2) Failure to stay in control of bicycle;
- (3) Failure to obey dismount policy;
- (4) Riding on lawn or other restricted area;
- (5) Failure to use due care and caution.

Penalties: The penalties for violating any part of this section shall be progressive, with the monetary penalty increasing for each subsequent offense regardless of the nature of the previous offense(s). The first violation shall have a monetary penalty of ten dollars. A second violation shall have a monetary penalty of twenty-five dollars. A third and each subsequent violation shall have a monetary penalty of fifty dollars.

Any bicycle rider who violates any portion of this section and as a result is involved in a collision with a pedestrian or an object shall have the monetary penalty for the offense(s) doubled.

Any bicycle rider who attempts to elude a uniformed police officer attempting to enforce these regulations shall have the monetary penalty for the offense(s) doubled.

PERMANENT

Chapter 516-13 WAC notwithstanding, bicycle riders remain subject to enforcement of applicable city and state traffic laws while riding upon public roadways or sidewalks.

A bicycle rider who refuses to cooperate with a police officer or to present proof of identification will be subject to arrest for obstructing a law enforcement officer under the provisions of chapter 9A.76 RCW and/or criminal trespass under the provisions of chapter 9A.52 RCW.

Appeal procedure. A university notice of infraction (NOI) may be appealed by filing a completed appeal form at the parking services office within seven days of receipt of the notice of infraction; otherwise, the right to a hearing is forfeited.

Distribution of funds collected from monetary penalties. Moneys collected for violations of chapter 516-13 WAC shall be applied towards the cost of enforcing this section. Moneys received in excess of these costs shall be applied towards bicycle-related projects, including bicycle parking, bicycle pathways and safe bicycling education.

AMENDATORY SECTION (Amending WSR 96-24-015, filed 11/22/96, effective 1/1/97)

WAC 516-15-050 Enforcement. A person using a skateboard, coaster, in-line skates, toy vehicle, or similar device who refuses to abide by ~~((these))~~ the rules and regulations ((will be asked to leave the campus. Refusal to obey will subject the person to being cited for trespass under the provisions of chapter 9A.52 RCW.

~~If the user is a student, the student will be asked to remove the skateboard, coaster, in-line skates, toy vehicle, or other similar device from use on campus. If the student refuses, a proceeding may be initiated under chapter 516-22 WAC, the student rights and responsibilities code))~~ set forth under chapter 516-15 WAC may be issued a university notice of infraction (NOI) for using a skateboard, coaster, in-line skates, toy vehicle, or similar device on campus in an area not designated for such use.

Penalties: The penalties for violating any part of this section shall be progressive, with the monetary penalty increasing for each subsequent offense. The first violation

shall have a monetary penalty of ten dollars. A second violation shall have a monetary penalty of fifty dollars.

Any person who violates any portion of this section and as a result is involved in a collision with a pedestrian or an object shall have the monetary penalty for the offense doubled.

Any person using a skateboard, coaster, in-line skates, toy vehicle, or similar device who attempts to elude a uniformed police officer attempting to enforce these regulations shall have the monetary penalty for the offense doubled.

Appeal procedure. A university notice of infraction (NOI) may be appealed by filing a completed appeal form at the parking services office within seven days of receipt of the notice of infraction; otherwise, the right to a hearing is forfeited.

WSR 99-07-097

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

(Filed March 23, 1999, 10:14 a.m., effective June 23, 1999)

Date of Adoption: March 23, 1999.

Purpose: Chapter 296-62 WAC, General occupational health standards, Part P, Hazardous waste operations, treatment storage and disposal facilities and Part R, Emergency response to hazardous substance release. The current standard contains requirements for both hazardous waste operations and emergency response to hazardous substance release. This causes confusion for employers when trying to determine which requirements apply to their specific industry or operation. This adoption will separate this single standard into two distinct sets of requirements related to hazardous waste operations and emergency response to hazardous substance release, in order to eliminate the confusion. There are no new requirements being adopted.

Citation of Existing Rules Affected by this Order: Amended sections chapter 296-62 WAC, Part P, Hazardous waste operations, treatment, storage and disposal facilities:

Existing Part P sections and subsections	Proposed section # for revised Part P	New headings—Part P
	296-62-300	Hazardous waste operations and treatment, storage and disposal facilities.
300(1) and (2)	296-62-30001	Scope and application.
300(3)	296-62-30003	Definitions.
3010(1)(a)	296-62-3010	Overview of a written safety and health program.
3010(1)(b)	296-62-30105	Elements of a safety and health program.
3010(1)(c)	296-62-30110	Safety considerations during the initial site excavation.
3010(1)(d)	296-62-30115	Notifying contractors and subcontractors of procedures and hazards.
3010(1)(e)	296-62-30120	Availability of the safety and health program.
3010(2)(a) and (b)	296-62-30125	Organizational structure of the site safety and health program.
3010(3)	296-62-30130	Comprehensive workplan of the site program.
3010(4)(a) and (b)	296-62-30135	Overview of a site-specific safety and health plan.
3010(4)(c)	296-62-30140	Preentry briefing of the site-specific safety and health plan.

3010(4)(d)	296-62-30145	Effectiveness of the site safety and health plan.
3020(1)	296-62-3020	Site characterization and analysis.
3020(2)	296-62-30205	Preliminary evaluation.
3020(3)	296-62-30210	Hazard identification.
3020(4)	296-62-30215	Required information.
3020(5)	296-62-30220	Personal protective equipment.
3020(6)	296-62-30225	Monitoring.
3020(7)	296-62-30230	Risk identification.
3020(8)	296-62-30235	Employee notification.
3030(1)	296-62-3030	Site control.
3030(2)	296-62-30305	Site control program.
3030(3)	296-62-30310	Elements of the site control program.
3030(4)	296-62-30315	Site work zones.
3040(1)	296-62-3040	General training requirements and the employees covered.
3040(2)	296-62-30405	Elements covered in training.
3040(3)	296-62-30410	Initial training.
3040(4)	296-62-30415	Management and supervisor training.
3040(5)	296-62-30420	Law enforcement at illicit drug labs.
3040(6)(a)	296-62-30425	Training content for 40 and 80 hour hazardous waste cleanup courses.
3040(6)(b)	296-62-30430	Training content for 24-hour hazardous waste cleanup course.
3040(6)(c)	296-62-30435	Training content for 16-hour supplemental training for hazardous waste sites.
3040(6)(d)	296-62-30440	Additional 8 hours of training for supervisors and managers.
3040(7)	296-62-30445	Qualifications for trainers.
3040(8)	296-62-30450	Training certification.
3040(9)	296-62-30455	Training requirements for emergency response.
3040(10)	296-62-30460	Refresher training.
3040(11)	296-62-30465	Equivalent training.
3050(1)	296-62-3050	Medical surveillance program.
3050(2)	296-62-30505	Employees covered.
3050(3)	296-62-30510	Frequency of medical exams and consultations.
3050(4)	296-62-30515	Content of medical exams and consultations.
3050(5)	296-62-30520	Examination by a physician and costs.
3050(6)	296-62-30525	Information provided to the physician.
3050(7)	296-62-30530	Physician's written opinion.
3050(8)	296-62-30535	Recordkeeping of medical surveillance activities.
3060(1) and (2)	296-62-3060	Engineering controls, work practices, and personal protective equipment for employee protection.
3060(3)	296-62-30605	Personal protective equipment selection.
3060(4)	296-62-30610	Totally-encapsulating chemical protective suits.
3060(5)	296-62-30615	Personal protective equipment (PPE) program.
3070(1)	296-62-3070	Monitoring concentrations of hazardous substances.
3070(2)	296-62-30705	Monitoring during initial entry.
3070(3)	296-62-30710	Periodic monitoring.
3070(4)	296-62-30715	Monitoring of high-risk employees.
3080	296-62-3080	Informational programs.
3090(1)	296-62-3090	General requirements for handling drums and containers.
3090(2)	296-62-30905	Opening drums and containers.
3090(3)	296-62-30910	Material handling equipment.

3090(4)	296-62-30915	Radioactive wastes.
3090(5)	296-62-30920	Shock-sensitive wastes.
3090(6)	296-62-30925	Laboratory waste packs.
3090(7)	296-62-30930	Sampling of drum and container contents.
3090(8)	296-62-30935	Shipping and transport of drums.
3090(9)	296-62-30940	Tank and vault procedures.
3100(1) and (2)	296-62-3100	Decontamination procedures.
3100(3)	296-62-31005	Location of decontamination areas.
3100(4)	296-62-31010	Decontamination of equipment and solvents.
3100(5)(a)-(b), (6) and (7)	296-62-31015	Decontamination of personal protective clothing and equipment.
3100(8)	296-62-31020	Showers and change rooms used for decontamination.
3110(1)	296-62-3110	Emergency response plan for employees at uncontrolled hazardous waste sites.
3110(2)	296-62-31105	Elements of an emergency response plan at uncontrolled hazardous waste sites.
3110(3)	296-62-31110	Procedures for handling emergency incidents at uncontrolled hazardous waste sites.
3120	296-62-3120	Illumination.
3130 title	296-62-3130	Sanitation at temporary workplaces.
3130(1)	296-62-31305	Potable water.
3130(2)	296-62-31310	Nonpotable water.
3130(3)	296-62-31315	Toilet facilities.
3130(4)	296-62-31320	Food handling.
3130(5)	296-62-31325	Temporary sleeping quarters.
3130(6)	296-62-31330	Washing facilities.
3130(7)	296-62-31335	Showers and change rooms.
3138	296-62-3138	New technology programs.
3140	296-62-3140	Certain operations conducted under the Resource Conservation and Recovery Act of 1976 (RCRA).
3140(1)	296-62-31405	Safety and health program requirements under RCRA.
3140(2)	296-62-31410	Hazard communication program requirements under RCRA.
3140(3)	296-62-31415	Medical surveillance program requirements under RCRA.
3140(4)	296-62-31420	Decontamination program requirements under RCRA.
3140(5)	296-62-31425	New technology programs requirements under RCRA.
3140(6)	296-62-31430	Materials handling program requirements under RCRA.
3140(7)(a)	296-62-31435	Training program for new employees under RCRA.
3140(7)(b)	296-62-31440	Training program for current employees under RCRA.
3140(7)(c)	296-62-31445	RCRA requirements for trainers.
3140(8)	296-62-31450	Emergency response program requirements under RCRA.
3140(8)(a)	296-62-31455	Emergency response plan under RCRA.
3140(8)(b)	296-62-31460	Elements of an emergency response plan under RCRA.
3140(8)(c)	296-62-31465	Training requirements for emergency response under RCRA.
3140(8)(d)	296-62-31470	Procedures for handling emergency incidents under RCRA.
3152	296-62-3152	Appendices to Part P—Hazardous waste operations and TSD facilities.
3160	296-62-3160	Appendix A—Personal protective equipment test methods.
3170	296-62-3170	Appendix B—General description and discussion of the levels of protection and protective gear.

3180	296-62-3180	Appendix C—Compliance guidelines.
3190	296-62-3190	Appendix D—References.
3195	296-62-3195	Appendix E—Training curriculum guidelines.

Repealed sections chapter 296-62 WAC, Part P, General occupational health standard:

3112	repealed section	repealed section (content became part of Part R)
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New sections chapter 296-62 WAC, Part R—Emergency response to hazardous substance release:

Existing Part P sections and subsections	New Part R section #	New Part R headings—Listed in order of revision
	296-62-410	Emergency response to hazardous substance release.
300(1) and (2)	296-62-41001	Scope and application.
300(3)	296-62-41003	Definitions.
3112	296-62-41010	Emergency response.
3112(1)	296-62-41011	Emergency response plan.
3112(2)	296-62-41013	Elements of an emergency response plan.
3112(3)	296-62-41015	Procedures for handling emergency response.
3112(4)	296-62-41017	Skilled support personnel.
3112(5)	296-62-41019	Specialist employees.
3112(6)	296-62-4102	Training.
3112(6)	296-62-41021	Training before participation.
3112(7)	296-62-41023	Trainers.
3112(8)	296-62-41025	Refresher training.
3060(1) and (2)	296-62-4103	Employee personal protective equipment.
3060(3)	296-62-41031	Personal protective equipment selection.
3060(4)	296-62-41033	Totally-encapsulating chemical protective suits.
3060(5)	296-62-41035	Personal protective equipment (PPE) program.
	296-62-4104	Medical surveillance and consultation for emergency response.
3050(2)	296-62-41041	Employees covered.
3050(3)	296-62-41042	Frequency of medical exams and consultations.
3050(4)	296-62-41043	Content of medical exams and consultations.
3050(5)	296-62-41044	Exams by a physician and costs.
3050(6)	296-62-41045	Information provided to the physician.
3050(7)	296-62-41046	Physicians written opinion.
3050(8)	296-62-41047	Recordkeeping.
3112(11)	296-62-4106	Post emergency response operations.
	296-62-41061	Removal of hazardous substances.
	296-62-41063	Employees training and protective equipment.
3152	296-62-4108	Appendices to Part R—Emergency response.
3160	296-62-41081	Appendix A—Personal protective equipment test methods.
3170	296-62-41082	Appendix B—General description and discussion of the levels of protection and protective gear.
3180	296-62-41084	Appendix C—Compliance guidelines.
3190	296-62-41085	Appendix D—References.
3195	296-62-41086	Appendix E—Training curriculum guidelines.

Statutory Authority for Adoption: RCW 49.17.040.

Adopted under notice filed as WSR 99-01-149 on December 22, 1998.

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 34, Amended 104, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 34, Amended 104, 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 34, Amended 104, Repealed 1.

Effective Date of Rule: June 23, 1999.

March 15, 1999

Gary Moore

Director

PART P—HAZARDOUS WASTE OPERATIONS AND ((EMERGENCY RESPONSE)) TREATMENT, STORAGE, AND DISPOSAL FACILITIES

AMENDATORY SECTION (Amending Order 94-07, filed 7/20/94, effective 9/20/94)

WAC 296-62-300 ((Scope, application, and definitions.)) Hazardous waste operations and treatment, storage, and disposal facilities. ((1) Scope. This section covers employers who have employees who work in the following operations:

(a) Clean up operations required by a governmental body, whether federal, state, local, or other involving hazardous substances that are conducted at uncontrolled hazardous waste sites (including, but not limited to, the EPA's National Priority Site List (NPL), state priority site lists, sites recommended for the EPA NPL, and initial investigations of government identified sites which are conducted before the presence or absence of hazardous substances has been ascertained);

(b) Corrective actions involving clean up operations at sites covered by the Resource Conservation and Recovery Act of 1976 (RCRA) as amended (42 U.S.C. 6901 et seq.);

(c) Voluntary clean up operations at sites recognized by federal, state, local, or other governmental bodies as uncontrolled hazardous waste sites;

(d) Operations involving hazardous wastes that are conducted at treatment, storage, and disposal (TSD) facilities regulated by 40 CFR Parts 264 and 265 pursuant to RCRA; or by agencies under agreement with U.S.E.P.A. to implement RCRA regulations; and

(e) Emergency response operations for releases of, or substantial threats of releases of, hazardous substances without regard to the location of the hazard.

(2) Application:

(a) All requirements of this chapter and chapters 296-24 and 296-155 WAC apply pursuant to their terms to hazardous waste and emergency response operations whether covered by this part or not. If there is a conflict or overlap, the provision more protective of employee safety and health shall apply.

(b) Hazardous substance clean up operations within the scope of subsection (1)(a), (b), and (c) of this section must comply with all sections of this part except WAC 296-62-3112 and 296-62-3140.

(e) Operations within the scope of subsection (1)(d) of this section must comply only with the requirements of WAC 296-62-3140.

Notes and Exceptions: (i) All provisions of WAC 296-62-3140 cover any treatment, storage, or disposal (TSD) operation regulated by 40 CFR parts 264 and 265 or by state law authorized under RCRA, and required to have a permit or interim status from EPA pursuant to 40 CFR 270.1 or from a state agency pursuant to RCRA.

(ii) Employers who are not required to have a permit or interim status because they are conditionally exempt small quantity generators under 40 CFR 261.5 or are generators who qualify under 40 CFR 262.34 for exemptions from regulation under 40 CFR parts 264, 265, and 270 ("excepted employers") are not covered by WAC 296-62-3140 (1) through (7). Excepted employers who are required by the EPA or state agency to have their employees engage in emergency response or who direct their employees to engage in emergency response are covered by WAC 296-62-3140(8), and cannot be exempted by WAC 296-62-3140(8)(a). Excepted employers who are not required to have employees engage in emergency response, who direct their employees to evacuate in the case of such emergencies and who meet the requirements of WAC 296-62-3140(8)(a) are exempt from the balance of WAC 296-62-3140(8).

(iii) If an area is used primarily for treatment, storage or disposal, any emergency response operations in that area shall comply with WAC 296-62-3140(8). In other areas not used primarily for treatment, storage or disposal, any emergency response operations shall comply with WAC 296-62-3112. Compliance with the requirements of WAC 296-62-3112 shall be deemed to be in compliance with the requirements of WAC 296-62-3140(8).

(d) Emergency response operations for releases of, or substantial threats of releases of hazardous substances which are not covered by subsection (1)(a) through (d) of this section must only comply with the requirements of WAC 296-62-3112.

(3) Definitions:

(a) "Buddy system" means a system of organizing employees into work groups in such a manner that each employee of the work group is designated to be observed by at least one other employee in the work group. The purpose of the buddy system is to provide rapid assistance to employees in the event of an emergency.

(b) "Clean up operation" means an operation where hazardous substances are removed, contained, incinerated, neutralized, stabilized, cleared up, or in any other manner processed or handled with the ultimate goal of making the site safer for people or the environment.

(c) "Contamination reduction zone" means the buffer between the exclusion zone and the outermost clean zone.

(d) "Decontamination" means the removal of hazardous substances from employees and their equipment to the extent necessary to preclude the occurrence of foreseeable adverse health effects.

(e) "Emergency response" or "responding to emergencies" means a response effort by employees from outside the immediate release area or by other designated responders

(i.e., mutual aid groups, local fire departments, etc.) to an occurrence which results, or is likely to result, in an uncontrolled release of a hazardous substance. Responses to incidental releases of hazardous substances where the substance can be absorbed, neutralized, or otherwise controlled at the time of release by employees in the immediate release area or by maintenance personnel are not considered to be emergency responses within the scope of this standard. Responses to release of hazardous substances where there is no potential safety or health hazard (i.e., fire, explosion, or chemical exposure) are not considered to be emergency responses.

(f) "Exclusion zone" means the innermost zone at a site where contamination does occur.

(g) "Facility" means (i) any building structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, storage container, motor vehicle, rolling stock, or aircraft, or (ii) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any waterborne vessel.

(h) "Hazardous materials response (HAZMAT) team" means an organized group of employees, designated by the employer, who are expected to perform work, to handle and control actual or potential leaks or spills of hazardous substances requiring possible close approach to the substance. The team members perform responses to releases or potential releases of hazardous substances for the purpose of control or stabilization of the incident. A HAZMAT team is not a fire brigade nor is a typical fire brigade a HAZMAT team. A HAZMAT team, however, may be a separate component of a fire brigade or fire department.

(i) "Hazardous substance" means any substance designated or listed under (i)(i) through (iv) of this subsection; exposure to which results or may result in adverse effects on the health or safety of employees:

(i) Any substance defined under section 101(14) of CERCLA;

(ii) Any biological agent and other disease-causing agent which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any person, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such persons or their offspring;

(iii) Any substance listed by the United States Department of Transportation as hazardous materials under WAC 480-12-195; and

(iv) Hazardous waste as herein defined.

(j) "Hazardous waste" means:

A waste or combination of wastes as defined in (m) of this subsection.

(k) "Hazardous waste operation" means any operation conducted within the scope of this standard.

(l) "Hazardous waste site" or "site" means any facility or location within the scope of this standard at which hazardous waste operations take place.

(m) "Health hazard" means a chemical, mixture of chemicals, or a pathogen for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. It also includes stress due to temperature extremes. Further definition of the terms used above can be found in Appendix A to chapter 296-62 WAC, Part C.

(n) "IDLH" or "immediately dangerous to life or health" means any atmospheric concentration of any toxic, corrosive, or asphyxiant substance that poses an immediate threat to life or would cause irreversible or delayed adverse health effects or would interfere with an individual's ability to escape from a dangerous atmosphere.

(o) "Oxygen deficiency" means that concentration of oxygen by volume below which atmosphere-supplying respiratory protection must be provided. It exists in atmospheres where the percentage of oxygen by volume is less than 19.5 percent oxygen.

(p) "Permissible exposure limit" means the exposure, inhalation, or dermal permissible limit specified in WAC 296-62-075 through 296-62-07515.

(q) "Published exposure level" means the exposure limits published in "NIOSH Recommendations for Occupational Health Standards" dated 1986 incorporated by reference, or if none is specified, the exposure limits published in the standards specified by the American Conference of Governmental Industrial Hygienists in their publication "Threshold Limit Values and Biological Exposure Indices for 1988-89" dated 1988 incorporated by reference.

(r) "Post emergency response" means that portion of an emergency response performed after the immediate threat of a release has been stabilized or eliminated and clean up of the site has begun. If post emergency response is performed by an employer's own employees who were part of the initial emergency response, it is considered to be part of the initial response and not post emergency response. However, if a group of an employer's own employees, separate from the group providing initial response, performs the clean up operation, then the separate group of employees would be considered to be performing post-emergency response and subject to WAC 296-62-3112(11).

(s) "Qualified person" means a person with specific training, knowledge, and experience in the area for which the person has responsibility and the authority to control.

(t) "Site safety and health supervisor (or official)" means the individual located on a hazardous waste site who is responsible to the employer and has the authority and knowledge necessary to implement the site safety and health plan and verify compliance with applicable safety and health requirements.

(u) "Site work zones" means an exclusion zone, contamination reduction zone, and a clean zone established at a hazardous waste site before clean up work begins to prevent or reduce the movement of contaminants from the site to uncon-

contaminated areas and to control public, employee, and equipment exposure to hazardous substances:

(i) ~~The exclusion zone is the innermost of the zones and is where contamination does occur. The contamination reduction zone is the zone between the exclusion zone and the clean zone and serves as a transition and buffer between the contaminated and clean zone to further reduce the physical transfer of contaminating substances to the public, employees, and equipment. The clean zone is the outermost of the zones and is a noncontaminated or clean area. The level of contamination in these zones is not defined and some designated exclusion zones can have very little contamination directly affecting employees.~~

(ii) ~~The contaminated reduction corridors are the designated areas within the contaminated reduction zone for the decontamination of personnel and equipment.~~

(v) ~~"Small quantity generator" means a generator of hazardous wastes who in any calendar month generates no more than 1000 kilograms (2205 pounds) of hazardous waste in that month.~~

(w) ~~"Uncontrolled hazardous waste site" means an area identified as an uncontrolled hazardous waste site by a governmental body, whether federal, state, local, or other where an accumulation of hazardous substances creates a threat to the health and safety of individuals or the environment or both. Some sites are found on public lands, such as those created by former municipal, county, or state landfills where illegal or poorly managed waste disposal has taken place. Other sites are found on private property, often belonging to generators or former generators of hazardous substance waste. Examples of such sites include, but are not limited to, surface impoundments, landfills, dumps, and tank or drum farms. Normal operations at TSD sites are not covered by this definition.)~~

NEW SECTION

WAC 296-62-30001 Scope and application. (1) Scope. This section covers employers who have employees who work in the following operations:

(a) Clean-up operations required by a governmental body, whether federal, state, local, or other involving hazardous substances that are conducted at uncontrolled hazardous waste sites (including, but not limited to, the EPA's National Priority Site List (NPL), state priority site lists, sites recommended for the EPA NPL, and initial investigations of government identified sites which are conducted before the presence or absence of hazardous substances has been ascertained);

(b) Corrective actions involving clean-up operations at sites covered by the Resource Conservation and Recovery Act of 1976 (RCRA) as amended (42 U.S.C. 6901 et seq.);

(c) Voluntary clean-up operations at sites recognized by federal, state, local, or other governmental bodies as uncontrolled hazardous waste sites;

(d) Operations involving hazardous wastes that are conducted at treatment, storage, and disposal (TSD) facilities regulated by 40 CFR Parts 264 and 265 under RCRA; or by agencies under agreement with U.S.E.P.A. to implement RCRA regulations.

(2) Application.

(a) All requirements of this chapter and chapters 296-24 and 296-155 WAC apply to hazardous waste operations whether covered by this part or not. If there is a conflict or overlap, the provision more protective of employee safety and health must apply.

(b) Hazardous substance clean-up operations within the scope of subsection (1)(a), (b), and (c) of this section must comply with all sections of WAC 296-62-410, Part R, Emergency response to hazardous substance release.

(c) Operations within the scope of subsection (1)(d) of this section must comply only with the requirements of WAC 296-62-3140 through 296-62-31430.

Notes and Exceptions:

(i) All provisions of WAC 296-62-3140 through 296-62-31430 cover any treatment, storage, or disposal (TSD) operation regulated by 40 CFR Parts 264 and 265 or by state law authorized under RCRA, and required to have a permit or interim status from EPA under 40 CFR 270.1 or from a state agency under RCRA.

(ii) Employers who are not required to have a permit or interim status because they are conditionally exempt small quantity generators under 40 CFR 261.5 or are generators who qualify under 40 CFR 262.34 for exemptions from regulation under 40 CFR Parts 264, 265, and 270 ("excepted employers") are not covered by WAC 296-62-31405 through 296-62-31445. Excepted employers who are required by the EPA or state agency to have their employees engage in emergency response or who direct their employees to engage in emergency response are covered by WAC 296-62-31450 through 296-62-31470 and cannot be exempted by WAC 296-62-31455. Excepted employers who are not required to have employees engage in emergency response, who direct their employees to evacuate in the case of such emergencies and who meet the requirements of WAC 296-62-31455 are exempt from the balance of WAC 296-62-31450 through 296-62-31470.

(iii) If an area is used primarily for treatment, storage or disposal, any emergency response operations in that area must comply with WAC 296-62-31410 through 296-62-31470. In other areas not used primarily for treatment, storage or disposal, any emergency response operations must comply with WAC 296-62-410, Part R, Emergency response to hazardous substance release. Compliance with the requirements of WAC 296-62-410, Part R, Emergency response to hazardous substance release must be deemed to be in compliance with the requirements of WAC 296-62-31450 through 296-62-31470.

NEW SECTION

WAC 296-62-30003 Definitions. "Buddy system" means a system of organizing employees into work groups in such a manner that each employee of the work group is designated to be observed by at least one other employee in the work group. The purpose of the buddy system is to provide rapid assistance to employees in the event of an emergency.

"Clean-up operation" means an operation where hazardous substances are removed, contained, incinerated, neutral-

ized, stabilized, cleared-up, or in any other manner processed or handled with the ultimate goal of making the site safer for people or the environment.

"Contamination reduction zone" means the buffer between the exclusion zone and the outermost clean zone.

"Decontamination" means the removal of hazardous substances from employees and their equipment to the extent necessary to preclude the occurrence of foreseeable adverse health effects.

"Emergency response" or "responding to emergencies" means a response effort by employees from outside the immediate release area or by other designated responders (i.e., mutual aid groups, local fire departments, etc.) to an occurrence which results, or is likely to result, in an uncontrolled release of a hazardous substance. Responses to incidental releases of hazardous substances where the substance can be absorbed, neutralized, or otherwise controlled at the time of release by employees in the immediate release area or by maintenance personnel are not considered to be emergency responses within the scope of this standard. Responses to release of hazardous substances where there is no potential safety or health hazard (i.e., fire, explosion, or chemical exposure) are not considered to be emergency responses.

"Exclusion zone" means the innermost zone at a site where contamination does occur.

"Facility" means:

Any building structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, storage container, motor vehicle, rolling stock, or aircraft; or

Any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any water-borne vessel.

"Hazardous substance" means any substance designated or listed under this definition, exposure to which results or may result in adverse effects on the health or safety of employees:

Any substance defined under section 101(14) of CERCLA;

Any biological agent and other disease-causing agent which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any person, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such persons or their offspring;

Any substance listed by the United States Department of Transportation as hazardous materials under WAC 480-12-195; and

Hazardous waste as herein defined.

"Hazardous waste" means:

A waste or combination of wastes as defined as a "health hazard."

"Hazardous waste operation" means any operation conducted within the scope of this standard.

"Hazardous waste site" or "site" means any facility or location within the scope of this standard at which hazardous waste operations take place.

"Health hazard" means a chemical, mixture of chemicals, or a pathogen for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. It also includes stress due to temperature extremes. Further definition of the terms used above can be found in Appendix A to chapter 296-62 WAC, Part C.

"IDLH" or "immediately dangerous to life or health" means any atmospheric concentration of any toxic, corrosive, or asphyxiant substance that poses an immediate threat to life or would cause irreversible or delayed adverse health effects or would interfere with an individual's ability to escape from a dangerous atmosphere.

"Oxygen deficiency" means that concentration of oxygen by volume below which atmosphere supplying respiratory protection must be provided. It exists in atmospheres where the percentage of oxygen by volume is less than 19.5 percent oxygen.

"Permissible exposure limit" means the exposure, inhalation, or dermal permissible limit specified in WAC 296-62-075 through 296-62-07515.

"Published exposure level" means the exposure limits published in "NIOSH Recommendations for Occupational Health Standards" dated 1986 incorporated by reference, or if none is specified, the exposure limits published in the standards specified by the American Conference of Governmental Industrial Hygienists in their publication "Threshold Limit Values and Biological Exposure Indices for 1988-89" dated 1988 incorporated by reference.

"Postemergency response" means that portion of an emergency response performed after the immediate threat of a release has been stabilized or eliminated and clean-up of the site has begun. If postemergency response is performed by an employer's own employees who were part of the initial emergency response, it is considered to be part of the initial response and not postemergency response. However, if a group of an employer's own employees, separate from the group providing initial response, performs the clean-up operation, then the separate group of employees would be considered to be performing postemergency response and subject to chapter 296-62 WAC, Part R.

"Qualified person" means a person with specific training, knowledge, and experience in the area for which the person has responsibility and the authority to control.

"Site safety and health supervisor (or official)" means the individual located on a hazardous waste site who is responsible to the employer and has the authority and knowledge necessary to implement the site safety and health plan and verify compliance with applicable safety and health requirements.

"Site work zones" means an exclusion zone, contamination reduction zone, and a clean zone established at a hazardous waste site before clean-up work begins to prevent or reduce the movement of contaminants from the site to uncontaminated areas and to control public, employee, and equipment exposure to hazardous substances.

The exclusion zone is the innermost of the zones and is where contamination does occur. The contamination reduction zone is the zone between the exclusion zone and the clean zone and serves as a transition and buffer between the contaminated and clean zone to further reduce the physical transfer of contaminating substances to the public, employees, and equipment. The clean zone is the outermost of the zones and is a noncontaminated or clean area. The level of contamination in these zones is not defined and some designated exclusion zones can have very little contamination directly affecting employees.

The contaminated reduction corridors are the designated areas within the contaminated reduction zone for the decontamination of personnel and equipment.

"Small quantity generator" means a generator of hazardous wastes who in any calendar month generates no more than 1000 kilograms (2205 pounds) of hazardous waste in that month.

"Uncontrolled hazardous waste site" means an area identified as an uncontrolled hazardous waste site by a governmental body, whether federal, state, local, or other where an accumulation of hazardous substances creates a threat to the health and safety of individuals or the environment or both. Some sites are found on public lands, such as those created by former municipal, county, or state landfills where illegal or poorly managed waste disposal has taken place. Other sites are found on private property, often belonging to generators or former generators of hazardous substance waste. Examples of such sites include, but are not limited to, surface impoundments, landfills, dumps, and tank or drum farms. Normal operations at TSD sites are not covered by this definition.

AMENDATORY SECTION (Amending WSR 95-04-007, filed 1/18/95, effective 3/1/95)

WAC 296-62-3010 Overview of a written safety and health program.

Note: Safety and health programs developed and implemented to meet other federal, state, or local regulations are considered acceptable in meeting this requirement if they cover or are modified to cover the topics required in this section. An additional or separate safety and health program is not required by this section.

~~((1) General.~~

~~(a))~~ Employers ~~((shall))~~ **must** develop and implement a written safety and health program for their employees involved in hazardous waste operations. The program ~~((shall))~~ **must** be designed to identify, evaluate, and control safety and health hazards and provide for emergency response for hazardous waste operations.

~~((b) The written safety and health program shall incorporate the following:~~

~~(i) An organizational structure;~~

~~(ii) A comprehensive workplan;~~

~~(iii) A site-specific safety and health plan which need not repeat the employer's standard operating procedures required in (b)(vi) of this subsection;~~

~~(iv) The safety and health training program;~~

~~(v) The medical surveillance program;~~

~~(vi) The employer's standard operating procedures for safety and health; and~~

~~(vii) Any necessary interface between general program and site specific activities.~~

~~(c) Site excavation. Site excavations created during initial site preparation or during hazardous waste operations shall be shored or sloped as appropriate to prevent accidental collapse in accordance with subpart N of chapter 296-155 WAC.~~

~~(d) Contractors and subcontractors. An employer who retains contractor or subcontractor services for work in hazardous waste operations shall inform those contractors, subcontractors, or their representatives of the site emergency response procedures and any potential fire, explosion, health, safety, or other hazards of the hazardous waste operation that have been identified by the employer, including those identified in the employer's information program.~~

~~(e) Program availability. The written safety and health program shall be made available to any contractor or subcontractor or their representative who will be involved with the hazardous waste operation; to employees; to employee designated representatives; to WISHA personnel, and to personnel of other federal, state, or local agencies with regulatory authority over the site.~~

~~(2) Organizational structure part of the site program.~~

~~(a) The organizational structure part of the program shall establish the specific chain of command and specify the overall responsibilities of supervisors and employees. It shall include at a minimum, the following elements:~~

~~(i) A general supervisor who has the responsibility and authority to direct all hazardous waste operations;~~

~~(ii) A site safety and health supervisor who has the responsibility and authority to develop and implement the site safety and health plan and verify compliance.~~

~~(iii) All other personnel needed for hazardous waste site operations and emergency response and their general functions and responsibilities.~~

~~(iv) The lines of authority, responsibility, and communication.~~

~~(b) The organizational structure shall be reviewed and updated as necessary to reflect the current status of waste site operations.~~

~~(3) Comprehensive workplan part of the site program. The comprehensive workplan shall address the tasks and objectives of site operations and the logistics and resources required to reach those tasks and objectives.~~

~~(a) The comprehensive workplan shall address anticipated clean-up activities as well as normal operating procedures which need not repeat the employers procedures available elsewhere.~~

~~(b) The comprehensive workplan shall define work tasks and objectives and identify the methods for accomplishing those tasks and objectives.~~

(c) The comprehensive workplan shall establish personnel requirements for implementing the plan.

(d) The comprehensive workplan shall provide for the implementation of the training required in WAC 296-62-3040.

(e) The comprehensive workplan shall provide for the implementation of the required informational programs required in WAC 296-62-3080.

(f) The comprehensive workplan shall provide for the implementation of the medical surveillance program described in WAC 296-62-3050.

(4) Site specific safety and health plan part of the program:

(a) General. The site safety and health plan, which must be kept on site, shall address the safety and health hazards of each phase of site operation; and include the requirements and procedures for employee protection.

(b) Elements. The site safety and health plan, as a minimum, shall address the following:

(i) Names of key personnel and alternates responsible for site safety and health, including a site safety and health supervisor.

(ii) A safety and health risk or hazard analysis for each site task and operation found in the workplan.

(iii) Employee training assignments to assure compliance with WAC 296-62-3040.

(iv) Personal protective equipment to be used by employees for each of the site tasks and operations being conducted as required by the personal protective equipment program in WAC 296-62-3060(5).

(v) Medical surveillance requirements in accordance with the program in WAC 296-62-3050.

(vi) Frequency and types of air monitoring, personnel monitoring, and environmental sampling techniques and instrumentation to be used, including methods of maintenance and calibration of monitoring and sampling equipment to be used.

(vii) Site control measures in accordance with the site control program required in WAC 296-62-3030.

(viii) Decontamination procedures in accordance with WAC 296-62-3100.

(ix) An emergency response plan meeting the requirements of WAC 296-62-3110 for safe and effective responses to emergencies, including the necessary PPE and other equipment.

(x) Confined space and permit required confined space entry procedures as addressed in chapter 296-62-WAC, Part M.

(xi) A spill containment program meeting the requirements of WAC 296-62-3090.

(c) Preentry briefing. The site specific safety and health plan shall provide for preentry briefings to be held prior to initiating any site activity, and at such other times as necessary to ensure that employees are apprised of the site safety and health plan and that this plan is being followed. The information and data obtained from site characterization and analysis work required in WAC 296-62-3020 shall be used to prepare and update the site safety and health plan.

(d) Effectiveness of site safety and health plan. Inspections shall be conducted by the site safety and health supervi-

sor or, in the absence of that individual, another individual who is knowledgeable in occupational safety and health acting on behalf of the employer as necessary to determine the effectiveness of the site safety and health plan. Any deficiencies in the effectiveness of the site safety and health plan shall be corrected by the employer.)

NEW SECTION

WAC 296-62-30105 Elements of a safety and health program. The written safety and health program must include the following elements:

- (1) An organizational structure;
- (2) A comprehensive workplan;
- (3) A site-specific safety and health plan which need not repeat the employer's standard operating procedures required in subsection (7) of this section;
- (4) The safety and health training program;
- (5) The medical surveillance program;
- (6) The employer's standard operating procedures for safety and health; and
- (7) Any necessary interface between general program and site specific activities.

NEW SECTION

WAC 296-62-30110 Safety considerations during the initial site excavation. Site excavations created during initial site preparation or during hazardous waste operations must be shored or sloped as appropriate to prevent accidental collapse in accordance with subpart N of chapter 296-155 WAC.

NEW SECTION

WAC 296-62-30115 Notifying contractors and subcontractors of procedures and hazards. An employer who retains contractor or subcontractor services for work in hazardous waste operations must inform those contractors, subcontractors, or their representatives of the site emergency response procedures and any potential fire, explosion, health, safety, or other hazards of the hazardous waste operation that have been identified by the employer, including those identified in the employer's information program.

NEW SECTION

WAC 296-62-30120 Availability of the safety and health program. The written safety and health program must be made available to any contractor or subcontractor or their representative who will be involved with the hazardous waste operation; to employees; to employee designated representatives; to WISHA personnel, and to personnel of other federal, state, or local agencies with regulatory authority over the site.

NEW SECTION

WAC 296-62-30125 Organizational structure of the site safety and health program. (1) The organizational structure of the site safety and health program must establish the specific chain of command and specify the overall

responsibilities of supervisors and employees. It must include at a minimum, the following elements:

(a) A general supervisor who has the responsibility and authority to direct all hazardous waste operations.

(b) A site safety and health supervisor who has the responsibility and authority to develop and implement the site safety and health plan and verify compliance.

(c) All other personnel needed for hazardous waste site operations and emergency response and their general functions and responsibilities.

(d) The lines of authority, responsibility, and communication.

(2) The organizational structure shall be reviewed and updated as necessary to reflect the current status of waste site operations.

NEW SECTION

WAC 296-62-30130 Comprehensive workplan of the site program. The comprehensive workplan must address the tasks and objectives of site operations and the logistics and resources required to reach those tasks and objectives. The comprehensive workplan must:

(1) Address anticipated clean-up activities as well as normal operating procedures which need not repeat the employers procedures available elsewhere.

(2) Define work tasks and objectives and identify the methods for accomplishing those tasks and objectives.

(3) Establish personnel requirements for implementing the plan.

(4) Provide for the implementation of the training required in WAC 296-62-3040.

(5) Provide for the implementation of the required informational programs required in WAC 296-62-3080.

(6) Provide for the implementation of the medical surveillance program described in WAC 296-62-3050 through 296-62-30535.

NEW SECTION

WAC 296-62-30135 Overview of a site-specific safety and health plan. (1) A written site-specific safety and health plan, must be kept on site. It must address the safety and health hazards of each phase of site operation and include the requirements and procedures for employee protection.

(2) Elements of a site-specific safety and health plan. The site-specific safety and health plan must include the following elements:

(a) The names of key personnel and alternates responsible for site safety and health, including a site safety and health supervisor.

(b) A safety and health risk or hazard analysis for each site task and operation found in the workplan.

(c) Employee training assignments to assure compliance with WAC 296-62-3040 through 296-62-30465.

(d) Personal protective equipment to be used by employees for each of the site tasks and operations being conducted as required by the personal protective equipment program in WAC 296-62-30615.

(e) A medical surveillance program meeting the requirements in WAC 296-62-3050 through 296-62-30535.

(f) Frequency and types of air monitoring, personnel monitoring, and environmental sampling techniques and instrumentation to be used, including methods of maintenance and calibration of monitoring and sampling equipment to be used.

(g) Site control measures in WAC 296-62-3030 through 296-62-30315.

(h) Decontamination procedures in WAC 296-62-3100 through 296-62-31015.

(i) An emergency response plan meeting the requirements of chapter 296-62 WAC, Part R for safe and effective responses to emergencies, including the necessary PPE and other equipment.

(j) Confined space and permit-required confined space entry procedures as addressed in chapter 296-62 WAC, Part M.

(k) A spill containment program meeting the requirements of WAC 296-62-3090 through 296-62-30940.

NEW SECTION

WAC 296-62-30140 Preentry briefing of the site-specific safety and health plan. The site-specific safety and health plan must provide for preentry briefings to be held prior to initiating any site activity, and at such other times as necessary to ensure that employees are apprised of the site safety and health plan and that this plan is being followed. The information and data obtained from site characterization and analysis work required in WAC 296-62-3020 through 296-62-30235 must be used to prepare and update the site safety and health plan.

NEW SECTION

WAC 296-62-30145 Effectiveness of site safety and health plan. Inspections must be conducted by the site safety and health supervisor or, in the absence of that individual, another individual who is knowledgeable in occupational safety and health acting on behalf of the employer as necessary to determine the effectiveness of the site safety and health plan. Any deficiencies in the effectiveness of the site safety and health plan must be corrected by the employer.

AMENDATORY SECTION (Amending WSR 94-16-145, filed 8/3/94, effective 9/12/94)

WAC 296-62-3020 Site characterization and analysis. ~~((1) General.)~~ Hazardous waste sites ~~((shall))~~ must be evaluated in accordance with this section to identify specific site hazards and to determine the appropriate safety and health control procedures needed to protect employees from the identified hazards.

~~((2) Preliminary evaluation. A preliminary evaluation of a site's characteristics shall be performed prior to site entry by a qualified person in order to aid in the selection of appropriate employee protection methods prior to site entry. Immediately after initial site entry, a more detailed evaluation of the site's specific characteristics shall be performed by a qual-~~

ified person in order to further identify existing site hazards and to further aid in the selection of the appropriate engineering controls and personal protective equipment for the tasks to be performed.

(3) Hazard identification. All suspected conditions that may pose inhalation or skin absorption hazards that are immediately dangerous to life or health (IDLH), or other conditions that may cause death or serious harm, shall be identified during the preliminary survey and evaluated during the detailed survey. Examples of such hazards include, but are not limited to, confined space entry, potentially explosive or flammable situations, visible vapor clouds, or areas where biological indicators such as dead animals or vegetation are located.

(4) Required information. The following information to the extent available shall be obtained by the employer prior to allowing employees to enter a site:

- (a) Location and approximate size of the site.
- (b) Description of the response activity and/or the job task to be performed.
- (c) Duration of the planned employee activity.
- (d) Site topography and accessibility by air and roads.
- (e) Safety and health hazards expected at the site.
- (f) Pathways for hazardous substance dispersion.
- (g) Present status and capabilities of emergency response teams that would provide assistance to hazardous waste clean-up site employees at the time of an emergency.
- (h) Hazardous substances and health hazards involved or expected at the site and their chemical and physical properties.

(5) Personal protective equipment. Personal protective equipment (PPE) shall be provided and used during initial site entry in accordance with the following requirements:

(a) Based upon the results of the preliminary site evaluation, an ensemble of PPE shall be selected and used during initial site entry which will provide protection to a level of exposure below established permissible exposure limits and published exposure levels for known or suspected hazardous substances and health hazards, and which will provide protection against other known and suspected hazards identified during the preliminary site evaluation. If there is no permissible exposure limit or published exposure level, the employer may use other published studies and information as a guide to appropriate personal protective equipment. Level A and Level B personal protective equipment is required for the most hazardous actual or potential exposures.

(b) If positive pressure self-contained breathing apparatus is not used as part of the entry ensemble, and if respiratory protection is warranted by the potential hazards identified during the preliminary site evaluation, an escape self-contained breathing apparatus of at least five minute's duration shall be carried by employees during initial site entry.

(c) If the preliminary site evaluation does not produce sufficient information to identify the hazards or suspected hazards of the site an ensemble providing protection equivalent to Level B PPE shall be provided as minimum protection and direct reading instruments shall be used as appropriate for identifying IDLH conditions. (See WAC 296-62-3170 Appendix B for a description of Level B hazards and the recommendations for Level B protective equipment.)

(d) Once the hazards of the site have been identified, the appropriate PPE shall be selected and used in accordance with WAC 296-62-3060.

(6) Monitoring. The following monitoring shall be conducted during initial site entry when the site evaluation produces information that shows the potential for ionizing radiation or IDLH conditions, or when the site information is not sufficient to rule out these possible conditions:

(a) Monitoring with direct reading instruments for hazardous levels of ionizing radiation.

(b) Monitoring the air with appropriate direct reading equipment (i.e., combustible gas meters, detector tubes) for IDLH and other conditions that may cause death or serious harm (combustible or explosive atmospheres, oxygen deficiency, toxic substances).

(c) Visually observing for signs of actual or potential IDLH or other dangerous conditions.

(d) An ongoing air monitoring program in accordance with WAC 296-62-3070 shall be implemented after site characterization has determined the site is safe for the start-up of operations.

(7) Risk identification. Once the presence and concentrations of specific hazardous substances and health hazards have been established, the risks associated with these substances shall be identified. Employees who will be working on the site shall be informed of any risks that have been identified. In situations covered by chapter 296-62 WAC, Part C, training required by those standards need not be duplicated.

((Note: Risks to consider include, but are not limited to:

- (a) Exposures exceeding the permissible exposure limits and published exposure levels.
- (b) IDLH concentrations.
- (c) Potential skin absorption and irritation sources.
- (d) Potential eye irritation sources.
- (e) Explosion sensitivity and flammability ranges.
- (f) Oxygen deficiency.

(8) Employee notification. Any information concerning the chemical, physical, and toxicologic properties of each substance known or expected to be present on site that is available to the employer and relevant to the duties an employee is expected to perform shall be made available to all employees prior to the commencement of their work activities. The employer may utilize information developed for the hazard communication standard, chapter 296-62 WAC, Part C, for this purpose.))

NEW SECTION

WAC 296-62-30205 Preliminary evaluation. A preliminary evaluation of a site's characteristics must be performed prior to site entry by a qualified person in order to aid in the selection of appropriate employee protection methods prior to site entry. Immediately after initial site entry, a more detailed evaluation of the site's specific characteristics must be performed by a qualified person in order to further identify existing site hazards and to further aid in the selection of the appropriate engineering controls and personal protective equipment for the tasks to be performed.

NEW SECTION

WAC 296-62-30210 Hazard identification. All suspected conditions that may pose inhalation or skin absorption hazards that are immediately dangerous to life or health (IDLH), or other conditions that may cause death or serious harm, must be identified during the preliminary survey and evaluated during the detailed survey. Examples of such hazards include, but are not limited to, confined space entry, potentially explosive or flammable situations, visible vapor clouds, or areas where biological indicators such as dead animals or vegetation are located.

NEW SECTION

WAC 296-62-30215 Required information. The following information to the extent available must be obtained by the employer prior to allowing employees to enter a site:

- (1) Location and approximate size of the site.
- (2) Description of the response activity and/or the job task to be performed.
- (3) Duration of the planned employee activity.
- (4) Site topography and accessibility by air and roads.
- (5) Safety and health hazards expected at the site.
- (6) Pathways for hazardous substance dispersion.
- (7) Present status and capabilities of emergency response teams that would provide assistance to hazardous waste clean-up site employees at the time of an emergency.
- (8) Hazardous substances and health hazards involved or expected at the site and their chemical and physical properties.

NEW SECTION

WAC 296-62-30220 Personal protective equipment. Personal protective equipment (PPE) must be provided and used during initial site entry in accordance with the following requirements:

- (1) Based upon the results of the preliminary site evaluation, an ensemble of PPE must be selected and used during initial site entry which will provide protection to a level of exposure below established permissible exposure limits and published exposure levels for known or suspected hazardous substances and health hazards, and which will provide protection against other known and suspected hazards identified during the preliminary site evaluation. If there is no permissible exposure limit or published exposure level, the employer may use other published studies and information as a guide to appropriate personal protective equipment. Level A and Level B personal protective equipment is required for the most hazardous actual or potential exposures.
- (2) If positive-pressure self-contained breathing apparatus is not used as part of the entry ensemble, and if respiratory protection is warranted by the potential hazards identified during the preliminary site evaluation, an escape self-contained breathing apparatus of at least five minute's duration must be carried by employees during initial site entry.
- (3) If the preliminary site evaluation does not produce sufficient information to identify the hazards or suspected hazards of the site an ensemble providing protection equivalent to Level B PPE must be provided as minimum protection

and direct reading instruments must be used as appropriate for identifying IDLH conditions. (See WAC 296-62-3170 - Appendix B for a description of Level B hazards and the recommendations for Level B protective equipment.)

(4) Once the hazards of the site have been identified, the appropriate PPE must be selected and used in accordance with WAC 296-62-3060 through 296-62-30615.

NEW SECTION

WAC 296-62-30225 Monitoring. The following monitoring must be conducted during initial site entry when the site evaluation produces information that shows the potential for ionizing radiation or IDLH conditions, or when the site information is not sufficient to rule out these possible conditions:

- (1) Monitoring with direct reading instruments for hazardous levels of ionizing radiation.
- (2) Monitoring the air with appropriate direct reading equipment (i.e., combustible gas meters, detector tubes) for IDLH and other conditions that may cause death or serious harm (combustible or explosive atmospheres, oxygen deficiency, toxic substances).
- (3) Visually observing for signs of actual or potential IDLH or other dangerous conditions.
- (4) An ongoing air monitoring program in accordance with WAC 296-62-30710 and 296-62-30715 must be implemented after site characterization has determined the site is safe for the start-up of operations.

NEW SECTION

WAC 296-62-30230 Risk identification. Once the presence and concentrations of specific hazardous substances and health hazards have been established, the risks associated with these substances must be identified. Employees who will be working on the site must be informed of any risks that have been identified. In situations covered by chapter 296-62 WAC, Part C, training required by those standards need not be duplicated.

Note: Risks to consider include, but are not limited to:

- (1) Exposures exceeding the permissible exposure limits and published exposure levels.
- (2) IDLH concentrations.
- (3) Potential skin absorption and irritation sources.
- (4) Potential eye irritation sources.
- (5) Explosion sensitivity and flammability ranges.
- (6) Oxygen deficiency.

NEW SECTION

WAC 296-62-30235 Employee notification. Any information concerning the chemical, physical, and toxicologic properties of each substance known or expected to be present on site that is available to the employer and relevant to the duties an employee is expected to perform must be made available to all employees prior to the commencement of their work activities. The employer may use information developed for the hazard communication standard, chapter 296-62 WAC, Part C, for this purpose.

AMENDATORY SECTION (Amending Order 89-10, filed 10/10/89, effective 11/24/89)

WAC 296-62-3030 Site control. ~~((1) General.)~~ Appropriate site control procedures ~~((shall))~~ **must** be implemented to control employee exposure to hazardous substances before clean-up work begins.

~~((2) Site control program. A site control program for protecting employees which is part of the employer's site safety and health program required in WAC 296-62-3010 shall be developed during the planning stages of a hazardous waste clean-up operation and modified as necessary as new information becomes available.~~

~~(3) Elements of the site control program. The site control program shall, as a minimum, include: A site map; site work zones; the use of a "buddy system"; site communications including alerting means for emergencies; the standard operating procedures or safe work practices; and, identification of nearest medical assistance. Where these requirements are covered elsewhere they need not be repeated.~~

~~(4) Site work zones:~~

~~(a) The site work zones shall be the exclusion zone, contamination reduction zone, and the clean zone.~~

~~(b) Decontamination procedures shall take place in the contamination reduction corridor consisting, if practical, of separate corridors for personnel and for equipment.~~

~~(c) An entry and exit check point must be established at the boundary of the exclusion zone to regulate the flow of personnel and equipment into and out of the zone. Exit from the exclusion zone must be through a contamination reduction corridor.~~

~~(d) Access to the contamination reduction zone from the clean zone is through a control point. Personnel entering or working in the contamination zone shall wear the prescribed personnel protective equipment, if required, for working in this zone. Entering the clean zone requires removal of any protective equipment worn in the contamination reduction zone.)~~

NEW SECTION

WAC 296-62-30305 Site control program. A site control program for protecting employees which is part of the employer's site safety and health program required in WAC 296-62-3010 through 296-62-30145 must be developed during the planning stages of a hazardous waste clean-up operation and modified as necessary as new information becomes available.

NEW SECTION

WAC 296-62-30310 Elements of the site control program. The site control program must, as a minimum, include: A site map; site work zones; the use of a "buddy system"; site communications including alerting means for emergencies; the standard operating procedures or safe work practices; and, identification of nearest medical assistance. Where these requirements are covered elsewhere they need not be repeated.

NEW SECTION

WAC 296-62-30315 Site work zones. (1) The site work zones must be the exclusion zone, contamination reduction zone, and the clean zone.

(2) Decontamination procedures must take place in the contamination reduction corridor consisting, if practical, of separate corridors for personnel and for equipment.

(3) An entry and exit check point must be established at the boundary of the exclusion zone to regulate the flow of personnel and equipment into and out of the zone. Exit from the exclusion zone must be through a contamination reduction corridor.

(4) Access to the contamination reduction zone from the clean zone is through a control point. Personnel entering or working in the contamination zone must wear the prescribed personnel protective equipment, if required, for working in this zone. Entering the clean zone requires removal of any protective equipment worn in the contamination reduction zone.

AMENDATORY SECTION (Amending WSR 95-04-007, filed 1/18/95, effective 3/1/95)

WAC 296-62-3040 General training requirements and the employees covered. (1) ~~((General.~~

~~(a))~~ All employees working on site (such as but not limited to equipment operators, general laborers, and others) exposed to hazardous substances, health hazards, or safety hazards, and their supervisors and management responsible for the site, ~~((shall))~~ **must** receive training meeting the requirements of this subsection before they are permitted to engage in hazardous waste operations that could expose them to hazardous substances, safety, or health hazards, and they ~~((shall))~~ **must** review training as specified in this subsection.

~~((b))~~ (2) Employees ~~((shall))~~ **must** not be permitted to participate in or supervise field activities until they have been trained to a level required by their job function and responsibility.

~~((2) Elements to be covered. The training shall thoroughly cover the following:~~

~~(a) Names of personnel and alternates responsible for site safety and health;~~

~~(b) Safety, health, and other hazards present on the site;~~

~~(c) Use of personal protective equipment;~~

~~(d) Work practices by which the employee can minimize risks from hazards;~~

~~(e) Safe use of engineering controls and equipment on the site;~~

~~(f) Medical surveillance requirements including recognition of symptoms and signs which might indicate overexposure to hazards; and~~

~~(g) The contents of items (vii) through (x) of the site safety and health plan set forth in WAC 296-62-3010 (4)(b).~~

(3) **Initial training.** General site workers (such as equipment operators, general laborers, and supervisory personnel) engaged in hazardous substance removal or other activities which expose or potentially expose workers to hazardous substances and health hazards shall receive the following required training:

~~(a) General site workers required to wear Level A or Level B personal protective equipment because of the types of hazards to which they are exposed or have the potential for being exposed are required to have 80 hours of training and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor.~~

~~(b) General site workers required to wear Level C or D personal protective equipment, equipment operators or transport vehicle operators, are required to have 40 hours of training and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor.~~

~~(c) General site workers on site only occasionally for specific limited tasks, and supervisors not working in the two inner zones are required to have 24 hours of training. For example, certain Environmental Protection Agency, and department of ecology employees, labor and industries inspectors and other short-term monitoring and surveying personnel would be required to only have 24 hours of training if they are on site only occasionally for a specific limited task and are unlikely to be exposed over permissible exposure levels and published exposure limits. A minimum of one day actual field experience under direct supervision is also required.~~

~~(d) Workers regularly on site who work in areas which have been monitored and fully characterized indicating that exposures are under permissible exposure limits and published exposure limits where respirators are not necessary, and the characterization indicates that there are no health hazards or the possibility of an emergency developing, shall receive a minimum of 24 hours of instruction off the site and the minimum of one day actual field experience under the direct supervision of a trained, experienced supervisor.~~

~~(e) Workers with 24 hours of training who are covered by (c) and (d) of this subsection, and who become general site workers or who are required to wear respirators, shall have the additional 16 hours and two days of training necessary to total the training specified in (b) of this subsection.~~

~~(4) Management and supervisor training. On-site management and supervisors directly responsible for, or who supervise employees engaged in, hazardous waste operations shall receive the same initial training as listed in subsection (3) of this section, and three days of supervised field experience and at least eight additional hours of specialized training at the time of job assignment on such topics as, but not limited to, the employer's safety and health program and the associated employee training program, personal protective equipment program, spill containment program, and health hazard monitoring procedure and techniques.~~

~~(5) Law enforcement at illicit drug labs.~~

~~((Exception:~~

~~WISHA did not intend application of the 80 hour training requirement to law enforcement personnel required to enter illicit drug labs, secure the premise, and obtain necessary evidence for law enforcement purposes. Attendance at a specific 40-hour course, such as that presented by the criminal justice training commission, is acceptable.~~

~~((Note: If cleanup activities are conducted by law enforcement personnel, then appropriate hazardous waste cleanup training would be required.~~

~~(6) Training course content:~~

~~(a) 40 and 80 hour hazardous waste cleanup courses. As a minimum, the training course content for the 40 hour and 80 hour training program shall include the following topics:~~

~~(i) Overview of the applicable sections of Part P of chapter 296-62 WAC and the elements of an employer's effective occupational safety and health program.~~

~~(ii) Effect of chemical exposure to hazardous substances (i.e., toxicity, carcinogens, irritants, sensitizers, etc.).~~

~~(iii) Effects of biological and radiological exposures.~~

~~(iv) Fire and explosion hazards (i.e., flammable and combustible liquids, reactive materials).~~

~~(v) General safety hazards, including electrical hazards, powered equipment hazards, walking-working surface hazards and those hazards associated with hot and cold temperature extremes.~~

~~(vi) Permit required confined space, tank, and vault hazards and entry procedures.~~

~~(vii) Names of personnel and alternates, where appropriate, responsible for site safety and health at the site.~~

~~(viii) Specific safety, health, and other hazards that are to be addressed at a site and in the site safety and health plan.~~

~~(ix) Use of personal protective equipment and the implementation of the personal protective equipment program.~~

~~(x) Work practices that will minimize employee risk from site hazards.~~

~~(xi) Safe use of engineering controls and equipment and any new relevant technology or procedure.~~

~~(xii) Content of the medical surveillance program and requirements, including the recognition of signs and symptoms of overexposure to hazardous substances.~~

~~(xiii) The contents of an effective site safety and health plan.~~

~~(xiv) Use of monitoring equipment with "hands-on" experience and the implementation of the employee and site monitoring program.~~

~~(xv) Implementation and use of the information program.~~

~~(xvi) Drum and container handling procedures and the elements of a spill containment program.~~

~~(xvii) Selection and use of material handling equipment.~~

~~(xviii) Methods for assessment of risk and handling of radioactive wastes.~~

~~(xix) Methods for handling shock-sensitive wastes.~~

~~(xx) Laboratory waste pack handling procedures.~~

~~(xxi) Container sampling procedures and safeguards.~~

~~(xxii) Safe preparation procedures for shipping and transport of containers.~~

~~(xxiii) Decontamination program and procedures.~~

~~(xxiv) Emergency response plan and procedures including first aid.~~

~~(xxv) Safe site illumination levels.~~

~~(xxvi) Site sanitation procedures and equipment for employee needs.~~

~~(xxvii) Review of the applicable appendices to Part P of chapter 296-62 WAC.~~

~~(xxviii) Overview and explanation of WISHA's hazard communication standard Part C of chapter 296-62 WAC.~~

~~(xxix) Sources of reference, additional information and efficient use of relevant manuals and hazard coding systems.~~

~~(xxx) Principles of toxicology and biological monitoring.~~

~~(xxxi) Rights and responsibilities of employees and employers under WISHA and CERCLA.~~

~~(xxxii) "Hands-on" field exercises and demonstrations.~~

~~(b) 24-hour hazardous waste cleanup course. As a minimum, the 24-hour training course required in WAC 296-62-3040 (3)(e) and (d) for employees engaged in occasional visits to uncontrolled hazardous waste sites shall include the following topics where they are applicable to the job function to be performed:~~

~~(i) Overview of applicable sections of Part P of chapter 296-62 WAC and the elements of the employer's effective occupational safety and health program.~~

~~(ii) Employee rights and responsibilities under WISHA and CERCLA.~~

~~(iii) Overview of relevant chemical exposures to hazardous substances (i.e., toxics, carcinogens, irritants, sensitizers, etc.).~~

~~(iv) Overview of the principles of toxicology and biological monitoring.~~

~~(v) Use of monitoring equipment with hands-on practice and an overview of a site monitoring program.~~

~~(vi) Overview of site hazards including fire and explosion, confined spaces, oxygen deficiency, electrical hazards, powered equipment hazards, walking-working surface hazards.~~

~~(vii) The contents of an effective site safety and health plan.~~

~~(viii) Use of personal protective equipment and the implementation of the personal protective equipment program.~~

~~(ix) Work practices that will minimize employee risk from site hazards.~~

~~(x) Site simulations with "hands-on" exercises and practice.~~

~~(xi) Emergency response planning and response including first aid.~~

~~(xii) Content of the medical surveillance program and requirements, including the recognition of signs and symptoms of overexposure to hazardous substances.~~

~~(xiii) Decontamination programs and procedures.~~

~~(xiv) Safe use of engineering controls and equipment.~~

~~(xv) Sources of references and efficient use of relevant manuals and knowledge of hazard coding systems.~~

~~(e) 16-hour supplemental training for hazardous waste sites. As a minimum, employees who have received 24 hours of training for hazardous waste site operations shall receive training in the following topics before they are allowed to work as general site workers or if they are required to wear respirators:~~

~~(i) Relevant chemical exposures to hazardous substances beyond that previously covered.~~

~~(ii) Site hazards including fire and explosion, confined spaces, oxygen deficiency, electrical, powered equipment, and walking-working surfaces beyond that previously covered.~~

~~(iii) Names of personnel and alternates responsible for site safety and health at the site, where appropriate.~~

~~(iv) Use of monitoring equipment and the implementation of the employee and the site monitoring program beyond that previously covered.~~

~~(v) Implementation and use of the informational program.~~

~~(vi) Drum and container handling procedures and the elements of a spill containment program.~~

~~(vii) Selection and use of material handling equipment.~~

~~(viii) Methods for assessment of risk and handling of radioactive wastes.~~

~~(ix) Methods for handling shock sensitive wastes.~~

~~(x) Laboratory waste pack handling procedures.~~

~~(xi) Container sampling procedures and safeguards.~~

~~(xii) Safe preparation procedures for shipping and transport of containers.~~

~~(xiii) Decontamination program and procedures.~~

~~(xiv) Safety site illumination levels.~~

~~(xv) Site sanitation procedures and equipment.~~

~~(xvi) Review of the applicable appendices to Part P of chapter 296-62 WAC.~~

~~(xvii) Overview and explanation of WISHA's Hazard communication standard Part C of chapter 296-62 WAC.~~

~~(xviii) Sources of reference and additional information.~~

~~(d) Additional 8 hours of training for supervisors and managers. Supervisors and managers shall receive an additional eight hours of training in the following subjects:~~

~~(i) Management of hazardous wastes and their disposal.~~

~~(ii) Federal, state, and local agencies to be contacted in the event of a release of hazardous substances.~~

~~(iii) Management of emergency procedures in the event of a release of hazardous substances.~~

~~(7) Qualifications for trainers. Trainers shall be qualified to instruct employees about the subject matter that is being presented in training. Such trainers shall have satisfactorily completed a training program for teaching the subjects they are expected to teach, or they shall have the academic credentials and instructional experience necessary for teaching the subjects. Instructors shall demonstrate competent instructional skills and knowledge of the applicable subject matter.~~

~~(8) Training certification. Employees and supervisors that have received and successfully completed the training and field experience specified in subsections (1) through (4) of this section shall be certified by their instructor or the head instructor and trained supervisor as having successfully completed the necessary training. A written certificate shall be given to each person so certified. Any person who has not been so certified or who does not meet the requirements of subsection (11) of this section shall be prohibited from engaging in hazardous waste operations.~~

~~(9) Emergency response. Employees who are engaged in responding to hazardous emergency situations at hazardous waste clean-up sites that may expose them to hazardous substances shall be trained in how to respond to expected emergencies.~~

~~(10) Refresher training. Employees specified in subsection (1) of this section, and managers specified in subsection (4) of this section, shall receive eight hours of refresher training annually on the items specified in subsections (2) and/or (4) of this section, any critique of incidents that have~~

occurred in the past year that can serve as training examples of related work, and other relevant topics.

~~(11) Equivalent training. Employers who can show by documentation or certification that an employee's work experience and/or training has resulted in training equivalent to that training required in subsections (1) through (4) of this section shall not be required to provide the initial training requirements of those sections to such employees and shall provide a copy of the certification or documentation to the employee upon request. However, certified employees or employees with equivalent training new to a site shall receive appropriate, site specific training before site entry and have appropriate supervised field experience at the new site. Equivalent training includes any academic training or the training that existing employees might have already received from actual hazardous waste site work experience. The 80 hours of instruction required can be fulfilled as follows:~~

~~(a) Instruction can include a combination of presently available 40 hour training sessions and other related classes or training including additional supervised on-the-job training as long as material covered includes elements required in the training section WAC 296-62-3040(2) of the regulations. A single 80 hour training session is also acceptable.~~

~~(b) Previously attended courses including eight-hour refresher courses apply toward the 80-hour requirement and need not be repeated.~~

~~(c) Documentation of previous experience and training by qualified trainers is required of employers and must be available to inspectors for review.~~

~~(d) When calculating hours of training, WISHA assumes a "normal" work day to be eight hours with sufficient time for lunch and other breaks.))~~

NEW SECTION

WAC 296-62-30405 Elements covered in training. The training must thoroughly cover the following:

- (1) Names of personnel and alternates responsible for site safety and health;
- (2) Safety, health, and other hazards present on the site;
- (3) Use of personal protective equipment;
- (4) Work practices by which the employee can minimize risks from hazards;
- (5) Safe use of engineering controls and equipment on the site;
- (6) Medical surveillance requirements including recognition of symptoms and signs which might indicate overexposure to hazards; and
- (7) The contents of the site safety and health plan set forth in WAC 296-62-31035 (2)(g) through (j).

NEW SECTION

WAC 296-62-30410 Initial training. General site workers (such as equipment operators, general laborers, and supervisory personnel) engaged in hazardous substance removal or other activities which expose or potentially expose workers to hazardous substances and health hazards must receive the following required training:

(1) General site workers required to wear Level A or Level B personal protective equipment because of the types of hazards to which they are exposed or have the potential for being exposed are required to have 80 hours of training and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor.

(2) General site workers required to wear Level C or D personal protective equipment, equipment operators or transport vehicle operators, are required to have 40 hours of training and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor.

(3) General site workers on site only occasionally for specific limited tasks, and supervisors not working in the two inner zones are required to have 24 hours of training. For example, certain Environmental Protection Agency, and department of ecology employees, labor and industries inspectors and other short-term monitoring and surveying personnel would be required to only have 24 hours of training if they are on-site only occasionally for a specific limited task and are unlikely to be exposed over permissible exposure levels and published exposure limits. A minimum of one day actual field experience under direct supervision is also required.

(4) Workers regularly on site who work in areas which have been monitored and fully characterized indicating that exposures are under permissible exposure limits and published exposure limits where respirators are not necessary, and the characterization indicates that there are no health hazards or the possibility of an emergency developing, must receive a minimum of 24 hours of instruction off the site and the minimum of one day actual field experience under the direct supervision of a trained, experienced supervisor.

(5) Workers with 24 hours of training who are covered by subsections (3) and (4) of this section, and who become general site workers or who are required to wear respirators, must have the additional 16 hours and two days of training necessary to total the training specified in subsection (2) of this section.

NEW SECTION

WAC 296-62-30415 Management and supervisor training. On-site management and supervisors directly responsible for, or who supervise employees engaged in, hazardous waste operations must receive the same initial training as listed in WAC 296-62-30410, and three days of supervised field experience and at least eight additional hours of specialized training at the time of job assignment on such topics as, but not limited to, the employer's safety and health program and the associated employee training program, personal protective equipment program, spill containment program, and health hazard monitoring procedure and techniques.

NEW SECTION

WAC 296-62-30420 Law enforcement at illicit drug labs. Exception: WISHA did not intend application of the 80 hour training requirement to law enforcement personnel required to enter illicit drug labs, secure the premise, and

obtain necessary evidence for law enforcement purposes. Attendance at a specific 40 hours course, such as that presented by the criminal justice training commission, is acceptable.

Note: If cleanup activities are conducted by law enforcement personnel, then appropriate hazardous waste cleanup training would be required.

NEW SECTION

WAC 296-62-30425 Training course content for 40 and 80 hour hazardous waste cleanup courses. As a minimum, the training course content for the 40 hour and 80 hour training program must include the following topics:

(1) Overview of the applicable sections of Part P of chapter 296-62 WAC and the elements of an employer's effective occupational safety and health program.

(2) Effect of chemical exposure to hazardous substances (i.e., toxicity, carcinogens, irritants, sensitizers, etc.).

(3) Effects of biological and radiological exposures.

(4) Fire and explosion hazards (i.e., flammable and combustible liquids, reactive materials).

(5) General safety hazards, including electrical hazards, powered equipment hazards, walking-working surface hazards and those hazards associated with hot and cold temperature extremes.

(6) Permit-required confined space, tank, and vault hazards and entry procedures.

(7) Names of personnel and alternates, where appropriate, responsible for site safety and health at the site.

(8) Specific safety, health, and other hazards that are to be addressed at a site and in the site safety and health plan.

(9) Use of personal protective equipment and the implementation of the personal protective equipment program.

(10) Work practices that will minimize employee risk from site hazards.

(11) Safe use of engineering controls and equipment and any new relevant technology or procedure.

(12) Content of the medical surveillance program and requirements, including the recognition of signs and symptoms of overexposure to hazardous substances.

(13) The contents of an effective site safety and health plan.

(14) Use of monitoring equipment with "hands-on" experience and the implementation of the employee and site monitoring program.

(15) Implementation and use of the information program.

(16) Drum and container handling procedures and the elements of a spill containment program.

(17) Selection and use of material handling equipment.

(18) Methods for assessment of risk and handling of radioactive wastes.

(19) Methods for handling shock-sensitive wastes.

(20) Laboratory waste pack handling procedures.

(21) Container sampling procedures and safeguards.

(22) Safe preparation procedures for shipping and transport of containers.

(23) Decontamination program and procedures.

(24) Emergency response plan and procedures including first aid.

(25) Safe site illumination levels.

(26) Site sanitation procedures and equipment for employee needs.

(27) Review of the applicable appendices to Part P of chapter 296-62 WAC.

(28) Overview and explanation of WISHA's hazard communication standard Part C of chapter 296-62 WAC.

(29) Sources of reference, additional information and efficient use of relevant manuals and hazard coding systems.

(30) Principles of toxicology and biological monitoring.

(31) Rights and responsibilities of employees and employers under WISHA and CERCLA.

(32) Hands-on field exercises and demonstrations.

NEW SECTION

WAC 296-62-30430 Training content for 24-hour hazardous waste cleanup course. As a minimum, the 24-hour training course required in WAC 296-62-30410 (3) and (4) for employees engaged in occasional visits to uncontrolled hazardous waste sites must include the following topics where they are applicable to the job function to be performed:

(1) Overview of applicable sections of Part P of chapter 296-62 WAC and the elements of the employer's effective occupational safety and health program.

(2) Employee rights and responsibilities under WISHA and CERCLA.

(3) Overview of relevant chemical exposures to hazardous substances (i.e., toxics, carcinogens, irritants, sensitizers, etc.).

(4) Overview of the principles of toxicology and biological monitoring.

(5) Use of monitoring equipment with hands-on practice and an overview of a site monitoring program.

(6) Overview of site hazards including fire and explosion, confined spaces, oxygen deficiency, electrical hazards, powered equipment hazards, walking-working surface hazards.

(7) The contents of an effective site safety and health plan.

(8) Use of personal protective equipment and the implementation of the personal protective equipment program.

(9) Work practices that will minimize employee risk from site hazards.

(10) Site simulations with "hands-on" exercises and practice.

(11) Emergency response planning and response including first aid.

(12) Content of the medical surveillance program and requirements, including the recognition of signs and symptoms of overexposure to hazardous substances.

(13) Decontamination programs and procedures.

(14) Safe use of engineering controls and equipment.

(15) Sources of references and efficient use of relevant manuals and knowledge of hazard coding systems.

NEW SECTION

WAC 296-62-30435 16-hour supplemental training for hazardous waste sites. As a minimum, employees who have received 24 hours of training for hazardous waste site operations must receive training in the following topics before they are allowed to work as general site workers or if they are required to wear respirators:

- (1) Relevant chemical exposures to hazardous substances beyond that previously covered.
- (2) Site hazards including fire and explosion, confined spaces, oxygen deficiency, electrical, powered equipment, and walking-working surfaces beyond that previously covered.
- (3) Names of personnel and alternates responsible for site safety and health at the site, where appropriate.
- (4) Use of monitoring equipment and the implementation of the employee and the site monitoring program beyond that previously covered.
- (5) Implementation and use of the informational program.
- (6) Drum and container handling procedures and the elements of a spill containment program.
- (7) Selection and use of material handling equipment.
- (8) Methods for assessment of risk and handling of radioactive wastes.
- (9) Methods for handling shock-sensitive wastes.
- (10) Laboratory waste pack handling procedures.
- (11) Container sampling procedures and safeguards.
- (12) Safe preparation procedures for shipping and transport of containers.
- (13) Decontamination program and procedures.
- (14) Safety site illumination levels.
- (15) Site sanitation procedures and equipment.
- (16) Review of the applicable appendices to Part P of chapter 296-62 WAC.
- (17) Overview and explanation of WISHA's Hazard communication standard Part C of chapter 296-62 WAC.
- (18) Sources of reference and additional information.

NEW SECTION

WAC 296-62-30440 Additional 8 hours of training for supervisors and managers. Supervisors and managers must receive an additional eight hours of training in the following subjects:

- (1) Management of hazardous wastes and their disposal.
- (2) Federal, state, and local agencies to be contacted in the event of a release of hazardous substances.
- (3) Management of emergency procedures in the event of a release of hazardous substances.

NEW SECTION

WAC 296-62-30445 Qualifications for trainers. Trainers must be qualified to instruct employees about the subject matter that is being presented in training. Such trainers must have satisfactorily completed a training program for teaching the subjects they are expected to teach, or they must have the academic credentials and instructional experience

necessary for teaching the subjects. Instructors must demonstrate competent instructional skills and knowledge of the applicable subject matter.

NEW SECTION

WAC 296-62-30450 Training certification. Employees and supervisors that have received and successfully completed the training and field experience specified in WAC 296-62-3040 through 296-62-30415 must be certified by their instructor or the head instructor and trained supervisor as having successfully completed the necessary training. A written certificate must be given to each person certified. Any person who has not been certified or who does not meet the requirements of WAC 296-62-30465 must be prohibited from engaging in hazardous waste operations.

NEW SECTION

WAC 296-62-30455 Training requirements for emergency response. Employees who are engaged in responding to hazardous emergency situations at hazardous waste clean-up sites that may expose them to hazardous substances must be trained in how to respond to expected emergencies.

NEW SECTION

WAC 296-62-30460 Refresher training. Employees specified in WAC 296-62-3040 and managers specified in WAC 296-62-30415 must receive eight hours of refresher training annually on the items specified in WAC 296-62-30405 and/or 296-62-30415, any critique of incidents that have occurred in the past year that can serve as training examples of related work, and other relevant topics.

NEW SECTION

WAC 296-62-30465 Equivalent training. Employers who can show by documentation or certification that an employee's work experience and/or training has resulted in training equivalent to that training required in WAC 296-62-3040 through 296-62-30410 must not be required to provide the initial training requirements of those sections to such employees and must provide a copy of the certification or documentation to the employee upon request. However, certified employees or employees with equivalent training new to a site must receive appropriate, site specific training before site entry and have appropriate supervised field experience at the new site. Equivalent training includes any academic training or the training that existing employees might have already received from actual hazardous waste site work experience. The 80 hours of instruction required can be fulfilled as follows:

- (1) Instruction can include a combination of presently available 40 hour training sessions and other related classes or training including additional supervised on-the-job training as long as material covered includes elements required in the training section WAC 296-62-30405 of the regulations. A single 80 hour training session is also acceptable.

(2) Previously attended courses including eight-hour refresher courses apply toward the 80 hour requirement and need not be repeated.

(3) Documentation of previous experience and training by qualified trainers is required of employers and must be available to inspectors for review.

(4) When calculating hours of training, WISHA assumes a "normal" work day to be eight hours with sufficient time for lunch and other breaks.

AMENDATORY SECTION (Amending Order 91-01, filed 5/20/91, effective 6/20/91)

WAC 296-62-3050 Medical surveillance. ~~((1) General.)~~ Employers engaged in operations specified in WAC 296-62-300 (1) ~~((a) through (d))~~ and not covered by WAC 296-62-300(2), exceptions; ~~((and employers of employees specified in WAC 296-62-3112(9) shall))~~ must institute a medical surveillance program ~~((in accordance with this subsection)).~~

~~((2) Employees covered. The medical surveillance program shall be instituted by the employer for the following employees:~~

~~(a) All employees who are or may be exposed to hazardous substances or health hazards at or above the permissible exposure limits or, if there is no permissible exposure limit, above the published exposure levels for these substances, without regard to the use of respirators, for 30 days or more a year;~~

~~(b) All employees who wear a respirator for 30 days or more a year or as required by WAC 296-62-071; and~~

~~(c) All employees who are injured, become ill or develop signs or symptoms due to possible overexposure involving hazardous substances or health hazards from an emergency response or hazardous waste operation; and~~

~~(d) Members of HAZMAT teams.~~

(3) Frequency of medical examinations and consultations. Medical examinations and consultations shall be made available by the employer to each employee covered under subsection (1) of this section on the following schedules:

(a) For employees covered under WAC 296-62-3050 (2)(a), (b), and (d):

(i) Prior to assignment;

(ii) At least once every twelve months for each employee covered unless the attending physician believes a longer interval (not greater than biennially) is appropriate;

(iii) At termination of employment or reassignment to an area where the employee would not be covered if the employee has not had an examination within the last six months;

(iv) As soon as possible upon notification by an employee that the employee has developed signs or symptoms indicating possible overexposure to hazardous substances or health hazards, or that the employee has been injured or exposed above the permissible exposure limits, or published exposure levels in an emergency situation;

(v) At more frequent times, if the examining physician determines that an increased frequency of examination is medically necessary.

~~(b) For employees covered under subsection (2)(c) of this section and for all employees including those employees covered by WAC 296-62-300 (1)(c) who may have been injured, received a health impairment, developed signs or symptoms which may have resulted from exposure to hazardous substances resulting from an emergency incident, or exposed during an emergency incident to hazardous substances at concentrations above the permissible exposure limits or the published exposure levels without the necessary personal protective equipment being used:~~

~~(i) As soon as possible following the emergency incident or development of signs or symptoms;~~

~~(ii) At additional times, if the examining physician determines that follow-up examinations or consultations are medically necessary.~~

~~(4) Content of medical examinations and consultations.~~

~~(a) Medical examinations required by subsection (3) of this section shall include a medical and work history (or updated history if one is in the employee's file) with special emphasis on symptoms related to the handling of hazardous substances and health hazards, and to fitness for duty including the ability to wear any required PPE under conditions (i.e., temperature extremes) that may be expected at the worksite.~~

~~(b) The content of medical examinations or consultations made available to employees pursuant to this section shall be determined by the examining physician. The guidelines in the *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities* (See Appendix D, Reference #10) should be consulted.~~

~~(5) Examination by a physician and costs. All medical examinations and procedures shall be performed by or under the supervision of a licensed physician, preferably one knowledgeable in occupational medicine, and shall be provided without cost to the employee, without loss of pay, and at a reasonable time and place.~~

~~(6) Information provided to the physician. The employer shall provide one copy of this standard and its appendices to the examining physician, and in addition, the following for each employee:~~

~~(a) A description of the employee's duties as they relate to the employee's exposures;~~

~~(b) The employee's exposure levels or anticipated exposure levels;~~

~~(c) A description of any personal protective equipment used or to be used;~~

~~(d) Information from previous medical examinations of the employee which is not readily available to the examining physician; and~~

~~(e) Information required in WAC 296-62-071 through 296-62-07121.~~

~~(7) Physician's written opinion:~~

~~(a) The employer shall obtain and furnish the employee with a copy of a written opinion from the examining physician containing the following:~~

~~(i) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health from work in hazardous waste operations or emergency response or from respirators use.~~

~~(ii) The physician's recommended limitations upon the employees assigned work.~~

~~(iii) The results of the medical examination and tests if requested by the employee.~~

~~(iv) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.~~

~~(b) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposures.~~

~~(8) Recordkeeping.~~

~~(a) An accurate record of the medical surveillance required by this section shall be retained. This record shall be retained for the period specified and meet the criteria of Part B of chapter 296-62-WAC.~~

~~(b) The record required in (a) of this subsection shall include at least the following information:~~

~~(i) The name and Social Security number of the employee;~~

~~(ii) Physicians' written opinions, recommended limitations, and results of examinations and tests;~~

~~(iii) Any employee medical complaints related to exposure to hazardous substances;~~

~~(iv) A copy of the information provided to the examining physician by the employer, with the exception of the standard and its appendices:))~~

NEW SECTION

WAC 296-62-30505 Employees covered. The medical surveillance program must be instituted for the following employees:

(1) All employees who are or may be exposed to hazardous substances or health hazards at or above the permissible exposure limits or, if there is no permissible exposure limit, above the published exposure levels for these substances, without regard to the use of respirators, for 30 days or more a year;

(2) All employees who wear a respirator for 30 days or more a year or as required by WAC 296-62-071; and

(3) All employees who are injured, become ill or develop signs or symptoms due to possible overexposure involving hazardous substances or health hazards from an emergency response or hazardous waste operation; and

(4) Members of HAZMAT teams.

NEW SECTION

WAC 296-62-30510 Frequency of medical examinations and consultations. Medical examinations and consultations shall be made available by the employer to each employee covered under WAC 296-62-3050 on the following schedules:

(1) For employees covered under WAC 296-62-30505 (1), (2), and (4):

(a) Prior to assignment;

(b) At least once every twelve months for each employee covered unless the attending physician believes a longer interval (not greater than biennially) is appropriate;

(c) At termination of employment or reassignment to an area where the employee would not be covered if the employee has not had an examination within the last six months;

(d) As soon as possible upon notification by an employee that the employee has developed signs or symptoms indicating possible overexposure to hazardous substances or health hazards, or that the employee has been injured or exposed above the permissible exposure limits, or published exposure levels in an emergency situation;

(e) At more frequent times, if the examining physician determines that an increased frequency of examination is medically necessary.

(2) For employees covered under WAC 296-62-30505 who may have been injured, received a health impairment, developed signs or symptoms which may have resulted from exposure to hazardous substances resulting from an emergency incident, or exposed during an emergency incident to hazardous substances at concentrations above the permissible exposure limits or the published exposure levels without the necessary personal protective equipment being used:

(a) As soon as possible following the emergency incident or development of signs or symptoms;

(b) At additional times, if the examining physician determines that follow-up examinations or consultations are medically necessary.

NEW SECTION

WAC 296-62-30515 Content of medical examinations and consultations. (1) Medical examinations required by WAC 296-62-30510 must include a medical and work history (or updated history if one is in the employee's file) with special emphasis on symptoms related to the handling of hazardous substances and health hazards, and to fitness for duty including the ability to wear any required PPE under conditions (i.e., temperature extremes) that may be expected at the worksite.

(2) The content of medical examinations or consultations made available to employees under this section must be determined by the examining physician. The guidelines in the *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities* (See Appendix D, Reference #9) should be consulted.

NEW SECTION

WAC 296-62-30520 Examination by a physician and costs. All medical examinations and procedures must be performed by or under the supervision of a licensed physician, preferably one knowledgeable in occupational medicine, and must be provided without cost to the employee, without loss of pay, and at a reasonable time and place.

NEW SECTION

WAC 296-62-30525 Information provided to the physician. The employer must provide one copy of this standard and its appendices to the examining physician, and the following for each employee:

- (1) A description of the employee's duties as they relate to the employee's exposures;
- (2) The employee's exposure levels or anticipated exposure levels;
- (3) A description of any personal protective equipment used or to be used;
- (4) Information from previous medical examinations of the employee which is not readily available to the examining physician; and
- (5) Information required in WAC 296-62-071 through 296-62-07121.

NEW SECTION

WAC 296-62-30530 Physician's written opinion. (1) The employer must obtain and furnish the employee with a copy of a written opinion from the examining physician containing the following:

- (a) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health from work in hazardous waste operations or emergency response or from respirators use.
- (b) The physician's recommended limitations upon the employees assigned work.
- (c) The results of the medical examination and tests if requested by the employee.
- (d) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.
- (2) The written opinion obtained by the employer must not reveal specific findings or diagnoses unrelated to occupational exposures.

NEW SECTION

WAC 296-62-30535 Recordkeeping of medical surveillance activities. (1) An accurate record of the medical surveillance required by this section must be retained. This record must be retained for the period specified and meet the criteria of Part B of chapter 296-62 WAC.

- (2) The record required in subsection (1) of this section must include at least the following information:
 - (a) The name and Social Security number of the employee;
 - (b) Physicians' written opinions, recommended limitations, and results of examinations and tests;
 - (c) Any employee medical complaints related to exposure to hazardous substances;
 - (d) A copy of the information provided to the examining physician by the employer, with the exception of the standard and its appendices.

AMENDATORY SECTION (Amending Order 94-07, filed 7/20/94, effective 9/20/94)

WAC 296-62-3060 Engineering controls, work practices, and personal protective equipment for employee protection. (1) Engineering controls, work practices, per-

sonal protective equipment, or a combination of these ~~((shall))~~ **must** be implemented in accordance with this section to protect employees from exposure to hazardous substances and health hazards.

(a) Engineering controls, work practices, and PPE for substances regulated in chapter 296-62 WAC.

Engineering controls and work practices ~~((shall))~~ **must** be instituted to reduce and maintain employee exposure to or below the permissible exposure limits for substances regulated by this chapter, except to the extent that such controls and practices are not feasible.

Note: Engineering controls which may be feasible include the use of pressurized cabs or control booths on equipment, and/or the use of remotely operated material handling equipment. Work practices which may be feasible are removing all nonessential employees from potential exposure during opening of drums, wetting down dusty operations, and locating employees upwind of possible hazards.

(b) Whenever engineering controls and work practices are not feasible, or not required, any reasonable combination of engineering controls, work practices, and PPE ~~((shall))~~ **must** be used to reduce and maintain exposures to or below the permissible exposure limits or dose limits for substances regulated by chapter 296-62 WAC.

(c) The employer ~~((shall))~~ **must** not implement a schedule of employee rotation as a means of compliance with permissible exposure limits or dose limits except when there is no other feasible way of complying with the airborne or dermal dose limits for ionizing radiation.

(d) The provisions of WAC 296-62-080 through 296-62-09013, 296-62-09015 through 296-62-09055, and 296-62-100 through 296-62-130 ~~((shall))~~ **must** be followed.

(2) Engineering controls, work practices, and personal protective equipment for substances not regulated in chapter 296-62 WAC. An appropriate combination of engineering controls, work practices, and personal protective equipment ~~((shall))~~ **must** be used to reduce and maintain employee exposure to or below published exposure levels for hazardous substances and health hazards not regulated by chapter 296-62 WAC. The employer may use the published literature and MSDS as a guide in making the employer's determination as to what level of protection the employer believes is appropriate for hazardous substances and health hazards for which there is no permissible exposure limit or published exposure level.

~~((3) Personal protective equipment selection.~~

~~(a) Personal protective equipment (PPE) shall be selected and used which will protect employees from the hazards and potential hazards they are likely to encounter as identified during the site characterization and analysis.~~

~~(b) Personal protective equipment selection shall be based on an evaluation of the performance characteristics of the PPE relative to the requirements and limitations of the site, the task specific conditions and duration, and the hazards and potential hazards identified at the site.~~

~~(c) Positive pressure self-contained breathing apparatus, or positive pressure air-line respirators equipped with an escape air supply shall be used when chemical exposure levels present will create a substantial possibility of immediate~~

death, immediate serious illness or injury, or impair the ability to escape.

~~(d) Totally encapsulating chemical protective suits (protection equivalent to Level A protection as recommended in Appendix B) shall be used in conditions where skin absorption of a hazardous substance may result in a substantial possibility of immediate death, immediate serious illness or injury, or impair the ability to escape.~~

~~(e) The level of protection provided by PPE selection shall be increased when additional information or site conditions indicate that increased protection is necessary to reduce employee exposures below permissible exposure limits and published exposure levels for hazardous substances and health hazards. (See WAC 296-62-3170 Appendix B for guidance on selecting PPE ensembles.)~~

~~Note: The level of employee protection provided may be decreased when additional information or site conditions show that decreased protection will not result in increased hazardous exposures to employees.~~

~~(f) Personal protective equipment shall be selected and used to meet the requirements of chapter 296-24 WAC, Part A-2, and additional requirements specified in this part.~~

~~(4) Totally encapsulating chemical protective suits.~~

~~(a) Totally encapsulating suits shall protect employees from the particular hazards which are identified during site characterization and analysis.~~

~~(b) Totally encapsulating suits shall be capable of maintaining positive air pressure. (See WAC 296-62-3160 Appendix A for a test method which may be used to evaluate this requirement.)~~

~~(c) Totally encapsulating suits shall be capable of preventing inward test gas leakage of more than 0.5 percent. (See WAC 296-62-3160 Appendix A for a test method which may be used to evaluate this requirement.)~~

~~(5) Personal protective equipment (PPE) program. A written personal protective equipment program, which is part of the employer's safety and health program required in WAC 296-62-3010 or 296-62-3140 and which shall be part of the site specific safety and health plan shall be established. The PPE program shall address the elements listed below. When elements, such as donning and doffing procedures, are provided by the manufacturer of a piece of equipment and are attached to the plan, they need not be rewritten into the plan as long as they adequately address the procedure or element.~~

~~(a) PPE selection based on site hazards;~~

~~(b) PPE use and limitations of the equipment;~~

~~(c) Work mission duration;~~

~~(d) PPE maintenance and storage;~~

~~(e) PPE decontamination and disposal;~~

~~(f) PPE training and proper fitting;~~

~~(g) PPE donning and doffing procedures;~~

~~(h) PPE inspection procedures prior to, during, and after use;~~

~~(i) Evaluation of the effectiveness of the PPE program, and~~

~~(j) Limitations during temperature extremes, heat stress, and other appropriate medical considerations.)~~

NEW SECTION

WAC 296-62-30605 Personal protective equipment selection. (1) Personal protective equipment (PPE) must be selected and used which will protect employees from the hazards and potential hazards they are likely to encounter as identified during the site characterization and analysis.

(2) Personal protective equipment selection must be based on an evaluation of the performance characteristics of the PPE relative to the requirements and limitations of the site, the task-specific conditions and duration, and the hazards and potential hazards identified at the site.

(3) Positive pressure self-contained breathing apparatus, or positive pressure air-line respirators equipped with an escape air supply must be used when chemical exposure levels present will create a substantial possibility of immediate death, immediate serious illness or injury, or impair the ability to escape.

(4) Totally encapsulating chemical protective suits (protection equivalent to Level A protection as recommended in Appendix B) must be used in conditions where skin absorption of a hazardous substance may result in a substantial possibility of immediate death, immediate serious illness or injury, or impair the ability to escape.

(5) The level of protection provided by PPE selection must be increased when additional information or site conditions indicate that increased protection is necessary to reduce employee exposures below permissible exposure limits and published exposure levels for hazardous substances and health hazards. (See WAC 296-62-3170 - Appendix B for guidance on selecting PPE ensembles.)

Note: The level of employee protection provided may be decreased when additional information or site conditions show that decreased protection will not result in increased hazardous exposures to employees.

(6) Personal protective equipment must be selected and used to meet the requirements of chapter 296-24 WAC, Part A-2, and additional requirements specified in this part.

NEW SECTION

WAC 296-62-30610 Totally encapsulating chemical protective suits. (1) Totally encapsulating suits must protect employees from the particular hazards which are identified during site characterization and analysis.

(2) Totally encapsulating suits must be capable of maintaining positive air pressure. (See WAC 296-62-3160 - Appendix A for a test method which may be used to evaluate this requirement.)

(3) Totally encapsulating suits must be capable of preventing inward test gas leakage of more than 0.5 percent. (See WAC 296-62-3160 - Appendix A for a test method which may be used to evaluate this requirement.)

NEW SECTION

WAC 296-62-30615 Personal protective equipment (PPE) program. A written personal protective equipment program, which is part of the employer's safety and health

program required in WAC 296-62-3010 or 296-62-31405 and which must be part of the site-specific safety and health plan must be established. The PPE program must address the elements listed below. When elements, such as donning and doffing procedures, are provided by the manufacturer of a piece of equipment and are attached to the plan, they need not be rewritten into the plan as long as they adequately address the procedure or element.

- (1) PPE selection based on site hazards;
- (2) PPE use and limitations of the equipment;
- (3) Work mission duration;
- (4) PPE maintenance and storage;
- (5) PPE decontamination and disposal;
- (6) PPE training and proper fitting;
- (7) PPE donning and doffing procedures;
- (8) PPE inspection procedures prior to, during, and after use;
- (9) Evaluation of the effectiveness of the PPE program; and
- (10) Limitations during temperature extremes, heat stress, and other appropriate medical considerations.

AMENDATORY SECTION (Amending Order 90-14, filed 10/1/90, effective 11/15/90)

WAC 296-62-3070 Monitoring concentrations of hazardous substances. (1) ~~((General-~~

~~((a))) Monitoring ~~((shall))~~ must be performed in accordance with this section where there may be a question of employee exposure to concentrations of hazardous substances in order to assure proper selection of engineering controls, work practices, and personal protective equipment so that employees are not exposed to levels which exceed permissible exposure limits or published exposure levels if there are no permissible exposure limits, for hazardous substances.~~

~~((b))) (2) Air monitoring ~~((shall))~~ must be used to identify and quantify airborne levels of hazardous substances and safety and health hazards in order to determine the appropriate level of employee protection needed on site.~~

~~((2) Initial entry. Upon initial entry, representative air monitoring shall be conducted to identify any IDLH condition, exposure over permissible exposure limits or published exposure levels, exposure over a radioactive material's dose limits, or other dangerous condition, such as the presence of flammable atmospheres or oxygen-deficient environments.~~

~~(3) Periodic monitoring. Periodic monitoring shall be conducted when the possibility of an IDLH condition or flammable atmosphere has developed or when there is indication that exposures may have risen over permissible exposure limits or published exposure levels since prior monitoring. Situations where it shall be considered whether the possibility that exposures have risen are as follows:~~

- ~~(a) When work begins on a different portion of the site.~~
- ~~(b) When contaminants other than those previously identified are being handled.~~
- ~~(c) When a different type of operation is initiated (e.g., drum opening as opposed to exploratory well drilling).~~
- ~~(d) When employees are handling leaking drums or containers or working in areas with obvious liquid contamination (e.g., a spill or lagoon).~~

~~(e) When a sufficient reasonable interval has passed so that exposures may have significantly increased.~~

~~(4) Monitoring of high-risk employees. After the actual clean-up phase of any hazardous waste operation commences; for example, when soil, surface water, or containers are moved or disturbed; the employer shall monitor those employees likely to have the highest exposures to hazardous substances and health hazards likely to be present above permissible exposure limits or published exposure levels by using personal sampling frequently enough to characterize employee exposures. If the employees likely to have the highest exposure are over permissible exposure limits or published exposure levels, then monitoring shall continue to determine all employees likely to be above those limits. The employer may utilize a representative sampling approach by documenting that the employees and chemicals chosen for monitoring are based on the criteria stated in this subsection.~~

Note: ~~It is not required to monitor employees engaged in site characterization operations covered by WAC 296-62-3020.)~~

NEW SECTION

WAC 296-62-30705 Monitoring during initial entry.

Upon initial entry, representative air monitoring must be conducted to identify any IDLH condition, exposure over permissible exposure limits or published exposure levels, exposure over a radioactive material's dose limits, or other dangerous condition, such as the presence of flammable atmospheres or oxygen-deficient environments.

NEW SECTION

WAC 296-62-30710 Periodic monitoring.

Periodic monitoring must be conducted when the possibility of an IDLH condition or flammable atmosphere has developed or when there is indication that exposures may have risen over permissible exposure limits or published exposure levels since prior monitoring. Situations where it must be considered whether the possibility that exposures have risen are as follows:

- (1) When work begins on a different portion of the site.
- (2) When contaminants other than those previously identified are being handled.
- (3) When a different type of operation is initiated (e.g., drum opening as opposed to exploratory well drilling).
- (4) When employees are handling leaking drums or containers or working in areas with obvious liquid contamination (e.g., a spill or lagoon).
- (5) When a sufficient reasonable interval has passed so that exposures may have significantly increased.

NEW SECTION

WAC 296-62-30715 Monitoring of high-risk employees.

After the actual clean-up phase of any hazardous waste operation commences; for example, when soil, surface water, or containers are moved or disturbed; the employer must monitor those employees likely to have the highest exposures to hazardous substances and health hazards likely to be present above permissible exposure limits or published expo-

sure levels by using personal sampling frequently enough to characterize employee exposures. If the employees likely to have the highest exposure are over permissible exposure limits or published exposure levels, then monitoring must continue to determine all employees likely to be above those limits. The employer may use a representative sampling approach by documenting that the employees and chemicals chosen for monitoring are based on the criteria stated in this subsection.

Note: It is not required to monitor employees engaged in site characterization operations covered by WAC 296-62-3020 through 296-62-30235.

AMENDATORY SECTION (Amending WSR 89-21-018, filed 10/10/89, effective 11/24/89)

WAC 296-62-3080 Informational programs. Employers ~~((shall))~~ must develop and implement a program which is part of the employer's safety and health program required in WAC 296-62-3010 through 296-62-30145 to inform employees, contractors, and subcontractors (or their representative) actually engaged in hazardous waste operations of the nature, level, and degree of exposure likely as a result of participation in such hazardous waste operations. Employees, contractors, and subcontractors working outside of the operations part of a site are not covered by this standard.

AMENDATORY SECTION (Amending Order 93-04, filed 9/22/93, effective 11/1/93)

WAC 296-62-3090 General requirements for handling drums and containers. (1) ~~((General~~

~~((a)))~~ Hazardous substances and contaminated soils, liquids, and other residues ~~((shall))~~ must be handled, transported, labeled, and disposed of in accordance with this section.

~~((b)))~~ (2) Drums and containers used during the cleanup ~~((shall))~~ must meet the appropriate DOT, OSHA, WISHA, and EPA regulations for the wastes that they contain.

~~((c)))~~ (3) When practical, drums and containers ~~((shall))~~ must be inspected and their integrity ~~((shall))~~ must be assured prior to being moved. Drums or containers that cannot be inspected before being moved because of storage conditions (i.e., buried beneath the earth, stacked behind other drums, stacked several tiers high in a pile, etc.) ~~((shall))~~ must be moved to an accessible location and inspected prior to further handling.

~~((d)))~~ (4) Unlabeled drums and containers ~~((shall))~~ must be considered to contain hazardous substances and handled accordingly until the contents are positively identified and labeled.

~~((e)))~~ (5) Site operations ~~((shall))~~ must be organized to minimize the amount of drum or container movement.

~~((f)))~~ (6) Prior to movement of drums or containers, all employees exposed to the transfer operation ~~((shall))~~ must be warned of the potential hazards associated with the contents of the drums or containers.

~~((g)))~~ (7) United States Department of Transportation specified salvage drums or containers and suitable quantities

of proper absorbent ~~((shall))~~ must be kept available and used in areas where spills, leaks, or ruptures may occur.

~~((h)))~~ (8) Where major spills may occur, a spill containment program, which is part of the employer's safety and health program required in WAC 296-62-3010, ~~((shall))~~ must be implemented to contain and isolate the entire volume of the hazardous substance being transferred.

~~((i)))~~ (9) Drums and containers that cannot be moved without rupture, leakage, or spillage ~~((shall))~~ must be emptied into a sound container using a device classified for the material being transferred.

~~((j)))~~ (10) A ground-penetrating system or other type of detection system or device ~~((shall))~~ must be used to estimate the location and depth of buried drums or containers.

~~((k)))~~ (11) Soil or covering material ~~((shall))~~ must be removed with caution to prevent drum or container rupture.

~~((l)))~~ (12) Fire extinguishing equipment meeting the requirements of Part G of chapter 296-24 WAC ~~((shall be))~~ must on hand and ready for use to control incipient fires.

~~((2))~~ Opening drums and containers. The following procedures shall be followed in areas where drums or containers are being opened:

~~((a))~~ Where an airline respirator system is used, connections to the source of air supply shall be protected from contamination and the entire system shall be protected from physical damage.

~~((b))~~ Employees not actually involved in opening drums or containers shall be kept a safe distance from the drums or containers being opened.

~~((c))~~ If employees must work near or adjacent to drums or containers being opened, a suitable shield that does not interfere with the work operation shall be placed between the employee and the drums or containers being opened to protect the employee in case of accidental explosion.

~~((d))~~ Controls for drum or container opening equipment, monitoring equipment, and fire suppression equipment shall be located behind the explosion-resistant barrier.

~~((e))~~ When there is a reasonable possibility of flammable atmospheres being present, material handling equipment and hand tools shall be of the type to prevent sources of ignition.

~~((f))~~ Drums and containers shall be opened in such a manner that excess interior pressure will be safely relieved. If pressure cannot be relieved from a remote location, appropriate shielding shall be placed between the employee and the drums or containers to reduce the risk of employee injury.

~~((g))~~ Employees shall not stand upon or work from drums or containers:

(3) Material handling equipment. Material handling equipment used to transfer drums and containers shall be selected, positioned, and operated to minimize sources of ignition related to the equipment from igniting vapors released from ruptured drums or containers.

(4) Radioactive wastes. Drums and containers containing radioactive wastes shall not be handled until such time as their hazard to employees is properly assessed.

(5) Shock-sensitive wastes.

As a minimum, the following special precautions shall be taken when drums and containers containing or suspected of containing shock-sensitive wastes are handled:

(a) All nonessential employees shall be evacuated from the area of transfer.

(b) Material handling equipment shall be provided with explosive containment devices or protective shields to protect equipment operators from exploding containers.

(c) An employee alarm system capable of being perceived above surrounding light and noise conditions shall be used to signal the commencement and completion of explosive waste handling activities.

(d) Continuous communications (i.e., portable radios, hand signals, telephones, as appropriate) shall be maintained between the employee in charge of the immediate handling area and the site safety and health supervisor and command post until such time as the handling operation is completed. Communication equipment or methods that could cause shock sensitive materials to explode shall not be used.

(e) Drums and containers under pressure, as evidenced by bulging or swelling, shall not be moved until such time as the cause for excess pressure is determined and appropriate containment procedures have been implemented to protect employees from explosive relief of the drum.

(f) Drums and containers containing packaged laboratory wastes shall be considered to contain shock sensitive or explosive materials until they have been characterized.

Caution: Shipping of shock sensitive wastes may be prohibited under United States Department of Transportation regulations. Employers and their shippers should refer to WAC 480-12-195.

(6) Laboratory waste packs. In addition to the requirements of subsection (4) of this section, the following precautions shall be taken, as a minimum, in handling laboratory waste packs (lab packs):

(a) Lab packs shall be opened only when necessary and then only by an individual knowledgeable in the inspection, classification, and segregation of the containers within the pack according to the hazards of the wastes.

(b) If crystalline material is noted on any container, the contents shall be handled as a shock sensitive waste until the contents are identified.

(7) Sampling of drum and container contents. Sampling of containers and drums shall be done in accordance with a sampling procedure which is part of the site safety and health plan developed for and available to employees and others at the specific worksite.

(8) Shipping and transport.

(a) Drums and containers shall be identified and classified prior to packaging for shipment.

(b) Drum or container staging areas shall be kept to the minimum number necessary to identify and classify materials safely and prepare them for transport.

(c) Staging areas shall be provided with adequate access and egress routes.

(d) Bulking of hazardous wastes shall be permitted only after a thorough characterization of the materials has been completed.

(9) Tank and vault procedures.

(a) Tanks and vaults containing hazardous substances shall be handled in a manner similar to that for drums and containers, taking into consideration the size of the tank or vault.

(b) Appropriate tank or vault entry procedures as described in chapter 296-62 WAC Part M and the employer's safety and health plan shall be followed whenever employees must enter a tank or vault.)

NEW SECTION

WAC 296-62-30905 Opening drums and containers. The following procedures must be followed in areas where drums or containers are being opened:

(1) Where an airline respirator system is used, connections to the source of air supply must be protected from contamination and the entire system must be protected from physical damage.

(2) Employees not actually involved in opening drums or containers must be kept a safe distance from the drums or containers being opened.

(3) If employees must work near or adjacent to drums or containers being opened, a suitable shield that does not interfere with the work operation must be placed between the employee and the drums or containers being opened to protect the employee in case of accidental explosion.

(4) Controls for drum or container opening equipment, monitoring equipment, and fire suppression equipment must be located behind the explosion-resistant barrier.

(5) When there is a reasonable possibility of flammable atmospheres being present, material handling equipment and hand tools must be of the type to prevent sources of ignition.

(6) Drums and containers must be opened in such a manner that excess interior pressure will be safely relieved. If pressure cannot be relieved from a remote location, appropriate shielding must be placed between the employee and the drums or containers to reduce the risk of employee injury.

(7) Employees must not stand upon or work from drums or containers.

NEW SECTION

WAC 296-62-30910 Material handling equipment. Material handling equipment used to transfer drums and containers must be selected, positioned, and operated to minimize sources of ignition related to the equipment from igniting vapors released from ruptured drums or containers.

NEW SECTION

WAC 296-62-30915 Radioactive wastes. Drums and containers containing radioactive wastes must not be handled until such time as their hazard to employees is properly assessed.

NEW SECTION

WAC 296-62-30920 Shock-sensitive wastes. As a minimum, the following special precautions must be taken when drums and containers containing or suspected of containing shock-sensitive wastes are handled:

(1) All nonessential employees must be evacuated from the area of transfer.

(2) Material handling equipment must be provided with explosive containment devices or protective shields to protect equipment operators from exploding containers.

(3) An employee alarm system capable of being perceived above surrounding light and noise conditions must be used to signal the commencement and completion of explosive waste handling activities.

(4) Continuous communications (i.e., portable radios, hand signals, telephones, as appropriate) must be maintained between the employee-in-charge of the immediate handling area and the site safety and health supervisor and command post until such time as the handling operation is completed. Communication equipment or methods that could cause shock-sensitive materials to explode must not be used.

(5) Drums and containers under pressure, as evidenced by bulging or swelling, must not be moved until such time as the cause for excess pressure is determined and appropriate containment procedures have been implemented to protect employees from explosive relief of the drum.

(6) Drums and containers containing packaged laboratory wastes must be considered to contain shock-sensitive or explosive materials until they have been characterized.

Caution: Shipping of shock-sensitive wastes may be prohibited under United States Department of Transportation regulations. Employers and their shippers should refer to WAC 480-12-195.

NEW SECTION

WAC 296-62-30925 Laboratory waste packs. In addition to the requirements of WAC 296-62-30915, the following precautions must be taken, as a minimum, in handling laboratory waste packs (lab packs):

(1) Lab packs must be opened only when necessary and then only by an individual knowledgeable in the inspection, classification, and segregation of the containers within the pack according to the hazards of the wastes.

(2) If crystalline material is noted on any container, the contents must be handled as a shock-sensitive waste until the contents are identified.

NEW SECTION

WAC 296-62-30930 Sampling of drum and container contents. Sampling of containers and drums must be done in accordance with a sampling procedure which is part of the site safety and health plan developed for and available to employees and others at the specific worksite.

NEW SECTION

WAC 296-62-30935 Shipping and transport of drums. (1) Drums and containers must be identified and classified prior to packaging for shipment.

(2) Drum or container staging areas must be kept to the minimum number necessary to identify and classify materials safely and prepare them for transport.

(3) Staging areas must be provided with adequate access and egress routes.

(4) Bulking of hazardous wastes must be permitted only after a thorough characterization of the materials has been completed.

NEW SECTION

WAC 296-62-30940 Tanks and vaults procedures. (1) Tanks and vaults containing hazardous substances must be handled in a manner similar to that for drums and containers, taking into consideration the size of the tank or vault.

(2) Appropriate tank or vault entry procedures as described in chapter 296-62 WAC, Part M and the employer's safety and health plan must be followed whenever employees must enter a tank or vault.

AMENDATORY SECTION (Amending WSR 89-21-018, filed 10/10/89, effective 11/24/89)

WAC 296-62-3100 Decontamination procedures. (1) General. Procedures for all phases of decontamination ~~((shall))~~ must be developed ~~((and implemented in accordance with this section))~~ according to WAC 296-62-3100 through 296-62-31015.

(2) Decontamination procedures.

(a) A decontamination procedure ~~((shall))~~ must be developed, communicated to employees and implemented before any employees or equipment may enter areas on site where potential for exposure to hazardous substances exists.

(b) Standard operating procedures ~~((shall))~~ must be developed to minimize employee contact with hazardous substances or with equipment that has contacted hazardous substances.

(c) All employees leaving a contaminated area ~~((shall))~~ must be appropriately decontaminated; all contaminated clothing and equipment leaving a contaminated area ~~((shall))~~ must be appropriately disposed of or decontaminated.

(d) Decontamination procedures ~~((shall))~~ must be monitored by the site safety and health supervisor to determine their effectiveness. When such procedures are found to be ineffective, appropriate steps ~~((shall))~~ must be taken to correct any deficiencies.

~~(((3)) Location. Decontamination shall be performed in geographical areas that will minimize the exposure of uncontaminated employees or equipment to contaminated employees or equipment.~~

~~(4) Equipment and solvents. All equipment and solvents used for decontamination shall be decontaminated or disposed of properly.~~

~~(5) Personal protective clothing and equipment:~~

~~(a) Protective clothing and equipment shall be decontaminated, cleaned, laundered, maintained, or replaced as needed to maintain their effectiveness.~~

~~(b) Employees whose nonimpermeable clothing becomes wetted with hazardous substances shall immediately remove that clothing and proceed to shower. The clothing shall be disposed of or decontaminated before it is removed from the work zone.~~

~~(6) Unauthorized employees. Unauthorized employees shall not remove protective clothing or equipment from change rooms.~~

~~(7) Commercial laundries or cleaning establishments. Commercial laundries or cleaning establishments that decontaminate protective clothing or equipment shall be informed of the potentially harmful effects of exposures to hazardous substances.~~

~~(8) Showers and change rooms. Where the decontamination procedure indicates a need for regular showers and change rooms outside of a contaminated area, they shall be provided and meet the requirements of Part B-1 of chapter 296-24 WAC. If temperature conditions prevent the effective use of water, then other effective means for cleansing shall be provided and used.~~

NEW SECTION

WAC 296-62-31005 Location of decontamination areas. Decontamination must be performed in geographical areas that will minimize the exposure of uncontaminated employees or equipment to contaminated employees or equipment.

NEW SECTION

WAC 296-62-31010 Decontamination of equipment and solvents. All equipment and solvents used for decontamination must be decontaminated or disposed of properly.

NEW SECTION

WAC 296-62-31015 Decontamination of personal protective clothing and equipment. (1) Protective clothing and equipment must be decontaminated, cleaned, laundered, maintained, or replaced as needed to maintain their effectiveness.

(2) Employees whose nonimpermeable clothing becomes wetted with hazardous substances must immediately remove that clothing and proceed to shower. The clothing must be disposed of or decontaminated before it is removed from the work zone.

(3) Unauthorized employees. Unauthorized employees must not remove protective clothing or equipment from change rooms.

(4) Commercial laundries or cleaning establishments. Commercial laundries or cleaning establishments that decontaminate protective clothing or equipment must be informed of the potentially harmful effects of exposures to hazardous substances.

NEW SECTION

WAC 296-62-31020 Showers and change rooms used for decontamination. Where the decontamination procedure indicates a need for regular showers and change rooms outside of a contaminated area, they must be provided and meet the requirements of Part B-1 of chapter 296-24 WAC. If temperature conditions prevent the effective use of water, then other effective means for cleansing must be provided and used.

AMENDATORY SECTION (Amending Order 90-14, filed 10/1/90, effective 11/15/90)

WAC 296-62-3110 Emergency response ((by)) plan for employees at uncontrolled hazardous waste sites. (1) ((Emergency response plan:

(a)) An emergency response plan ((shall)) must be developed and implemented by all employers within the scope of WAC ((296-62-300)) 296-62-30001 (1)(a) and (b) to handle anticipated emergencies prior to the commencement of hazardous waste operations. The plan ((shall)) must be in writing and available for inspection and copying by employees, their representatives, WISHA personnel, and other governmental agencies with relevant responsibilities.

((b)) (2) Employers who will evacuate their employees from the danger area when an emergency occurs, and who do not permit any of their employees to assist in handling the emergency are exempt from the requirements of this section if they provide an emergency action plan complying with WAC 296-24-567(1).

~~((2) Elements of an emergency response plan. The employer shall develop an emergency response plan for emergencies which shall address as a minimum, the following:~~

- ~~(a) Preemergency planning.~~
- ~~(b) Personnel roles, lines of authority, and communication.~~
- ~~(c) Emergency recognition and prevention.~~
- ~~(d) Safe distances and places of refuge.~~
- ~~(e) Site security and control.~~
- ~~(f) Evacuation routes and procedures.~~
- ~~(g) Decontamination procedures which are not covered by the site safety and health plan.~~
- ~~(h) Emergency medical treatment and first aid.~~
- ~~(i) Emergency alerting and response procedures.~~
- ~~(j) Critique of response and follow-up.~~
- ~~(k) PPE and emergency equipment.~~

~~(3) Procedures for handling emergency incidents.~~

(a) ~~In addition to the elements for the emergency response plan required in subsection (2) of this section, the following elements shall be included for emergency response plans:~~

- ~~(i) Site topography, layout, and prevailing weather conditions.~~
- ~~(ii) Procedures for reporting incidents to local, state, and federal governmental agencies.~~

~~(b) The emergency response plan shall be a separate section of the site safety and health plan.~~

~~(c) The emergency response plan shall be compatible and integrated with the disaster, fire and/or emergency response plans of local, state, and federal agencies.~~

~~(d) The emergency response plan shall be rehearsed regularly as part of the overall training program for site operations.~~

~~(e) The site emergency response plan shall be reviewed periodically and, as necessary, be amended to keep it current with new or changing site conditions or information.~~

~~(f) An employee alarm system shall be installed in accordance with WAC 296-24-631 through 296-24-63199 to notify employees of an on-site emergency situation, to stop~~

PERMANENT

~~work activities if necessary, to lower background noise in order to speed communication, and to begin emergency procedures:~~

~~(g) Based upon the information available at the time of the emergency, the employer shall evaluate the incident and the site response capabilities and proceed with the appropriate steps to implement the on-site emergency response plan.)~~

NEW SECTION

WAC 296-62-31105 Elements of an emergency response plan at uncontrolled hazardous waste sites. The employer must develop an emergency response plan for emergencies which must address as a minimum, the following:

- (1) Preemergency planning.
- (2) Personnel roles, lines of authority, and communication.
- (3) Emergency recognition and prevention.
- (4) Safe distances and places of refuge.
- (5) Site security and control.
- (6) Evacuation routes and procedures.
- (7) Decontamination procedures which are not covered by the site safety and health plan.
- (8) Emergency medical treatment and first aid.
- (9) Emergency alerting and response procedures.
- (10) Critique of response and follow-up.
- (11) PPE and emergency equipment.

NEW SECTION

WAC 296-62-31110 Procedures for handling emergency incidents at uncontrolled hazardous waste sites. (1) In addition to the elements for the emergency response plan required in WAC 296-62-31105, the following elements must be included for emergency response plans:

- (a) Site topography, layout, and prevailing weather conditions.
- (b) Procedures for reporting incidents to local, state, and federal governmental agencies.
- (2) The emergency response plan must be a separate section of the site safety and health plan.
- (3) The emergency response plan must be compatible and integrated with the disaster, fire and/or emergency response plans of local, state, and federal agencies.
- (4) The emergency response plan must be rehearsed regularly as part of the overall training program for site operations.
- (5) The site emergency response plan must be reviewed periodically and, as necessary, be amended to keep it current with new or changing site conditions or information.
- (6) An employee alarm system must be installed in accordance with WAC 296-24-631 through 296-24-63199 to notify employees of an on-site emergency situation, to stop work activities if necessary, to lower background noise in order to speed communication, and to begin emergency procedures.
- (7) Based upon the information available at the time of the emergency, the employer must evaluate the incident and

the site response capabilities and proceed with the appropriate steps to implement the on-site emergency response plan.

AMENDATORY SECTION (Amending Order 94-07, filed 7/20/94, effective 9/20/94)

WAC 296-62-3120 Illumination. Areas accessible to employees (~~shall~~) must be lighted to not less than the minimum illumination intensities listed in Table 1 while any work is in progress:

TABLE 1 - 120.1 — MINIMUM ILLUMINATION Intensities in Foot-Candles

Foot-candles	Area or operation
5	General site area.
3	Excavation and waste areas, accessways, active storage areas, loading platforms, refueling, and field maintenance areas.
5	Indoors: Warehouses, corridors, hallways, and exitways.
5	Tunnels, shafts, and general underground work areas; exception: Minimum of ten foot-candles is required at tunnel and shaft heading during drilling, mucking, and scaling. Mine Safety and Health Administration and the National Institute for Occupational Safety and Health approved cap lights shall be acceptable for use in the tunnel heading.
10	General shops (e.g., mechanical and electrical equipment rooms, active storerooms, barracks or living quarters, locker or dressing rooms, dining areas, and indoor toilets and workrooms).
30	First aid stations, infirmaries, and offices.

AMENDATORY SECTION (Amending WSR 89-21-018, filed 10/10/89, effective 11/24/89)

WAC 296-62-3130 Sanitation at temporary work-places. ~~((1) Potable water.~~

- ~~(a) An adequate supply of potable water shall be provided on the site.~~
- ~~(b) Portable containers used to dispense drinking water shall be capable of being tightly closed, and equipped with a tap. Water shall not be dipped from containers.~~
- ~~(c) Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and not used for any other purpose.~~
- ~~(d) Where single service cups (to be used but once) are supplied, both a sanitary container for the unused cups and a receptacle for disposing of the used cups shall be provided.~~
- (2) Nonpotable water.**
 - (a) Outlets for nonpotable water, such as water for fire fighting purposes shall be identified to indicate clearly that the water is unsafe and is not to be used for drinking, washing, or cooking purposes.
 - ~~(b) There shall be no cross-connection, open or potential, between a system furnishing potable water and a system furnishing nonpotable water.~~

PERMANENT

(3) Toilet facilities.

(a) Toilets shall be provided for employees according to Table 2.

TABLE 2 — TOILET FACILITIES

Number of employees	Minimum number of facilities
20 or fewer	One.
More than 20, fewer than 200	One toilet seat and one urinal per 40 employees.
More than 200	One toilet seat and one urinal per 50 employees.

(b) Under temporary field conditions, provisions shall be made to assure that at least one toilet facility is available.

(c) Hazardous waste sites, not provided with a sanitary sewer shall be provided with the following toilet facilities unless prohibited by local codes:

- (i) Chemical toilets;
- (ii) Recirculating toilets;
- (iii) Combustion toilets; or
- (iv) Flush toilets.

(d) The requirements of this section for sanitation facilities shall not apply to mobile crews having transportation readily available to nearby toilet facilities.

(e) Doors entering toilet facilities shall be provided with entrance locks controlled from inside the facility.

(4) Food handling. All food service facilities and operations for employees shall meet the applicable laws, ordinances, and regulations of the jurisdictions in which they are located.

(5) Temporary sleeping quarters. When temporary sleeping quarters are provided, they shall be heated, ventilated, and lighted.

(6) Washing facilities. The employer shall provide adequate washing facilities for employees engaged in operations where hazardous substances may be harmful to employees. Such facilities shall be in near proximity to the worksite, in areas where exposures are below permissible exposure limits and published exposure levels and which are under the controls of the employer, and shall be so equipped as to enable employees to remove hazardous substances from themselves.

(7) Showers and change rooms. When hazardous waste clean-up or removal operations commence on a site and the duration of the work will require six months or greater time to complete, the employer shall provide showers and change rooms for all employees exposed to hazardous substances and health hazards involved in hazardous waste clean-up or removal operations.

(a) Showers shall be provided and shall meet the requirements of WAC 296-24-12009(3).

(b) Change rooms shall be provided and shall meet the requirements of WAC 296-24-12011. Change rooms shall consist of two separate change areas separated by the shower area required in (a) of this subsection. One change area, with an exit leading off the worksite, shall provide employees with a clean area where they can remove, store, and put on street

clothing. The second area, with an exit to the worksite, shall provide employees with an area where they can put on, remove and store work clothing and personal protective equipment.

(e) Showers and change rooms shall be located in areas where exposures are below the permissible exposure limits and published exposure levels. If this cannot be accomplished, then a ventilation system shall be provided that will supply air that is below the permissible exposure limits and published exposure levels.

(d) Employers shall assure that employees shower at the end of their work shift and when leaving the hazardous waste site.))

NEW SECTION

WAC 296-62-31305 Potable water. (1) An adequate supply of potable water must be provided on the site.

(2) Portable containers used to dispense drinking water must be capable of being tightly closed, and equipped with a tap. Water must not be dipped from containers.

(3) Any container used to distribute drinking water must be clearly marked as to the nature of its contents and not used for any other purpose.

(4) Where single service cups (to be used but once) are supplied, both a sanitary container for the unused cups and a receptacle for disposing of the used cups must be provided.

NEW SECTION

WAC 296-62-31310 Nonpotable water. (1) Outlets for nonpotable water, such as water for fire fighting purposes must be identified to indicate clearly that the water is unsafe and is not to be used for drinking, washing, or cooking purposes.

(2) There must be no cross-connection, open or potential, between a system furnishing potable water and a system furnishing nonpotable water.

NEW SECTION

WAC 296-62-31315 Toilet facilities. (1) Toilets must be provided for employees according to Table 2.

TABLE 2 — TOILET FACILITIES

Number of employees	Minimum number of facilities
20 or fewer	One.
More than 20, fewer than 200	One toilet seat and one urinal per 40 employees.
More than 200	One toilet seat and one urinal per 50 employees.

(2) Under temporary field conditions, provisions must be made to assure that at least one toilet facility is available.

(3) Hazardous waste sites, not provided with a sanitary sewer must be provided with the following toilet facilities unless prohibited by local codes:

- (a) Chemical toilets;

PERMANENT

- (b) Recirculating toilets;
- (c) Combustion toilets; or
- (d) Flush toilets.

(4) The requirements of this section for sanitation facilities must not apply to mobile crews having transportation readily available to nearby toilet facilities.

(5) Doors entering toilet facilities must be provided with entrance locks controlled from inside the facility.

NEW SECTION

WAC 296-62-31320 Food handling. All food service facilities and operations for employees must meet the applicable laws, ordinances, and regulations of the jurisdictions in which they are located.

NEW SECTION

WAC 296-62-31325 Temporary sleeping quarters. When temporary sleeping quarters are provided, they must be heated, ventilated, and lighted.

NEW SECTION

WAC 296-62-31330 Washing facilities. The employer must provide adequate washing facilities for employees engaged in operations where hazardous substances may be harmful to employees. Such facilities must be in near proximity to the worksite, in areas where exposures are below permissible exposure limits and published exposure levels and which are under the controls of the employer, and must be so equipped as to enable employees to remove hazardous substances from themselves.

NEW SECTION

WAC 296-62-31335 Showers and change rooms. When hazardous waste clean-up or removal operations commence on a site and the duration of the work will require six months or greater time to complete, the employer must provide showers and change rooms for all employees exposed to hazardous substances and health hazards involved in hazardous waste clean-up or removal operations.

(1) Showers must be provided and must meet the requirements of WAC 296-24-12009(3).

(2) Change rooms must be provided and must meet the requirements of WAC 296-24-12011. Change rooms must consist of two separate change areas separated by the shower area required in (1) of this subsection. One change area, with an exit leading off the worksite, must provide employees with a clean area where they can remove, store, and put on street clothing. The second area, with an exit to the worksite, must provide employees with an area where they can put on, remove and store work clothing and personal protective equipment.

(3) Showers and change rooms must be located in areas where exposures are below the permissible exposure limits and published exposure levels. If this cannot be accomplished, then a ventilation system must be provided that will

supply air that is below the permissible exposure limits and published exposure levels.

(4) Employers must assure that employees shower at the end of their work shift and when leaving the hazardous waste site.

AMENDATORY SECTION (Amending WSR 89-21-018, filed 10/10/89, effective 11/24/89)

WAC 296-62-3138 New technology programs. (1) The employer ~~((shall))~~ must develop and implement procedures for the introduction of effective new technologies and equipment developed for the improved protection of employees working with hazardous waste clean-up operations, and the same ~~((shall))~~ must be implemented as part of the site safety and health program to assure that employee protection is being maintained.

(2) New technologies, equipment or control measures available to the industry, such as the use of foams, absorbents, adsorbents, neutralizers, or other means to suppress the level of air contaminants while excavating the site or for spill control, ~~((shall))~~ must be evaluated by employers or their representatives. Such an evaluation ~~((shall))~~ must be done to determine the effectiveness of the new methods, materials, or equipment before implementing their use on a large scale for enhancing employee protection. Information and data from manufacturers or suppliers may be used as part of the employer's evaluation effort. Such evaluations ~~((shall))~~ must be made available to WISHA upon request.

AMENDATORY SECTION (Amending WSR 94-16-145, filed 8/3/94, effective 9/12/94)

WAC 296-62-3140 Certain operations conducted under the Resource Conservation and Recovery Act of 1976 (RCRA). Employers conducting operations at treatment, storage, and disposal (TSD) facilities specified in WAC ~~((296-62-300))~~ 296-62-30001 (1)(d) ~~((shall))~~ must provide and implement the programs specified in ~~((this section))~~ WAC 296-62-3140 through 296-62-31470. See the "Notes and Exceptions" of WAC ~~((296-62-300))~~ 296-62-30001 (2)(c) for employers not covered.

~~((1) Safety and health program. The employer shall develop and implement a written safety and health program for employees involved in hazardous waste operations that shall be available for inspection by employees, their representatives and WISHA personnel. The program shall be designed to identify, evaluate and control safety and health hazards in their facilities for the purpose of employee protection, to provide for emergency response meeting the requirements of WAC 296-62-3110 and to address as appropriate site analysis, engineering controls, maximum exposure limits, hazardous waste handling procedures and uses of new technologies.~~

~~((2) Hazard communication program. The employer shall implement a hazard communication program meeting the requirements of chapter 296-62 WAC, Part C, as part of the employer's safety and health program.~~

Note: ~~The exemption for hazardous waste provided in WAC 296-62-054 is applicable to this section.~~

~~(3) Medical surveillance program. The employer shall develop and implement a medical surveillance program meeting the requirements of WAC 296-62-3050.~~

~~(4) Decontamination program. The employer shall develop and implement a decontamination procedure meeting the requirements of WAC 296-62-3100.~~

~~(5) New technology programs. The employer shall develop and implement procedures meeting the requirements of WAC 296-62-3138 for introducing new and innovative equipment into the workplace.~~

~~(6) Material handling program. Where employees will be handling drums or containers, the employer shall develop and implement procedures meeting the requirements of WAC 296-62-3090 (1)(b) through (h) and (k), as well as WAC 296-62-3090 (3) and (8), prior to starting such work.~~

~~(7) Training program.~~

~~(a) New employees. The employer shall develop and implement a training program, which is part of the employer's safety and health program, for employees exposed to health hazards or hazardous substances at TSD operations to enable the employees to perform their assigned duties and functions in a safe and healthful manner so as not to endanger themselves or other employees. The initial training shall be for 24 hours and refresher training shall be for eight hours annually. Employees who have received the initial training required by this section shall be given a written certificate attesting that they have successfully completed the necessary training.~~

~~(b) Current employees. Employers who can show by an employee's previous work experience and/or training that the employee has had training equivalent to the initial training required by this section, shall be considered as meeting the initial training requirements of this section as to that employee. Equivalent training includes the training that existing employees might have already received from actual site work experience. Current employees shall receive eight hours of refresher training annually.~~

~~(c) Trainers. Trainers who teach initial training shall have satisfactorily completed a training course for teaching the subjects they are expected to teach or they shall have the academic credentials and instruction experience necessary to demonstrate a good command of the subject matter of the courses and competent instructional skills.~~

~~(8) Emergency response program.~~

~~(a) Emergency response plan. An emergency response plan shall be developed and implemented by all employers. Such plans need not duplicate any of the subjects fully addressed in the employer's contingency planning required by permits, such as those issued by the United States Environmental Protection Agency, provided that the contingency plan is made part of the emergency response plan. The emergency response plan shall be a written portion of the employer's safety and health program required in this section. Employers who will evacuate their employees from the worksite location when an emergency occurs and who do not permit any of their employees to assist in handling the emergency are exempt from the requirements of WAC 296-62-3140(8) if they provide an emergency action plan complying with WAC 296-24-567.~~

~~(b) Elements of an emergency response plan. The employer shall develop an emergency response plan for~~

emergencies which shall address, as a minimum, the following areas to the extent that they are not addressed in any specific program required in this section:

~~(i) Preemergency planning and coordination with outside parties.~~

~~(ii) Personnel roles, lines of authority, and communication.~~

~~(iii) Emergency recognition and prevention.~~

~~(iv) Safe distances and places of refuge.~~

~~(v) Site security and control.~~

~~(vi) Evacuation routes and procedures.~~

~~(vii) Decontamination procedures.~~

~~(viii) Emergency medical treatment and first aid.~~

~~(ix) Emergency alerting and response procedures.~~

~~(x) Critique of response and follow-up.~~

~~(xi) PPE and emergency equipment.~~

~~(c) Training.~~

~~(i) Training for emergency response employees shall be completed before they are called upon to perform in real emergencies. Such training shall include the elements of the emergency response plan, standard operating procedures the employer has established for the job, the personal protective equipment to be worn, and procedures for handling emergency incidents.~~

~~((Exception #1:~~

~~An employer need not train all employees to the degree specified if the employer divides the workforce in a manner such that a sufficient number of employees who have responsibility to control emergencies have the training specified, and all other employees, who may first respond to an emergency incident, have sufficient awareness training to recognize that an emergency response situation exists and that they are instructed in that case to summon the fully trained employees and not attempt to control activities for which they are not trained.~~

~~Exception #2:~~

~~An employer need not train all employees to the degree specified if arrangements have been made in advance for an outside fully trained emergency response team to respond in a reasonable period and all employees, who may come to the incident first, have sufficient awareness training to recognize that an emergency response situation exists and they have been instructed to call the designated outside fully trained emergency response team for assistance.~~

~~(ii) Employee members of TSD facility emergency response organizations shall be trained to a level of competence in the recognition of health and safety hazards to protect themselves and other employees. This would include training in the methods used to minimize the risk from safety and health hazards; in the safe use of control equipment; in the selection and use of appropriate personal protective equipment; in the safe operating procedures to be used at the incident scene; in the techniques of coordination with other employees to minimize risks; in the appropriate response to overexposure from health hazards or injury to themselves and other employees; and in the recognition of subsequent symptoms which may result from overexposures.~~

~~(iii) The employer shall certify that each covered employee has attended and successfully completed the training required in this subsection, or shall certify the employee's competency at least yearly. The method used to demonstrate~~

competency for certification of training shall be recorded and maintained by the employer.

(d) Procedures for handling emergency incidents:

~~(i) In addition to the elements for the emergency response plan required in (b) of this subsection, the following elements shall be included for emergency response plans to the extent that they do not repeat any information already contained in the emergency response plan:~~

~~(A) Site topography, layout, and prevailing weather conditions:~~

~~(B) Procedures for reporting incidents to local, state, and federal governmental agencies:~~

~~(ii) The emergency response plan shall be compatible and integrated with the disaster, fire, and/or emergency response plans of local, state, and federal agencies:~~

~~(iii) The emergency response plan shall be rehearsed regularly as part of the overall training program for site operations:~~

~~(iv) The site emergency response plan shall be reviewed periodically and, as necessary, be amended to keep it current with new or changing site conditions or information:~~

~~(v) An employee alarm system shall be installed in accordance with WAC 296-24-631 to notify employees of an emergency situation; to stop work activities if necessary; to lower background noise in order to speed communication; and to begin emergency procedures:~~

~~(vi) Based upon the information available at time of the emergency, the employer shall evaluate the incident and the site response capabilities and proceed with the appropriate steps to implement the site emergency response plan.))~~

NEW SECTION

WAC 296-62-31405 Safety and health program under RCRA. The employer must develop and implement a written safety and health program for employees involved in hazardous waste operations that must be available for inspection by employees, their representatives and WISHA personnel. The program shall be designed to identify, evaluate and control safety and health hazards in their facilities for the purpose of employee protection, to provide for emergency response meeting the requirements of WAC 296-62-3110 and to address as appropriate site analysis, engineering controls, maximum exposure limits, hazardous waste handling procedures and uses of new technologies.

NEW SECTION

WAC 296-62-31410 Hazard communication program requirements under RCRA. The employer must implement a hazard communication program meeting the requirements of chapter 296-62 WAC, Part C, as part of the employer's safety and health program.

Note: The exemption for hazardous waste provided in WAC 296-62-054 is applicable to this section.

NEW SECTION

WAC 296-62-31415 Medical surveillance program requirements under RCRA. The employer must develop

and implement a medical surveillance program meeting the requirements of WAC 296-62-3050.

NEW SECTION

WAC 296-62-31420 Decontamination program requirements under RCRA. The employer must develop and implement a decontamination procedure meeting the requirements of WAC 296-62-3100 through 296-62-31015.

NEW SECTION

WAC 296-62-31425 New technology programs requirements under RCRA. The employer must develop and implement procedures meeting the requirements of WAC 296-62-3138 for introducing new and innovative equipment into the workplace.

NEW SECTION

WAC 296-62-31430 Material handling program requirements under RCRA. Where employees will be handling drums or containers, the employer must develop and implement procedures meeting the requirements of WAC 296-62-3090 (2) through (8), as well as WAC 296-62-30910 and 296-62-30935, prior to starting such work.

NEW SECTION

WAC 296-62-31435 Training program for new employees under RCRA. The employer must develop and implement a training program, which is part of the employer's safety and health program, for employees exposed to health hazards or hazardous substances at TSD operations to enable the employees to perform their assigned duties and functions in a safe and healthful manner so as not to endanger themselves or other employees. The initial training must be for 24 hours and refresher training must be for eight hours annually. Employees who have received the initial training required by this section shall be given a written certificate attesting that they have successfully completed the necessary training.

NEW SECTION

WAC 296-62-31440 Training program for current employees. Employers who can show by an employee's previous work experience and/or training that the employee has had training equivalent to the initial training required by this section, must be considered as meeting the initial training requirements of this section as to that employee. Equivalent training includes the training that existing employees might have already received from actual site work experience. Current employees must receive eight hours of refresher training annually.

NEW SECTION

WAC 296-62-31445 RCRA requirements for trainers. Trainers who teach initial training must have satisfactorily completed a training course for teaching the subjects they are expected to teach or they must have the academic creden-

tials and instruction experience necessary to demonstrate a good command of the subject matter of the courses and competent instructional skills.

NEW SECTION

WAC 296-62-31450 Emergency response program requirements under RCRA.

NEW SECTION

WAC 296-62-31455 Emergency response plan under RCRA. An emergency response plan must be developed and implemented by all employers. The plan does not need to duplicate any of the subjects fully addressed in the employer's contingency planning required by permits, such as those issued by the United States Environmental Protection Agency, provided that the contingency plan is made part of the emergency response plan. The emergency response plan must be a written portion of the employer's safety and health program. Employers who will evacuate their employees from the worksite location when an emergency occurs and who do not permit any of their employees to assist in handling the emergency are exempt from the requirements of WAC 296-62-31450 through 296-62-31470 if they provide an emergency action plan meeting the requirements in WAC 296-24-567.

NEW SECTION

WAC 296-62-31460 Elements of an emergency response plan under RCRA. The employer must develop an emergency response plan for emergencies. The plan must address the following areas to the extent that they are not addressed in any specific program required in this part:

- (1) Preemergency planning and coordination with outside parties.
- (2) Personnel roles, lines of authority, and communication.
- (3) Emergency recognition and prevention.
- (4) Safe distances and places of refuge.
- (5) Site security and control.
- (6) Evacuation routes and procedures.
- (7) Decontamination procedures.
- (8) Emergency medical treatment and first aid.
- (9) Emergency alerting and response procedures.
- (10) Critique of response and follow-up.
- (11) PPE and emergency equipment.

NEW SECTION

WAC 296-62-31465 Training requirements for emergency response under RCRA. (1) Training for emergency response employees must be completed before they are called upon to perform in real emergencies. The training must cover the elements of the emergency response plan, standard operating procedures the employer has established for the job, the personal protective equipment to be worn, and procedures for handling emergency incidents.

Exception #1: An employer need not train all employees to the degree specified if the employer divides the workforce in a manner such that a sufficient number of employees who have responsibility to control emergencies have the training specified, and all other employees, who may first respond to an emergency incident, have sufficient awareness training to recognize that an emergency response situation exists and that they are instructed in that case to summon the fully trained employees and not attempt to control activities for which they are not trained.

Exception #2: An employer need not train all employees to the degree specified if arrangements have been made in advance for an outside fully trained emergency response team to respond in a reasonable period and all employees, who may come to the incident first, have sufficient awareness training to recognize that an emergency response situation exists and they have been instructed to call the designated outside fully trained emergency response team for assistance.

(2) Employee members of TSD facility emergency response organizations must be trained to a level of competence in the recognition of health and safety hazards to protect themselves and other employees. This would include training in the methods used to minimize the risk from safety and health hazards; in the safe use of control equipment; in the selection and use of appropriate personal protective equipment; in the safe operating procedures to be used at the incident scene; in the techniques of coordination with other employees to minimize risks; in the appropriate response to overexposure from health hazards or injury to themselves and other employees; and in the recognition of subsequent symptoms which may result from overexposures.

(3) The employer must certify that each covered employee has attended and successfully completed the training required in this subsection, or must certify the employee's competency at least yearly. The method used to demonstrate competency for certification of training must be recorded and maintained by the employer.

NEW SECTION

WAC 296-62-31470 Procedures for handling emergency incidents under RCRA. (1) In addition to the elements for the emergency response plan required in WAC 296-62-31460, the following elements must be included for emergency response plans to the extent that they do not repeat any information already contained in the emergency response plan:

- (a) Site topography, layout, and prevailing weather conditions.
- (b) Procedures for reporting incidents to local, state, and federal governmental agencies.

(2) The emergency response plan must be compatible and integrated with the disaster, fire, and/or emergency response plans of local, state, and federal agencies.

(3) The emergency response plan must be rehearsed regularly as part of the overall training program for site operations.

(4) The site emergency response plan must be reviewed periodically and, as necessary, be amended to keep it current with new or changing site conditions or information.

(5) An employee alarm system must be installed in accordance with WAC 296-24-631 to notify employees of an emergency situation; to stop work activities if necessary; to lower background noise in order to speed communication; and to begin emergency procedures.

(6) Based upon the information available at time of the emergency, the employer must evaluate the incident and the site response capabilities and proceed with the appropriate steps to implement the site emergency response plan.

AMENDATORY SECTION (Amending WSR 89-21-018, filed 10/10/89, effective 11/24/89)

WAC 296-62-3152 Appendices to Part P—Hazardous waste operations and ((emergency response)) TSD facilities.

Note: The following appendices serve as nonmandatory guidelines to assist employees and employers in complying with the appropriate requirements of this part. However, WAC 296-62-3060 through 296-62-30615 makes mandatory in certain circumstances the use of Level A and Level B personal protective equipment protection.

AMENDATORY SECTION (Amending Order 91-07, filed 11/22/91, effective 12/24/91)

WAC 296-62-3160 Appendix A—Personal protective equipment test methods. This appendix sets forth the non-mandatory examples of tests which may be used to evaluate compliance with WAC 296-62-3060. Other tests and other challenge agents may be used to evaluate compliance.

(1) Totally-encapsulating chemical protective suit pressure test.

(a) Scope.

(i) This practice measures the ability of a gas tight totally-encapsulating chemical protective suit material, seams, and closures to maintain a fixed positive pressure. The results of this practice allow the gas tight integrity of a total-encapsulating chemical protective suit to be evaluated.

(ii) Resistance of the suit materials to permeation, penetration, and degradation by specific hazardous substances is not determined by this test method.

(b) Definition of terms.

(i) "Totally-encapsulated chemical protective suit (TECP suit)" means a full body garment which is constructed of protective clothing materials; covers the wearer's torso, head, arms, and legs; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer and respirator by itself or in combination with the wearer's gloves and boots.

(ii) "Protective clothing material" means any material or combination of materials used in an item of clothing for the purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.

(iii) "Gas tight" means for the purpose of this test method the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.

(c) Summary of test method. The TECP suit is visually inspected and modified for the test. The test apparatus is

attached to the suit to permit inflation to the pretest suit expansion pressure for removal of suit wrinkles and creases. The pressure is lowered to the test pressure and monitored for three minutes. If the pressure drop is excessive, the TECP suit fails the test and is removed from service. The test is repeated after leak location and repair.

(d) Required supplies.

(i) Source of compressed air.

(ii) Test apparatus for suit testing including a pressure measurement device with a sensitivity of at least 1/4 inch water gauge.

(iii) Vent valve closure plugs or sealing tape.

(iv) Soapy water solution and soft brush.

(v) Stopwatch or appropriate timing device.

(e) Safety precautions. Care ((shall)) must be taken to provide the correct pressure safety devices required for the source of compressed air used.

(f) Test procedure. Prior to each test, the tester ((shall)) must perform a visual inspection of the suit. Check the suit for seam integrity by visually examining the seams and gently pulling on the seams. Ensure that all air supply lines, fittings, visor, zippers, and valves are secure and show no signs of deterioration.

(i) Seal off the vent valves along with any other normal inlet or exhaust points (such as umbilical air line fittings or facepiece opening) with tape or other appropriate means (caps, plugs, fixture, etc.). Care should be exercised in the sealing process not to damage any of the suit components.

(ii) Close all closure assemblies.

(iii) Prepare the suit for inflation by providing an improvised connection point on the suit for connecting an airline. Attach the pressure test apparatus to the suit to permit suit inflation from a compressed air source equipped with a pressure indicating regulator. The leak tightness of the pressure test apparatus should be tested before and after each test by closing off the end of the tubing attached to the suit and assuring a pressure of three inches water gauge for three minutes can be maintained. If a component is removed for the test, that component ((shall)) must be replaced and a second test conducted with another component removed to permit a complete test of the ensemble.

(iv) The pretest expansion pressure (A) and the suit test pressure (B) ((shall)) must be supplied by the suit manufacturer, but in no case shall they be less than (A)= 3 inches water gauge and (B)= 2 inches water gauge. The ending suit pressure (C) ((shall)) must be no less than eighty percent of the test pressure (B); i.e., the pressure drop shall not exceed twenty percent of the test pressure (B).

(v) Inflate the suit until the pressure inside is equal to pressure (A), the pretest expansion suit pressure. Allow at least one minute to fill out the wrinkles in the suit. Release sufficient air to reduce the suit pressure to pressure (B), the suit test pressure. Begin timing. At the end of three minutes, record the suit pressure as pressure (C), the ending suit pressure. The difference between the suit test pressure and the ending suit test pressure (B)-(C) ((shall)) must be defined as the suit pressure drop.

(vi) If the suit pressure drop is more than twenty percent of the suit test pressure (B) during the three minute test

period, the suit fails the test and ((~~shall~~)) must be removed from service.

(g) Retest procedure.

(i) If the suit fails the test check for leaks by inflating the suit to pressure (A) and brushing or wiping the entire suit (including seams, closures, lens gaskets, glove-to-sleeve joints, etc.) with a mild soap and water solution. Observe the suit for the formation of soap bubbles, which is an indication of a leak. Repair all identified leaks.

(ii) Retest the TECP suit as outlined in (f) of this subsection.

(h) Report. Each TECP suit tested by this practice ((~~shall~~)) must have the following information recorded.

(i) Unique identification number, identifying brand name, date of purchase, material of construction, and unique fit features; e.g., special breathing apparatus.

(ii) The actual values for test pressures (A), (B), and (C) ((~~shall~~)) must be recorded along with the specific observation times. If the ending pressure (C) is less than eighty percent of the test pressure (B), the suit ((~~shall~~)) must be identified as failing the test. When possible, the specific leak location ((~~shall~~)) must be identified in the test records. Retest pressure data ((~~shall~~)) must be recorded as an additional test.

(iii) The source of the test apparatus used ((~~shall~~)) must be identified and the sensitivity of the pressure gauge ((~~shall~~)) must be recorded.

(iv) Records ((~~shall~~)) must be kept for each pressure test even if repairs are being made at the test location.

Caution. Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked. Care should also be exercised to assure that the inside and outside of the suit is completely dry before it is put into storage.

(2) Totally-encapsulating chemical protective suit qualitative leak test.

(a) Scope.

(i) This practice semiquantitatively tests gas tight totally-encapsulating chemical protective suit integrity by detecting inward leakage of ammonia vapor. Since no modifications are made to the suit to carry out this test, the results from this practice provide a realistic test for the integrity of the entire suit.

(ii) Resistance of the suit materials to permeation, penetration, and degradation is not determined by this test method. ASTM test methods are available to test suit materials for those characteristics and the tests are usually conducted by the manufacturers of the suits.

(b) Definition of terms.

(i) "Totally-encapsulated chemical protective suit (TECP suit)" means a full body garment which is constructed of protective clothing materials; covers the wearer's torso, head, arms, and legs; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer and respirator by itself or in combination with the wearer's gloves and boots.

(ii) "Protective clothing material" means any material or combination of materials used in an item of clothing for the

purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.

(iii) "Gas tight" means for the purpose of this test method the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.

(iv) "Intrusion coefficient." A number expressing the level of protection provided by a gas tight totally-encapsulating chemical protective suit. The intrusion coefficient is calculated by dividing the test room challenge agent concentration by the concentration of challenge agent found inside the suit. The accuracy of the intrusion coefficient is dependent on the challenge agent monitoring methods. The larger the intrusion coefficient, the greater the protection provided by the TECP suit.

(c) Summary of recommended practice. The volume of concentrated aqueous ammonia solution (ammonia hydroxide, NH_4OH) required to generate the test atmosphere is determined using the directions outlined in WAC ((296-62-3490)) 296-62-3160 (2)(f)(i). The suit is donned by a person wearing the appropriate respiratory equipment (either a positive pressure self-contained breathing apparatus or a supplied air respirator) and worn inside the enclosed test room. The concentrated aqueous ammonia solution is taken by the suited individual into the test room and poured into an open plastic pan. A two-minute evaporation period is observed before the test room concentration is measured using a high range ammonia length of stain detector tube. When the ammonia reaches a concentration of between 1000 and 1200 ppm, the suited individual starts a standardized exercise protocol to stress and flex the suit. After this protocol is completed the test room concentration is measured again. The suited individual exits the test room and his stand-by person measures the ammonia concentration inside the suit using a low range ammonia length of stain detector tube or other more sensitive ammonia detector. A stand-by person is required to observe the test individual during the test procedure, aid the person in donning and doffing the TECP suit and monitor the suit interior. The intrusion coefficient of the suit can be calculated by dividing the average test area concentration by the interior suit concentration. A colorimetric indicator strip of bromophenol blue is placed on the inside of the suit facepiece lens so that the suited individual is able to detect a color change and know if the suit has a significant leak. If a color change is observed the individual should leave the test room immediately.

(d) Required supplies.

(i) A supply of concentrated aqueous ammonium hydroxide, 58% by weight.

(ii) A supply of bromophenol/blue indicating paper, sensitive to 5-10 ppm ammonia or greater over a two-minute period of exposure [pH 3.0 (yellow) to pH 4.6 (blue)].

(iii) A supply of high range (0.5-10 volume percent) and low range (5-700 ppm) detector tubes for ammonia and the corresponding sampling pump. More sensitive ammonia detectors can be substituted for the low range detector tubes to improve the sensitivity of this practice.

(iv) A shallow plastic pan (PVC) at least 12":14":1" and a half pint plastic container (PVC) with tightly closing lid.

(v) A graduated cylinder or other volumetric measuring device of at least fifty milliliters in volume with an accuracy of at least ± 1 milliliters.

(e) Safety precautions.

(i) Concentrated aqueous ammonium hydroxide, NH_4OH is a corrosive volatile liquid requiring eye, skin, and respiratory protection. The person conducting the test ((~~shall~~)) must review the MSDS for aqueous ammonia.

(ii) Since the established permissible exposure limit for ammonia is 35 ppm as a 15 minute STEL, only persons wearing a positive pressure self-contained breathing apparatus or a supplied air respirator ((~~shall~~)) must be in the chamber. Normally only the person wearing the total-encapsulating suit will be inside the chamber. A stand-by person ((~~shall~~)) must have a self-contained breathing apparatus, or a positive pressure supplied air respirator available to enter the test area should the suited individual need assistance.

(iii) A method to monitor the suited individual must be used during this test. Visual contact is the simplest but other methods using communication devices are acceptable.

(iv) The test room ((~~shall~~)) must be large enough to allow the exercise protocol to be carried out and then to be ventilated to allow for easy exhaust of the ammonia test atmosphere after the test(s) are completed.

(v) Individuals ((~~shall~~)) must be medically screened for the use of respiratory protection and checked for allergies to ammonia before participating in this test procedure.

(f) Test procedure.

(i) Measure the test area to the nearest foot and calculate its volume in cubic feet. Multiply the test area volume by 0.2 milliliters of concentrated aqueous ammonia per cubic foot of test area volume to determine the approximate volume of concentrated aqueous ammonia required to generate 1000 ppm in the test area.

(A) Measure this volume from the supply of concentrated ammonia and place it into a closed plastic container.

(B) Place the container, several high range ammonia detector tubes and the pump in the clean test pan and locate it near the test area entry door so that the suited individual has easy access to these supplies.

(ii) In a noncontaminated atmosphere, open a presealed ammonia indicator strip and fasten one end of the strip to the inside of the suit face shield lens where it can be seen by the wearer. Moisten the indicator strip with distilled water. Care ((~~shall~~)) must be taken not to contaminate the detector part of the indicator paper by touching it. A small piece of masking tape or equivalent should be used to attach the indicator strip to the interior of the suit face shield.

(iii) If problems are encountered with this method of attachment the indicator strip can be attached to the outside of the respirator facepiece being used during the test.

(iv) Don the respiratory protective device normally used with the suit, and then don the TECP suit to be tested. Check to be sure all openings which are intended to be sealed (zippers, gloves, etc.) are completely sealed. DO NOT, however, plug off any venting valves.

(v) Step into the enclosed test room such as a closet, bathroom, or test booth, equipped with an exhaust fan. No air should be exhausted from the chamber during the test

because this will dilute the ammonia challenge concentrations.

(vi) Open the container with the premeasured volume of concentrated aqueous ammonia within the enclosed test room, and pour the liquid into the empty plastic test pan. Wait two minutes to allow for adequate volatilization of the concentrated aqueous ammonia. A small mixing fan can be used near the evaporation pan to increase the evaporation rate of the ammonia solution.

(vii) After two minutes a determination of the ammonia concentration within the chamber should be made using the high range colorimetric detector tube. A concentration of 1000 ppm ammonia or greater ((~~shall~~)) must be generated before the exercises are started.

(viii) To test the integrity of the suit the following four minute exercise protocol should be followed:

(A) Raising the arms above the head with at least fifteen raising motions completed in one minute.

(B) Walking in place for one minute with at least fifteen raising motions of each leg in a one-minute period.

(C) Touching the toes with at least ten complete motions of the arms from above the head to touching of the toes in a one-minute period.

(D) Knee bends with at least ten complete standing and squatting motions in a one-minute period.

(ix) If at any time during the test the colorimetric indicator paper should change colors the test should be stopped and (f)(x) and (xi) of this subsection initiated.

(x) After completion of the test exercise, the test area concentration should be measured again using the high range colorimetric detector tube.

(xi) Exit the test area.

(xii) The opening created by the suit zipper or other appropriate suit penetration should be used to determine the ammonia concentration in the suit with the low range length of stain detector tube or other ammonia monitor. The internal TECP suit air should be sampled far enough from the enclosed test area to prevent a false ammonia reading.

(xiii) After completion of the measurement of the suit interior ammonia concentration the test is concluded and the suit is doffed and the respirator removed.

(xiv) The ventilating fan for the test room should be turned on and allowed to run for enough time to remove the ammonia gas. The fan ((~~shall~~)) must be vented to the outside of the building.

(xv) Any detectable ammonia in the suit interior (5 ppm ammonia (NH_3) or more for the length of stain detector tube) indicates the suit failed the test. When other ammonia detectors are used, a lower level of detection is possible and it should be specified as the pass/fail criteria.

(xvi) By following this test method an intrusion coefficient of approximately two hundred or more can be measured with the suit in a completely operational condition. If the intrusion coefficient is 200 or more, then the suit is suitable for emergency response and field use.

(g) Retest procedures.

(i) If the suit fails this test, check for leaks by following the pressure test in test (A) above.

(ii) Retest the TECP suit as outlined in the test procedure in (f) of this subsection.

(h) Report.

(i) Each gas tight totally-encapsulating chemical protective suit tested by this practice ((~~shall~~)) must have the following information recorded.

(A) Unique identification number, identifying brand name, date of purchase, material of construction, and unique suit features; e.g., special breathing apparatus.

(B) General description of test room used for test.

(C) Brand name and purchase date of ammonia detector strips and color change data.

(D) Brand name, sampling range, and expiration date of the length of stain ammonia detector tubes. The brand name and model of the sampling pump should also be recorded. If another type of ammonia detector is used, it should be identified along with its minimum detection limit for ammonia.

(E) Actual test results ((~~shall~~)) must list the two test area concentrations, their average, the interior suit concentration, and the calculated intrusion coefficient. Retest data ((~~shall~~)) must be recorded as an additional test.

(ii) The evaluation of the data ((~~shall~~)) must be specified as "suit passed" or "suit failed" and the date of the test. Any detectable ammonia (5 ppm or greater for the length of stain detector tube) in the suit interior indicates the suit fails this test. When other ammonia detectors are used, a lower level of detection is possible and it should be specified as the pass/fail criteria.

Caution. Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked.

Care should also be exercised to assure that the inside and outside of the suit is completely dry before it is put into storage.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 90-14, filed 10/1/90, effective 11/15/90)

WAC 296-62-3180 Appendix C—Compliance guidelines. (1) Occupational safety and health program. Each hazardous waste site clean-up effort will require an occupational safety and health program headed by the site coordinator or the employer's representative. The purpose of the program will be the protection of employees at the site and will be an extension of the employer's overall safety and health program. The program will need to be developed before work begins on the site and implemented as work proceeds as stated in WAC 296-62-3010 through 296-62-30145. The program is to facilitate coordination and communication of safety and health issues among personnel responsible for the various activities which will take place at the site. It will provide the overall means for planning and implementing the needed safety and health training and job orientation of employees who will be working at the site. The program will provide the means for identifying and controlling worksite hazards and the means for monitoring program effectiveness. The program will need to cover the responsibilities and authority of the site coordinator or the employer's manager on

the site for the safety and health of employees at the site, and the relationships with contractors or support services as to what each employer's safety and health responsibilities are for their employees on the site. Each contractor on the site needs to have its own safety and health program so structured that it will smoothly interface with the program of the site coordinator or principal contractor. Also those employers involved with treating, storing, or disposal of hazardous waste as covered in WAC 296-62-3140 must have implemented a safety and health plan for their employees. This program is to include the hazard communication program required in WAC ((~~296-62-3140(1)~~)) 296-62-31405 and the training required in WAC ((~~296-62-3140(4) and (5)~~)) 296-62-31420 and 296-62-31425 as parts of the employers comprehensive overall safety and health program. This program is to be in writing.

(a) Each site or workplace safety and health program will need to include the following:

(i) Policy statements of the line of authority and accountability for implementing the program, the objectives of the program and the role of the site safety and health officer or manager and staff;

(ii) Means or methods for the development of procedures for identifying and controlling workplace hazards at the site;

(iii) Means or methods for the development and communication to employees of the various plans, work rules, standard operating procedures and practices that pertain to individual employees and supervisors;

(iv) Means for the training of supervisors and employees to develop the needed skills and knowledge to perform their work in a safe and healthful manner;

(v) Means to anticipate and prepare for emergency situations; and

(vi) Means for obtaining information feedback to aid in evaluating the program and for improving the effectiveness of the program. The management and employees should be trying continually to improve the effectiveness of the program thereby enhancing the protection being afforded those working on the site.

(b) Accidents on the site should be investigated to provide information on how such occurrences can be avoided in the future. When injuries or illnesses occur on the site or workplace, they will need to be investigated to determine what needs to be done to prevent this incident from occurring again. Such information will need to be used as feedback on the effectiveness of the program and the information turned into positive steps to prevent any reoccurrence. Receipt of employee suggestions or complaints relating to safety and health issues involved with site or workplace activities is also a feedback mechanism that can be used effectively to improve the program and may serve in part as an evaluative tool(s).

(c) For the development and implementation of the program to be the most effective, professional safety and health personnel should be used. Certified safety professionals, board-certified industrial hygienists, or registered professional safety engineers are good examples of professional stature for safety and health managers who will administer the employer's program.

(2) The training programs for employees subject to the requirements of WAC 296-62-3040 through 296-62-30465 are expected to address: The safety and health hazards employees should expect to find on sites; what control measures or techniques are effective for those hazards; what monitoring procedures are effective in characterizing exposure levels; what makes an effective employer's safety and health program; what a site safety and health plan should include; hands-on training with personal protective equipment and clothing they may be expected to use; the contents of the WISHA standard relevant to the employee's duties and functions; and, employee's responsibilities under WISHA and other regulations. Supervisors will need training in their responsibilities under the safety and health program and its subject areas such as the spill containment program, the personal protective equipment program, the medical surveillance program, the emergency response plan and other areas.

(a) The training programs for employees subject to the requirements of WAC 296-62-3140 through 296-62-31465 should address: The employer's safety and health program elements impacting employees; the hazard communication program; the medical surveillance program; the hazards and the controls for such hazards that employees need to know for their job duties and functions. All require annual refresher training.

(b) The training programs for employees covered by the requirements of WAC ((296-62-3110(3))) 296-62-31110 will address those competencies required for the various levels of response such as: The hazards associated with hazardous substances; hazard identification and awareness; notification of appropriate persons; the need for and use of personal protective equipment including respirators; the decontamination procedures to be used; preplanning activities for hazardous substance incidents including the emergency response plan; company standard operating procedures for hazardous substance emergency responses; the use of the incident command system and other subjects. Hands-on training should be stressed whenever possible. Critiques done after an incident which include any evaluation of what worked, and what did not, and how can we do better the next time, may be counted as training time.

~~((c) For hazardous materials specialists (usually members of hazardous materials teams), the training will need to address the care, use and/or testing of chemical protective clothing including totally encapsulating suits, the medical surveillance program, the standard operating procedures for the hazardous materials team including the use of plugging and patching equipment and other subject areas.~~

~~(d) Officers and leaders who may be expected to be in charge at an incident will need to be fully knowledgeable of their company's incident command system. They will need to know where and how to obtain additional assistance and be familiar with the local district's emergency response plan and the state emergency response plan.~~

~~(e) Specialist employees such as technical experts, medical experts, or environmental experts that work with hazardous materials in their regular jobs, who may be sent to the incident scene by the shipper, manufacturer or governmental agency to advise and assist the person in charge of the incident will have training on an annual basis. Their training~~

~~must include the care and use of personal protective equipment including respirators; knowledge of the incident command system and how they are to relate to it; and those areas needed to keep them current in their respective field as it relates to safety and health involving specific hazardous substances.~~

~~(f) Those skilled support personnel, such as employees who work for public works departments or equipment operators who operate bulldozers, sand trucks, backhoes, etc., who may be called to the incident scene to provide emergency support assistance, will need to have at least a safety and health briefing before entering the area of potential or actual exposure. These specially skilled support personnel, who have not been a part of the emergency plan and do not meet the training requirements, must be made aware of the hazards they face and be provided all necessary protective clothing and equipment required for their tasks.~~

~~(g) There are two National Fire Protection Association standards, NFPA 472—"Standard for Professional Competence of Responders to Hazardous Material Incidents" and NFPA 471—"Recommended Practice for Responding to Hazardous Material Incidents," which are excellent resource documents to aid fire departments and other emergency response organizations in developing their training program materials. NFPA 472 provides guidance on the skills and knowledge needed for first responder awareness level, first responder operations level, hazmat technicians, and hazmat specialist. It also offers guidance for the officer corp who will be in charge of hazardous substance incidents.)~~

(3) Decontamination. Decontamination procedures will be tailored to the specific hazards of the site and will vary in complexity, and number of steps, depending on the level of hazard and the employee's exposure to the hazard. Decontamination procedures and PPE decontamination methods will vary depending upon the specific substance, since one procedure or method will not work for all substances. Evaluation of decontamination methods and procedures should be performed, as necessary, to assure that employees are not exposed to hazards by reusing PPE. References in WAC 296-62-3190, Appendix D, may be used for guidance in establishing an effective decontamination program. In addition, the United States Coast Guard Manual, "Policy Guidance for Response to Hazardous Chemical Releases," United States Department of Transportation, Washington, D.C. (COM-DTINST M16465.30), is a good reference for establishing an effective decontamination program.

(4) Emergency response plans. States, along with designated districts within the states, will be developing or have developed emergency response plans. These state and district plans are to be ((utilized)) used in the emergency response plans called for in this standard. Each employer needs to assure that its emergency response plan is compatible with the local plan. The major reference being used to aid in developing the state and local district plans is the Hazardous Materials Emergency Planning Guide, NRT-1. The current Emergency Response Guidebook from the United States Department of Transportation, CMA's CHEMTREC and the Fire Service Emergency Management Handbook may also be used as resources.

Employers involved with treatment, storage, and disposal facilities for hazardous waste, which have the required contingency plan called for by their permit, would not need to duplicate the same planning elements. Those items of the emergency response plan that are properly addressed in the contingency plan may be substituted into the emergency response plan required in WAC ((296-62-3112)) 296-62-410, Part R, Emergency response to hazardous substance release or otherwise kept together for employer and employee use.

(5) Personal protective equipment programs. The purpose of personal protective clothing and equipment (PPE) is to shield or isolate individuals from the chemical, physical, and biologic hazards that may be encountered at a hazardous substance site.

(a) As discussed in Appendix B, no single combination of protective equipment and clothing is capable of protecting against all hazards. Thus PPE should be used in conjunction with other protective methods and its effectiveness evaluated periodically.

(b) The use of PPE can itself create significant worker hazards, such as heat stress, physical and psychological stress, and impaired vision, mobility, and communication. For any given situation, equipment and clothing will be selected that provide an adequate level of protection. However, over-protection, as well as under-protection, can be hazardous and should be avoided where possible.

(c) Two basic objectives of any PPE program will be to protect the wearer from safety and health hazards, and to prevent injury to the wearer from incorrect use and/or malfunction of the PPE. To accomplish these goals, a comprehensive PPE program will include hazard identification, medical monitoring, environmental surveillance, selection, use, maintenance, and decontamination of PPE and its associated training.

(d) The written PPE program will include policy statements, procedures, and guidelines. Copies will be made available to all employees and a reference copy will be made available at the worksite. Technical data on equipment, maintenance manuals, relevant regulations, and other essential information will also be collected and maintained.

(6) ((Incident command system (ICS). WAC 296-62-3112 (3)(b) requires the implementation of an ICS. The ICS is an organized approach to effectively control and manage operations at an emergency incident. The individual in charge of the ICS is the senior official responding to the incident. The ICS is not much different than the "command post" approach used for many years by the fire service. During large complex fires involving several companies and many pieces of apparatus, a command post would be established. This enables one individual to be in charge of managing the incident, rather than having several officers from different companies making separate, and sometimes conflicting, decisions. The individual in charge of the command post would delegate responsibility for performing various tasks to subordinate officers. Additionally, all communications were routed through the command post to reduce the number of radio transmissions and eliminate confusion. However, strategy, tactics, and all decisions were made by one individual.

(a) The ICS is a very similar system, except it is implemented for emergency response to all incidents, both large and small, that involve hazardous substances.

(b) For a small incident, the individual in charge of the ICS may perform many tasks of the ICS. There may not be any, or little, delegation of tasks to subordinates. For example, in response to a small incident, the individual in charge of the ICS, in addition to normal command activities, may become the safety officer and may designate only one employee (with proper equipment) as a back-up to provide assistance if needed. WISHA does recommend, however, that at least two employees be designated as back-up personnel since the assistance needed may include rescue.

(c) To illustrate the operation of the ICS, the following scenario might develop during a small incident, such as an overturned tank truck with a small leak of flammable liquid.

(d) The first responding senior officer would implement and take command of the ICS. That person would size up the incident and determine if additional personnel and apparatus were necessary; would determine what actions to take to control the leak; and, determine the proper level of personal protective equipment. If additional assistance is not needed, the individual in charge of the ICS would implement actions to stop and control the leak using the fewest number of personnel that can effectively accomplish the tasks. The individual in charge of the ICS then would designate him or herself as the safety officer and two other employees as a back-up in case rescue may become necessary. In this scenario, decontamination procedures would not be necessary.

(e) A large complex incident may require many employees and difficult, time-consuming efforts to control. In these situations, the individual in charge of the ICS will want to delegate different tasks to subordinates in order to maintain a span of control that will keep the number of subordinates, that are reporting, to a manageable level.

(f) Delegation of tasks at large incidents may be by location, where the incident scene is divided into sectors, and subordinate officers coordinate activities within the sector that they have been assigned.

(g) Delegation of tasks can also be by function. Some of the functions that the individual in charge of the ICS may want to delegate at a large incident are: Medical services; evacuation; water supply; resources (equipment, apparatus); media relations; safety; and, site control (integrate activities with police for crowd and traffic control). Also for a large incident, the individual in charge of the ICS will designate several employees as back-up personnel; and a number of safety officers to monitor conditions and recommend safety precautions.

(h) Therefore, no matter what size or complexity an incident may be, by implementing an ICS there will be one individual in charge who makes the decisions and gives directions; and, all actions and communications are coordinated through one central point of command. Such a system should reduce confusion, improve safety, organize and coordinate actions, and should facilitate effective management of the incident.

(7) Site safety and control plans.

(a) The safety and security of response personnel and others in the area of an emergency response incident site

should be of primary concern to the incident commander. The use of a site safety and control plan could greatly assist those in charge of assuring the safety and health of employees on the site:

(b) ~~A comprehensive site safety and control plan should include the following: Summary analysis of hazards on the site and a risk analysis of those hazards; site map or sketch; site work zones (clean zone, transition or decontamination zone, work or hot zone); use of the buddy system; site communications; command post or command center; standard operating procedures and safe work practices; medical assistance and triage area; hazard monitoring plan (air contaminant monitoring, etc.); decontamination procedures and area; and other relevant areas. This plan should be a part of the employer's emergency response plan or an extension of it to the specific site.~~

(8)) Medical surveillance programs.

(a) Workers handling hazardous substances may be exposed to toxic chemicals, safety hazards, biologic hazards, and radiation. Therefore, a medical surveillance program is essential to assess and monitor workers' health and fitness for employment in hazardous waste operations and during the course of work; to provide emergency and other treatment as needed; and to keep accurate records for future reference.

(b) *The Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities* developed by the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), the United States Coast Guard (USCG), and the Environmental Protection Agency (EPA); October 1985 provides an excellent example of the types of medical testing that should be done as part of a medical surveillance program.

((9)) (7) New technology and spill containment programs. Where hazardous substances may be released by spilling from a container that will expose employees to the hazards of the materials, the employer will need to implement a program to contain and control the spilled material. Diking and ditching, as well as use of absorbents like diatomaceous earth, are traditional techniques which have proven to be effective over the years. However, in recent years new products have come into the marketplace, the use of which complement and increase the effectiveness of these traditional methods. These new products also provide emergency responders and others with additional tools or agents to use to reduce the hazards of spilled materials.

These agents can be rapidly applied over a large area and can be uniformly applied or otherwise can be used to build a small dam, thus improving the workers' ability to control spilled material. These application techniques enhance the intimate contact between the agent and the spilled material allowing for the quickest effect by the agent or quickest control of the spilled material. Agents are available to solidify liquid spilled materials, to suppress vapor generation from spilled materials, and to do both. Some special agents, which when applied as recommended by the manufacturer, will react in a controlled manner with the spilled material to neutralize acids or caustics, or greatly reduce the level of hazard of the spilled material.

There are several modern methods and devices for use by emergency response personnel or others involved with spill control efforts to safely apply spill control agents to control spilled material hazards. These include portable pressurized applicators similar to hand-held portable fire extinguishing devices, and nozzle and hose systems similar to portable fire fighting foam systems which allow the operator to apply the agent without having to come into contact with the spilled material. The operator is able to apply the agent to the spilled material from a remote position.

The solidification of liquids provides for rapid containment and isolation of hazardous substance spills. By directing the agent at run-off points or at the edges of the spill, the reactant solid will automatically create a barrier to slow or stop the spread of the material. Clean-up of hazardous substances as greatly improved when solidifying agents, acid or caustic neutralizers, or activated carbon absorbents are used. Properly applied, these agents can totally solidify liquid hazardous substances or neutralize or absorb them, which results in materials which are less hazardous and easier to handle, transport, and dispose of. The concept of spill treatment, to create less hazardous substances, will improve the safety and level of protection of employees working at spill clean-up operations or emergency response operations to spills of hazardous substances.

The use of vapor suppression agents for volatile hazardous substances, such as flammable liquids and those substances which present an inhalation hazard, is important for protecting workers. The rapid and uniform distribution of the agent over the surface of the spilled material can provide quick vapor knockdown. There are temporary and long-term foam-type agents which are effective on vapors and dusts, and activated carbon adsorption agents which are effective for vapor control and soaking-up of the liquid. The proper use of hose lines or hand-held portable pressurized applicators provides good mobility and permits the worker to deliver the agent from a safe distance without having to step into the untreated spilled material. Some of these systems can be recharged in the field to provide coverage of larger spill areas than the design limits of a single charged applicator unit. Some of the more effective agents can solidify the liquid flammable hazardous substances and at the same time elevate the flashpoint above 140 deg. F so the resulting substance may be handled as a nonhazardous waste material if it meets the United States Environmental Protection Agency's 40 CFR part 261 requirements (see particularly Sec. 261.21).

All workers performing hazardous substance spill control work are expected to wear the proper protective clothing and equipment for the materials present and to follow the employer's established standard operating procedures for spill control. All involved workers need to be trained in the established operating procedures; in the use and care of spill control equipment; and in the associated hazards and control of such hazards of spill containment work.

These new tools and agents are the things that employers will want to evaluate as part of their new technology program. The treatment of spills of hazardous substances or wastes at an emergency incident as part of the immediate spill containment and control efforts is sometimes acceptable to

EPA and a permit exception is described in 40 CFR 264.1 (g)(8) and 265.1 (c)(11).

AMENDATORY SECTION (Amending Order 90-14, filed 10/1/90, effective 11/15/90)

WAC 296-62-3190 Appendix D—References. The following references may be consulted for further information on the subject of this notice:

- (1) OSHA Instruction DFO CPL 2.70 - January 29, 1986, Special Emphasis Program: Hazardous Waste Sites.
- (2) OSHA Instruction DFO CPL 2-2.37A - January 29, 1986, Technical Assistance and Guidelines for Superfund and Other Hazardous Waste Site Activities.
- (3) OSHA Instruction DTS CPL 2.74 - January 29, 1986, Hazardous Waste Activity Form, OSHA 175.
- (4) Hazardous Waste Inspections Reference Manual, U.S. Department of Labor, Occupational Safety and Health Administration, 1986.
- (5) Memorandum of Understanding Among the National Institute for Occupational Safety and Health, the Occupational Safety and Health Administration, the United States Coast Guard, and the United States Environmental Protection Agency; Guidance for Worker Protection During Hazardous Waste Site Investigations and Clean-up and Hazardous Substance Emergencies; December 18, 1980.
- (6) National Priorities List, 1st Edition, October 1984; U.S. Environmental Protection Agency, Revised periodically.
- (7) ~~((The Decontamination of Response Personnel, Field Standard Operating Procedures (F.S.O.P.) 7; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, December 1984.~~
- (8)) Preparation of a Site Safety Plan, Field Standard Operating Procedures (F.S.O.P.) 9; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, April 1985.
- ~~((9))~~ (8) Standard Operating Safety Guidelines; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, Environmental Response Team; November 1984.
- ~~((10))~~ (9) Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities, National Institute for Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), U.S. Coast Guard (USCG), and Environmental Protection Agency (EPA); October 1985.
- ~~((11))~~ (10) Protecting Health and Safety at Hazardous Waste Sites: An Overview, U.S. Environmental Protection Agency, EPA/625/9-85/006; September 1985.
- ~~((12))~~ (11) Hazardous Waste Sites and Hazardous Substance Emergencies, NIOSH Worker Bulletin, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health; December 1982.
- ~~((13))~~ (12) Personal Protective Equipment for Hazardous Materials Incidents: A Selection Guide; U.S. Department of Health and Human Services, Public Health Service,

Centers for Disease Control, National Institute for Occupational Safety and Health; October 1984.

~~((14)) Fire Service Emergency Management Handbook, International Association of Fire Chiefs Foundation, 101 East Holly Avenue, Unit 10B, Sterling, VA 22170, January 1985.~~

~~((15)) Emergency Response Guidebook, U.S. Department of Transportation, Washington, D.C., 1987.~~

~~((16))~~ (13) Report to the Congress on Hazardous Materials Training, Planning and Preparedness, Federal Emergency Management Agency, Washington, D.C., July 1986.

~~((17)) Workbook for Fire Command, Alan V. Brunacini and J. David Beageron, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, 1985.~~

~~((18)) Fire Command, Alan V. Brunacini, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, 1985.~~

~~((19)) Incident Command System, Fire Protection Publications, Oklahoma State University, Stillwater, OK 74078, 1983.~~

~~((20)) Site Emergency Response Planning, Chemical Manufacturers Association, Washington, D.C. 20037, 1986.~~

~~((21)) Hazardous Materials Emergency Planning Guide, NRT 1, Environmental Protection Agency, Washington, D.C., March 1987.~~

~~((22))~~ (14) Community Teamwork: Working Together to Promote Hazardous Materials Transportation Safety. U.S. Department of Transportation, Washington, D.C., May 1983.

~~((23)) Disaster Planning Guide for Business and Industry, Federal Emergency Management Agency, Publication No. FEMA 141, August 1987.)~~

AMENDATORY SECTION (Amending WSR 95-04-006, filed 1/18/95, effective 3/10/95)

WAC 296-62-3195 Appendix E—Training curriculum guidelines. The following nonmandatory general criteria may be used for assistance in developing site-specific training curriculum used to meet the training requirements of WAC 296-62-3040(~~(, 296-62-3140(7), 296-62-3140(8)(e), 296-62-3112(6), and 296-62-3112(7))~~) through 296-62-30465, 296-62-31435 through 296-62-31445, 296-62-31465, 296-62-4102 through 296-62-41021, and 296-62-41023.

These are generic guidelines and they are not presented as a complete training curriculum for any specific employer. Site-specific training programs must be developed on the basis of a needs assessment of the hazardous waste site, RCRA/TSD, or emergency response operation in accordance with this chapter (chapter 296-62 WAC, Part P and Part R).

The guidance set forth here presents a highly effective program that in the areas covered would meet or exceed the regulatory requirements. In addition, other approaches could meet the regulatory requirements.

Suggested general criteria:

Definitions:

"Competent" means possessing the skills, knowledge, experience, and judgment to perform assigned tasks or activities satisfactorily as determined by the employer.

"Demonstration" means the showing by actual use of equipment or procedures.

"Hands-on training" means training in a simulated work environment that permits each student to have experience performing tasks, making decisions, or using equipment appropriate to the job assignment for which the training is being conducted.

"Initial training" means training required prior to beginning work.

"Lecture" means an interactive discourse with a class lead by an instructor.

"Proficient" means meeting a stated level of achievement.

"Site-specific" means individual training directed to the operations of a specific job site.

"Training hours" means the number of hours devoted to lecture, learning activities, small group work sessions, demonstration, evaluations, or hands-on experience.

Suggested core criteria:

(1) Training facility. The training facility should have available sufficient resources, equipment, and site locations to perform concise and hands-on training when appropriate. Training facilities should have sufficient organization, support staff, and services to conduct training in each of the courses offered.

(2) Training director. Each training program should be under the direction of a training director who is responsible for the program. The training director should have a minimum of two years of employee education experience.

(3) Instructors. Instructors should be deemed competent on the basis of previous documented experience in their area of instruction, successful completion of a "train-the-trainer" program specific to the topics they will teach, and an evaluation of instructional competence by the training director.

(a) Instructors should be required to maintain professional competency by participating in continuing education or professional development programs or by successfully completing an annual refresher course and having an annual review by the training director.

(b) The annual review by the training director should include observation of an instructor's delivery, a review of those observations with the trainer, and an analysis of any instructor or class evaluations completed by the students during the previous year.

(4) Course materials. The training director should approve all course materials to be used by the training provider. Course materials should be reviewed and updated at least annually. Materials and equipment should be in good working order and maintained properly.

(a) All written and audio-visual materials in training curricula should be peer reviewed by technically competent outside reviewers or by a standing advisory committee.

(b) Reviewers should possess expertise in the following disciplines were applicable: Occupational health, industrial hygiene and safety, chemical/environmental engineering, employee education, or emergency response. One or more of the peer reviewers should be an employee experienced in the work activities to which the training is directed.

(5) Students. The program for accepting students should include:

(a) Assurance that the student is or will be involved in work where chemical exposures are likely and that the student possesses the skills necessary to perform the work.

(b) A policy on the necessary medical clearance.

(6) Ratios. Student-instructor ratios should not exceed thirty students per instructor. Hands-on activity requiring the use of personal protective equipment should have the following student-instructor ratios: For Level C or Level D personal protective equipment the ratio should be ten students per instructor. For Level A or Level B personal protective equipment the ratio should be five students per instructor.

(7) Proficiency assessment. Proficiency should be evaluated and documented by the use of a written assessment and a skill demonstration selected and developed by the training director and training staff. The assessment and demonstration should evaluate the knowledge and individual skills developed in the course of training. The level of minimum achievement necessary for proficiency (~~shall~~) must be specified in writing by the training director.

(a) If a written test is used, there should be a minimum of fifty questions. If a written test is used in combination with a skills demonstration, a minimum of twenty-five questions should be used. If a skills demonstration is used, the tasks chosen and the means to rate successful completion should be fully documented by the training director.

(b) The content of the written test or of the skill demonstration (~~shall~~) must be relevant to the objectives of the course.

The written test and skill demonstration should be updated as necessary to reflect changes in the curriculum and any update should be approved by the training director.

(c) The proficiency assessment methods, regardless of the approach or combination of approaches used, should be justified, documented and approved by the training director.

(d) The proficiency of those taking the additional courses for supervisors should be evaluated and documented by using proficiency assessment methods acceptable to the training director. These proficiency assessment methods must reflect the additional responsibilities borne by supervisory personnel in hazardous waste operations or emergency response.

(8) Course certificate. Written documentation should be provided to each student who satisfactorily completes the training course. The documentation should include:

(a) Student's name.

(b) Course title.

(c) Course date.

(d) Statement that the student has successfully completed the course.

(e) Name and address of the training provider.

(f) An individual identification number for the certificate.

(g) List of the levels of personal protective equipment used by the student to complete the course.

(i) This documentation may include a certificate and an appropriate wallet-sized laminated card with a photograph of the student and the above information.

(ii) When such course certificate cards are used, the individual identification number for the training certificate should be shown on the card.

(9) Recordkeeping. Training providers should maintain records listing the dates courses were presented, the names of the individual course attendees, the names of those students successfully completing each course, and the number of training certificates issued to each successful student. These records should be maintained for a minimum of five years after the date an individual participated in a training program offered by the training provider. These records should be available and provided upon the student's request or as mandated by law.

(10) Program quality control. The training director should conduct or direct an annual written audit of the training program. Program modifications to address deficiencies, if any, should be documented, approved, and implemented by the training provider. The audit and the program modification documents should be maintained at the training facility.

Suggested Program Quality Control Criteria:

Factors listed here are suggested criteria for determining the quality and appropriateness of employee health and safety training for hazardous waste operations and emergency response.

(1) Training plan. Adequacy and appropriateness of the training program's curriculum development, instructor training, distribution of course materials, and direct student training should be considered, including:

(a) The duration of training, course content, and course schedules/agendas;

(b) The different training requirements of the various target populations, as specified in the appropriate generic training curriculum;

(c) The process for the development of curriculum, which includes appropriate technical input, outside review, evaluation, program pretesting.

(d) The adequate and appropriate inclusion of hands-on, demonstration, and instruction methods;

(e) Adequate monitoring of student safety, progress, and performance during the training.

(2) Program management, training director, staff, and consultants. Adequacy and appropriateness of staff performance and delivering an effective training program should be considered, including:

(a) Demonstration of the training director's leadership in assuring quality of health and safety training;

(b) Demonstration of the competency of the staff to meet the demands of delivering high quality hazardous waste employee health and safety training;

(c) Organization charts establishing clear lines of authority;

(d) Clearly defined staff duties including the relationship of the training staff to the overall program;

(e) Evidence that the training organizational structure suits the needs of the training program;

(f) Appropriateness and adequacy of the training methods used by the instructors;

(g) Sufficiency of the time committed by the training director and staff to the training program;

(h) Adequacy of the ratio of training staff to students;

(i) Availability and commitment of the training program of adequate human and equipment resources in the areas of:

(i) Health effects;

(ii) Safety;

(iii) Personal protective equipment (PPE);

(iv) Operational procedures;

(v) Employee protection practices/procedures;

(j) Appropriateness of management controls;

(k) Adequacy of the organization and appropriate resources assigned to assure appropriate training;

(l) In the case of multiple-site training programs, adequacy of management of the satellite centers.

(3) Training facilities and resources. Adequacy and appropriateness of the facilities and resources for supporting the training program should be considered, including:

(a) Space and equipment to conduct the training;

(b) Facilities for representative hands-on training;

(c) In the case of multiple-site programs, equipment and facilities at the satellite centers;

(d) Adequacy and appropriateness of the quality control and evaluations program to account for instructor performance;

(e) Adequacy and appropriateness of the quality control and evaluation program to ensure appropriate course evaluation, feedback, updating, and corrective action;

(f) Adequacy and appropriateness of disciplines and expertise being used within the quality control and evaluation program;

(g) Adequacy and appropriateness of the role of student evaluations to provide feedback for training program improvement.

(4) Quality control and evaluation. Adequacy and appropriateness of quality control and evaluation plans for training programs should be considered, including:

(a) A balanced advisory committee and/or competent outside reviewers to give overall policy guidance;

(b) Clear and adequate definition of the composition and active programmatic role of the advisory committee or outside reviewers;

(c) Adequacy of the minutes or reports of the advisory committee or outside reviewers' meetings or written communication;

(d) Adequacy and appropriateness of the quality control and evaluations program to account for instructor performance;

(e) Adequacy and appropriateness of the quality control and evaluation program to ensure appropriate course evaluation, feedback, updating, and corrective action;

(f) Adequacy and appropriateness of disciplines and expertise being used within the quality control and evaluation program;

(g) Adequacy and appropriateness of the role of student evaluations to provide feedback for training program improvement.

(5) Students. Adequacy and appropriateness of the program for accepting students should be considered, including:

(a) Assurance that the student already possess the necessary skills for their job, including necessary documentation;

(b) Appropriateness of methods the program uses to ensure that recruits are capable of satisfactorily completing training;

(c) Review and compliance with any medical clearance policy.

(6) Institutional environment and administrative support. The adequacy and appropriateness of the institutional environment and administrative support system for the training program should be considered, including:

- (a) Adequacy of the institutional commitment to the employee training program;
- (b) Adequacy and appropriateness of the administrative structure and administrative support.
- (7) Summary of evaluation questions. Key questions for evaluating the quality and appropriateness of an overall training program should include the following:
 - (a) Are the program objectives clearly stated?
 - (b) Is the program accomplishing its objectives?
 - (c) Are appropriate facilities and staff available?
 - (d) Is there an appropriate mix of classroom, demonstration, and hands-on training?
 - (e) Is the program providing quality employee health and safety training that fully meets the intent of regulatory requirements?
 - (f) What are the program's main strengths?
 - (g) What are the program's main weaknesses?
 - (h) What is recommended to improve the program?
 - (i) Are instructors instructing according to their training outlines?
 - (j) Is the evaluation tool current and appropriate for the program content?
 - (k) Is the course material current and relevant to the target group?

Suggested Training Curriculum Guidelines:

The following training curriculum guidelines are for those operations specifically identified in this Part P, as requiring training. Issues such as qualifications of instructors, training certification, and similar criteria appropriate to all categories of operations addressed in this Part P, have been covered in the preceding section and are not readdressed in each of the generic guidelines. Basic core requirements for training programs that are addressed include: (1) *General hazardous waste operations*; (2) *RCRA operations—Treatment, storage, and disposal facilities*; and (3) *Emergency response*.

- (1) General hazardous waste operations and site-specific training.
 - (a) Off-site training. Training course content for hazardous waste operations, required by WAC 296-62-3040 through 296-62-30465, should include the following topics or procedures:
 - (i) Regulatory knowledge.
 - (A) A review of this Part P and the core elements of an occupational safety and health program.
 - (B) The content of a medical surveillance program as outlined in WAC 296-62-3050 through 296-62-30535.
 - (C) The content of an effective site safety and health plan consistent with the requirements of WAC ((296-62-3040 (4)(b))) 296-62-30135(2).
 - (D) Emergency response plan and procedures as outlined in WAC 296-24-567 and 296-62-3110 through 296-62-31110.
 - (E) Adequate illumination.
 - (F) Sanitation recommendation and equipment.

(G) Review and explanation of WISHA's hazard-communication standard chapter 296-62 WAC, Part C, and chapter 296-24 WAC, Part A-4, safety procedures for the control of hazardous energy (lockout/tagout).

(H) Review of other applicable standards including but not limited to those in the construction standards, chapter 296-155 WAC.

(I) Rights and responsibilities of employers and employees under applicable WISHA/OSHA and department of ecology (DOE)/Environmental Protection Association (EPA) regulations and laws.

(ii) Technical knowledge.

(A) Type of potential exposures to chemical, biological, and radiological hazards; types of human responses to these hazards and recognition of those responses; principles of toxicology and information about acute and chronic hazards; health and safety considerations of new technology.

(B) Fundamentals of chemical hazards including but not limited to vapor pressure, boiling points, flash points, pH, other physical and chemical properties.

(C) Fire and explosion hazards of chemicals.

(D) General safety hazards such as but not limited to electrical hazards, powered equipment hazards, motor vehicle hazards, walking-working surface hazards, excavation hazards, and hazards associated with working in hot and cold temperature extremes.

(E) Review and knowledge of confined space entry procedures in chapter 296-62 WAC, Part M.

(F) Work practices to minimize employee risk from site hazards.

(G) Safe use of engineering controls, equipment, and any new relevant safety technology or safety procedures.

(H) Review and demonstration of competency with air sampling and monitoring equipment that may be used in a site monitoring program.

(I) Container sampling procedures and safeguarding; general drum and container handling procedures including special requirement for laboratory waste packs, shock-sensitive wastes, and radioactive wastes.

(J) The elements of a spill control program.

(K) Proper use and limitations of material handling equipment.

(L) Procedures for safe and healthful preparation of containers for shipping and transport.

(M) Methods of communication including those used while wearing respiratory protection.

(iii) Technical skills.

(A) Selection, use maintenance, and limitations of personal protective equipment including the components and procedures for carrying out a respirator program to comply with chapter 296-62 WAC Part E, Respiratory Protection.

(B) Instruction in decontamination programs including personnel, equipment, and hardware; hands-on training including Levels A, B, and C ensembles and appropriate decontamination lines; field activities including the donning and doffing of protective equipment to a level commensurate with the employee's anticipated job function and responsibility and to the degree required by potential hazards.

(C) Sources for additional hazard information; exercises using relevant manuals and hazard coding systems.

(iv) Additional suggested items.

(A) A laminated, dated card or certificate with photo, denoting limitations and level of protection for which the employee is trained should be issued to those students successfully completing a course.

(B) Attendance should be required at all training modules, with successful completion of exercises and a final written or oral examination with at least fifty questions.

(C) A minimum of one-third of the program should be devoted to hands-on exercises.

(D) A curriculum should be established for the eight-hour refresher training required by WAC ((~~296-62-4040(10)~~) 296-62-30460), with delivery of such courses directed toward those areas of previous training that need improvement or reemphasis.

(E) A curriculum should be established for the required eight-hour training for supervisors. Demonstrated competency in the skills and knowledge provided in forty-hour and eighty-hour courses should be prerequisites for supervisor training.

(b) Refresher training. The eight-hour annual refresher training required in WAC ((~~296-62-3040(10)~~) 296-62-30460) should be conducted by qualified training providers. Refresher training should include at a minimum the following topics and procedures:

(i) Review of and retraining on relevant topics covered in the forty-hour and eighty-hour programs, as appropriate, using reports by the students on their work experiences.

(ii) Update on developments with respect to material covered in the forty-hour and eighty-hour courses.

(iii) Review of changes to pertinent provisions of DOE/EPA or WISHA/OSHA standards or laws.

(iv) Introduction of additional subject areas as appropriate.

(v) Hands-on review of new or altered PPE or decontamination equipment or procedures. Review of new developments in personal protective equipment.

(vi) Review of newly developed air and contaminant monitoring equipment.

(c) On-site training. The employer should provide employees engaged in hazardous waste site activities with information and training prior to initial assignment into their work area, as follows:

(i) The requirements of the hazard communication program including the location and availability of the written program, required lists of hazardous chemicals, and material safety data sheets.

(ii) Activities and locations in their work area where hazardous substance may be present.

(iii) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearances, or other evidence (sight, sound or smell)) of hazardous chemicals being released, and applicable alarms from monitoring devices that record chemical releases.

(iv) The physical and health hazards of substances known or potentially present in the work area.

(v) The measures employees can take to help protect themselves from worksite hazards, including specific procedures the employer has implemented.

(vi) An explanation of the labeling system and material safety data sheets and how employees can obtain and use appropriate hazard information.

(vii) The elements of the confined space program including special PPE, permits, monitoring requirements, communication procedures, emergency response, and applicable lockout procedures.

(d) The employer should provide hazardous waste employees with information and training and should provide a review and access to the site safety and health plan as follows:

(i) Names of personnel and alternate responsible for site safety and health.

(ii) Safety and health hazards present on the site.

(iii) Selection, use, maintenance, and limitations of personal protective equipment specific to the site.

(iv) Work practices by which the employee can minimize risks from hazards.

(v) Safe use of engineering controls and equipment available on site.

(vi) Safe decontamination procedures established to minimize employee contact with hazardous substances, including:

(A) Employee decontamination;

(B) Clothing decontamination; and

(C) Equipment decontamination.

(vii) Elements of the site emergency response plan, including:

(A) Preemergency planning.

(B) Personnel roles and lines of authority and communication.

(C) Emergency recognition and prevention.

(D) Safe distances and places of refuge.

(E) Site security and control.

(F) Evacuation routes and procedures.

(G) Decontamination procedures not covered by the site safety and health plan.

(H) Emergency medical treatment and first aid.

(I) Emergency equipment and procedures for handling emergency incidents.

(e) The employer should provide hazardous waste employees with information and training on personal protective equipment used at the site, such as the following:

(i) PPE to be used based upon known or anticipated site hazards.

(ii) PPE limitations of materials and construction; limitations during temperature extremes, heat stress, and other appropriate medical considerations; use and limitations of respirator equipment as well as documentation procedures as outlined in chapter 296-62 WAC, Part E, Respiratory Protection.

(iii) PPE inspection procedures prior to, during, and after use.

(iv) PPE donning and doffing procedures.

(v) PPE decontamination and disposal procedures.

(vi) PPE maintenance and storage.

(vii) Task duration as related to PPE limitations.

(f) The employer should instruct the employee about the site medical surveillance program relative to the particular site, including:

(i) Specific medical surveillance programs that have been adapted for the site.

(ii) Specific signs and symptoms related to exposure to hazardous materials on the site.

(iii) The frequency and extent of periodic medical examinations that will be used on the site.

(iv) Maintenance and availability of records.

(v) Personnel to be contacted and procedures to be followed when signs and symptoms of exposures are recognized.

(g) The employees will review and discuss the site safety and health plan as part of the training program. The location of the site safety and health plan and all written programs should be discussed with employees including a discussion of the mechanisms for access, review, and references described.

(2) RCRA operations training for treatment, storage and disposal facilities.

(a) As a minimum, the training course required in WAC ((296-62-3140)) 296-62-31435 through 296-62-31440 and WAC 296-62-31465 should include the following topics:

(i) Review of the applicable parts of this Part P and the elements of the employer's occupational safety and health plan.

(ii) Review of relevant hazards such as, but not limited to, chemical, biological, and radiological exposures; fire and explosion hazards; thermal extremes; and physical hazards.

(iii) General safety hazards including those associated with electrical hazards, powered equipment hazards, lockout/tagout procedures, motor vehicle hazards and walking-working surface hazards.

(iv) Confined space hazards and procedures.

(v) Work practices to minimize employee risk from workplace hazards.

(vi) Emergency response plan and procedures including first aid meeting the requirements of WAC ((296-62-3140(8))) 296-62-31450.

(vii) A review of procedures to minimize exposure to hazardous waste and various type of waste streams, including the materials handling program and spill containment program.

(viii) A review of hazard communication programs meeting the requirements of chapter 296-62 WAC, Part C.

(ix) A review of medical surveillance programs meeting the requirements of WAC 296-62-3050 and ((296-62-3140(3))) 296-62-31415 including the recognition of signs and symptoms of overexposure to hazardous substance including known synergistic interactions.

(x) A review of decontamination programs and procedures meeting the requirements of WAC 296-62-3100 and ((296-62-3140(4))) 296-62-31420.

(xi) A review of an employer's requirements to implement a training program and its elements.

(xii) A review of the criteria and programs for proper selection and use of personal protective equipment, including respirators.

(xiii) A review of the applicable appendices to this Part P (Appendices A through E).

(xiv) Principles of toxicology and biological monitoring as they pertain to occupational health.

(xv) Rights and responsibilities of employees and employers under applicable WISHA/OSHA and DOE/EPA regulations and laws.

(xvi) Hands-on exercises and demonstrations of competency with equipment to illustrate the basic equipment principles that may be used during the performance of work duties, including the donning and doffing of PPE.

(xvii) Sources of reference, efficient use of relevant manuals, and knowledge of hazard coding systems to include information contained in hazardous waste manifests.

(xviii) At least eight hours of hands-on training.

(xix) Training in the job skills required for an employee's job function and responsibility before they are permitted to participate in or supervise field activities.

(b) The individual employer should provide hazardous waste employees with information and training prior to an employee's initial assignment into a work area. The training and information should cover the following topics:

(i) The emergency response plan and procedures including first aid.

(ii) A review of the employer's hazardous waste handling procedures including the materials handling program and elements of the spill containment program, location of spill response kits or equipment, and the names of those trained to respond to releases.

(iii) The hazardous communication program meeting the requirements of chapter 296-62 WAC, Part C.

(iv) A review of the employer's medical surveillance program including the recognition of signs and symptoms of exposure to relevant hazardous substance including known synergistic interactions.

(v) A review of the employer's decontamination program and procedures.

(vi) A review of the employer's training program and the parties responsible for that program.

(vii) A review of the employer's personal protective equipment program including the proper selection and use of PPE based upon specific site hazards.

(viii) All relevant site-specific procedures addressing potential safety and health hazards. This may include, as appropriate, biological and radiological exposures, fire and explosion hazards, thermal hazards, and physical hazards such as electrical hazards, powered equipment hazards, lockout/tagout hazards, motor vehicle hazards, and walking-working surface hazards.

(ix) Safe use of engineering controls and equipment on-site.

(x) Names of personnel and alternates responsible for safety and health.

~~((3) Emergency response training.~~

~~(a) General considerations. Emergency response organizations are required to consider the topics listed in WAC 296-62-3112(6). Emergency response organizations may use some or all of the following topics to supplement those mandatory topics when developing their response training programs. Many of the topics would require an interaction between the response provider and the individuals responsible for the site where the response would be expected.~~

- (i) Hazard recognition, including:
 - (A) Nature of hazardous substances present;
 - (B) Practical applications of hazard recognition, including presentations on biology, chemistry, and physics.
- (ii) Principles of toxicology, biological monitoring, and risk assessment.
- (iii) Safe work practices and general site safety.
- (iv) Engineering controls and hazardous waste operations:
- (v) Site safety plans and standard operating procedures.
- (vi) Decontamination procedures and practices.
- (vii) Emergency procedures, first aid, and self-rescue.
- (viii) Safe use of field equipment.
- (ix) Storage, handling, use and transportation of hazardous substances.
- (x) Use, care, and limitations of personal protective equipment.
- (xi) Safe sampling techniques.
- (xii) Rights and responsibilities of employees under WISHA and other related regulations and laws concerning right to know, safety and health, compensations and liability.
- (xiii) Medical monitoring requirements.
- (xiv) Community relations.
- (b) Suggested criteria for specific courses.
 - (i) First responder awareness level.
 - (A) Review of and demonstration of competency in performing the applicable skills of WAC 296-62-3112.
 - (B) Hands-on experience with the U.S. Department of Transportation's *Emergency Response Guidebook* (ERG) and familiarization with chapter 296-62 WAC, Part C, the hazard communication standard.
 - (C) Review of the principles and practices for analyzing an incident to determine both the hazardous substances present and the basic hazard and response information for each hazardous substance present.
 - (D) Review of procedures for implementing actions consistent with the local emergency response plan, the organization's standard operating procedures, and the current edition of DOT's ERG including emergency notification procedures and follow-up communications.
 - (E) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.
 - (F) Awareness and knowledge of the competencies for the First Responder at the Awareness Level covered in the National Fire Protection Association's Standard No. 472, Professional Competence of Responders to Hazardous Materials Incidents.
 - (ii) First responder operations level.
 - (A) Review of and demonstration of competency in performing the applicable skills of WAC 296-62-3112.
 - (B) Hands-on experience with the U.S. Department of Transportation's *Emergency Response Guidebook* (ERG), manufacturer material safety data sheets, CHEMTREC/CANUTEC, shipper or manufacturer contacts, and other relevant sources of information addressing hazardous substance releases. Familiarization with chapter 296-62 WAC, Part C, the hazard communication standard.

(C) Review of the principles and practices for analyzing an incident to determine the hazardous substances present, the likely behavior of the hazardous substance and its container, the types of hazardous substance transportation containers and vehicles, the types and selection of the appropriate defensive strategy for containing the release.

(D) Review of procedures for implementing continuing response actions consistent with the local emergency response plan, the organization's standard operating procedures, and the current edition of DOT's ERG including extended emergency notification procedures and follow-up communications.

(E) Review of the principles and practice for proper selection and use of personal protective equipment.

(F) Review of the principles and practice of personnel and equipment decontamination.

(G) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(H) Awareness and knowledge of the competencies for the First Responder at the Operations Level covered in the National Fire Protection Association's Standard No. 472, Professional Competence of Responders to Hazardous Materials Incidents.

(iii) Hazardous materials technician.

(A) Review of and demonstration of competency in performing the applicable skills of WAC 296-62-3112.

(B) Hands-on experience with written and electronic information relative to response decision-making including but not limited to the U.S. Department of Transportation's *Emergency Response Guidebook* (ERG), manufacturer material safety data sheets, CHEMTREC/CANUTEC, shipper or manufacturer contacts, computer data bases and response models, and other relevant sources of information addressing hazardous substance releases. Familiarization with chapter 296-62 WAC, Part C, the hazard communication standard.

(C) Review of the principles and practices for analyzing an incident to determine the hazardous substances present, their physical and chemical properties, the likely behavior of the hazardous substance and its container, the types of hazardous substance transportation containers and vehicles involved in the release, the appropriate strategy for approaching release sites and containing the release.

(D) Review of procedures for implementing continuing response actions consistent with the local emergency response plan, the organization's standard operating procedures, and the current edition of DOT's ERG including extended emergency notification procedures and follow-up communications.

(E) Review of the principles and practice for proper selection and use of personal protective equipment.

(F) Review of the principles and practices of establishing exposure zones, proper decontamination and medical surveillance stations and procedures.

(G) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

~~(H) Awareness and knowledge of the competencies for the Hazardous Materials Technician covered in the National Fire Protection Association's Standard No. 472, Professional Competence of Responders to Hazardous Materials Incidents:~~

~~(iv) Hazardous materials specialist:~~

~~(A) Review of and demonstration of competency in performing the applicable skills of WAC 296-62-3112.~~

~~(B) Hands-on experience with retrieval and use of written and electronic information relative to response decision making including but not limited to the U.S. Department of Transportation's *Emergency Response Guidebook* (ERG); manufacturer material safety data sheets, CHEMTREC/CANUTEC, shipper or manufacturer contacts, computer data bases and response models, and other relevant sources of information addressing hazardous substance releases. Familiarization with chapter 296-62 WAC, Part C, the hazard communication standard.~~

~~(C) Review of the principles and practices for analyzing an incident to determine the hazardous substances present, their physical and chemical properties, and the likely behavior of the hazardous substance and its container, vessel, or vehicle.~~

~~(D) Review of the principles and practices for identification of the types of hazardous substance transportation containers, vessels and vehicles involved in the release; selecting and using the various types of equipment available for plugging or patching transportation containers, vessels or vehicles; organizing and directing the use of multiple teams of hazardous material technicians and selecting the appropriate strategy for approaching release sites and containing or stopping the release.~~

~~(E) Review of procedures for implementing continuing response actions consistent with the local emergency response plan, the organization's standard operating procedures, including knowledge of the available public and private response resources, establishment of an incident command post, direction of hazardous material technician teams, and extended emergency notification procedures and follow-up communications.~~

~~(F) Review of the principles and practice for proper selection and use of personal protective equipment.~~

~~(G) Review of the principles and practices of establishing exposure zones and proper decontamination, monitoring and medical surveillance stations and procedures.~~

~~(H) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.~~

~~(I) Awareness and knowledge of the competencies for the Off-site Specialist Employee covered in the National Fire Protection Association's Standard No. 472, Professional Competence of Responders to Hazardous Materials Incidents:~~

~~(v) Incident commander.~~

~~The incident commander is the individual who, at any one time, is responsible for and in control of the response effort. This individual is the person responsible for the direction and coordination of the response effort. An incident commander's position should be occupied by the most senior,~~

~~appropriately trained individual present at the response site. Yet, as necessary and appropriate by the level of response provided, the position may be occupied by many individuals during a particular response as the need for greater authority, responsibility, or training increases. It is possible for the first responder at the awareness level to assume the duties of incident commander until a more senior and appropriately trained individual arrives at the response site.~~

~~Therefore, any emergency responder expected to perform as an incident commander should be trained to fulfill the obligations of the position at the level of response they will be providing including the following:~~

~~(A) Ability to analyze a hazardous substance incident to determine the magnitude of the response problem.~~

~~(B) Ability to plan and implement an appropriate response plan within the capabilities of available personnel and equipment.~~

~~(C) Ability to implement a response to favorably change the outcome of the incident in a manner consistent with the local emergency response plan and the organization's standard operating procedures.~~

~~(D) Ability to evaluate the progress of the emergency response to ensure that the response objectives are being met safely, effectively, and efficiently.~~

~~(E) Ability to adjust the response plan to the conditions of the response and to notify higher levels of response when required by the changes to the response plan.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-62-3112 Emergency response to hazardous substance releases.

PART R—EMERGENCY RESPONSE TO HAZARDOUS SUBSTANCE RELEASE

NEW SECTION

WAC 296-62-410 Emergency response to hazardous substance release.

NEW SECTION

WAC 296-62-41001 **Scope and application.** (1) Scope. This section covers employers who have employees who work in emergency response operations for the releases of, or substantial threats of releases of, hazardous substances without regard to the location of the hazard.

(2) Application. All requirements of this chapter and chapters 296-24 and 296-155 WAC apply under their terms to emergency response operations whether covered by this part or not. If there is a conflict or overlap, the provision more protective of employee safety and health must apply.

NEW SECTION

WAC 296-62-41003 Definitions. "Buddy system" means a system of organizing employees into work groups in such a manner that each employee of the work group is designated to be observed by at least one other employee in the work group. The purpose of the buddy system is to provide rapid assistance to employees in the event of an emergency.

"Clean-up operation" means an operation where hazardous substances are removed, contained, incinerated, neutralized, stabilized, cleared-up, or in any other manner processed or handled with the ultimate goal of making the site safer for people or the environment.

"Decontamination" means the removal of hazardous substances from employees and their equipment to the extent necessary to preclude the occurrence of foreseeable adverse health effects.

"Emergency response" or "responding to emergencies" means a response effort by employees from outside the immediate release area or by other designated responders (i.e., mutual aid groups, local fire departments, etc.) to an occurrence which results, or is likely to result, in an uncontrolled release of a hazardous substance. Responses to incidental releases of hazardous substances where the substance can be absorbed, neutralized, or otherwise controlled at the time of release by employees in the immediate release area or by maintenance personnel are not considered to be emergency responses within the scope of this standard. Responses to release of hazardous substances where there is no potential safety or health hazard (i.e., fire, explosion, or chemical exposure) are not considered to be emergency responses.

"Facility" means:

Any building structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, storage container, motor vehicle, rolling stock, or aircraft; or

Any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any water-borne vessel.

"Hazardous materials response (HAZMAT) team" means an organized group of employees, designated by the employer, who are expected to perform work, to handle and control actual or potential leaks or spills of hazardous substances requiring possible close approach to the substance. The team members perform responses to releases or potential releases of hazardous substances for the purpose of control or stabilization of the incident. A HAZMAT team is not a fire brigade nor is a typical fire brigade a HAZMAT team. A HAZMAT team, however, may be a separate component of a fire brigade or fire department.

"Hazardous substance" means any substance designated or listed under this definition, exposure to which results or may result in adverse effects on the health or safety of employees:

Any substance defined under section 101(14) of CERCLA;

Any biological agent and other disease-causing agent which after release into the environment and upon exposure,

ingestion, inhalation, or assimilation into any person, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such persons or their offspring;

Any substance listed by the United States Department of Transportation as hazardous materials under WAC 480-12-195; and

Hazardous waste.

"Hazardous waste" means: A waste or combination of wastes as defined in this section.

"Hazardous waste operation" means any operation conducted within the scope of chapter 296-62 WAC, Part P.

"Health hazard" means a chemical, mixture of chemicals, or a pathogen for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. It also includes stress due to temperature extremes. Further definition of the terms used above can be found in Appendix A to chapter 296-62 WAC, Part C.

"IDLH" or "immediately dangerous to life or health" means any atmospheric concentration of any toxic, corrosive, or asphyxiant substance that poses an immediate threat to life or would cause irreversible or delayed adverse health effects or would interfere with an individual's ability to escape from a dangerous atmosphere.

"Oxygen deficiency" means that concentration of oxygen by volume below which atmosphere supplying respiratory protection must be provided. It exists in atmospheres where the percentage of oxygen by volume is less than 19.5 percent oxygen.

"Permissible exposure limit" means the exposure, inhalation, or dermal permissible limit specified in WAC 296-62-075 through 296-62-07515.

"Published exposure level" means the exposure limits published in "*NIOSH Recommendations for Occupational Health Standards*" dated 1986 incorporated by reference, or if none is specified, the exposure limits published in the standards specified by the American Conference of Governmental Industrial Hygienists in their publication "*Threshold Limit Values and Biological Exposure Indices for 1988-89*" dated 1988 incorporated by reference.

"Post emergency response" means that portion of an emergency response performed after the immediate threat of a release has been stabilized or eliminated and clean-up of the site has begun. If post emergency response is performed by an employer's own employees who were part of the initial emergency response, it is considered to be part of the initial response and not post emergency response. However, if a group of an employer's own employees, separate from the group providing initial response, performs the clean-up operation, then the separate group of employees would be consid-

ered to be performing post-emergency response and subject to WAC 296-62-41060.

"Qualified person" means a person with specific training, knowledge, and experience in the area for which the person has responsibility and the authority to control.

NEW SECTION

WAC 296-62-41010 Emergency response. This section covers employers whose employees are engaged in emergency response no matter where it occurs except that it does not cover employees engaged in operations specified in WAC 296-62-300 (1)(a) through (d).

Those emergency response organizations who have developed and implemented programs equivalent to this section for handling releases of hazardous substances under Section 303 of SARA Title III must be deemed to have met the requirements of this section.

NEW SECTION

WAC 296-62-41011 Emergency response plan. An emergency response plan must be developed and implemented to handle anticipated emergencies before the commencement of emergency response operations. The plan must be in writing and available for inspection and copying by employees, their representatives, and WISHA personnel. Employers who will evacuate their employees from the danger area when an emergency occurs, and who do not permit any of their employees to assist in handling the emergency, are exempt from the requirements of this section if they provide an emergency action plan in accordance with WAC 296-24-567(1).

NEW SECTION

WAC 296-62-41013 Elements of an emergency response plan. The employer must develop an emergency response plan for emergencies which must address, as a minimum, the following to the extent that they are not addressed elsewhere:

- (1) Preemergency planning and coordination with outside parties.
- (2) Personnel roles, lines of authority, training, and communication.
- (3) Emergency recognition and prevention.
- (4) Safe distances and places of refuge.
- (5) Site security and control.
- (6) Evacuation routes and procedures.
- (7) Decontamination.
- (8) Emergency medical treatment and first aid.
- (9) Emergency alerting and response procedures.
- (10) Critique of response and follow-up.
- (11) PPE and emergency equipment.
- (12) Emergency response organizations may use the local emergency response plan or the state emergency response plan or both, as part of their emergency response plan to avoid duplication. Those items of the emergency response plan that are being properly addressed by the SARA

Title III plans may be substituted into their emergency plan or otherwise kept together for the employer and employee's use.

NEW SECTION

WAC 296-62-41015 Procedures for handling emergency response. (1) The senior emergency response official responding to an emergency must become the individual in charge of a site-specific incident command system (ICS). All emergency responders and their communications must be coordinated and controlled through the individual in charge of the ICS assisted by the senior official present for each employer.

Note: The "senior official" at an emergency response is the most senior official on the site who has the responsibility for controlling the operations at the site. Initially it is the senior officer on the first-due piece of responding emergency apparatus to arrive on the incident scene. As more senior officers arrive (i.e., battalion chief, fire chief, state law enforcement official, site coordinator, etc.), the position is passed up the line of authority which has been previously established.

(2) The individual in charge of the ICS must identify, to the extent possible, all hazardous substances or conditions present and shall address as appropriate site analysis, use of engineering controls, maximum exposure limits, hazardous substance handling procedures, and use of any new technologies.

(3) Based on the hazardous substances and/or conditions present, the individual in charge of the ICS must implement appropriate emergency operations, and assure that the personal protective equipment worn is appropriate for the hazards to be encountered. However, personal protective equipment must meet, at a minimum, the criteria contained in WAC 296-24-58513 when worn while performing fire fighting operations beyond the incipient stage for any incident.

(4) Employees engaged in emergency response and exposed to hazardous substances presenting an inhalation hazard or potential inhalation hazard must wear positive pressure self-contained breathing apparatus, until the individual in charge of the ICS determines through the use of air monitoring that a decreased level of respiratory protection will not result in hazardous exposures to employees.

(5) The individual in charge of the ICS must limit the number of emergency response personnel at the emergency site, in those areas of potential or actual exposure to incident or site hazards, to those who are actively performing emergency operations. However, operations in hazardous areas must be performed using the buddy system in groups of two or more.

(6) Back-up personnel must stand by with equipment ready to provide assistance or rescue. Advance first-aid support personnel, as a minimum, must also stand by with medical equipment and transportation capability.

(7) The individual in charge of the ICS must designate a safety official, who is knowledgeable in the operations being implemented at the emergency response site, with specific responsibility to identify and evaluate hazards and to provide direction with respect to the safety of operations for the emergency at hand.

(8) When activities are judged by the safety official to be an IDLH condition and/or to involve an imminent danger condition, the safety official must have the authority to alter, suspend, or terminate those activities. The safety official must immediately inform the individual in charge of the ICS of any actions needed to be taken to correct these hazards at the emergency scene.

(9) After emergency operations have terminated, the individual in charge of the ICS must implement appropriate decontamination procedures.

(10) When deemed necessary for meeting the tasks at hand, approved self-contained compressed air breathing apparatus may be used with approved cylinders from other approved self-contained compressed air breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-contained breathing apparatus must meet United States Department of Transportation and National Institute for Occupational Safety and Health criteria.

NEW SECTION

WAC 296-62-41017 Skilled support personnel. Personnel, not necessarily an employer's own employees, who are skilled in the operation of certain equipment, such as mechanized earth moving or digging equipment or crane and hoisting equipment, and who are needed temporarily to perform immediate emergency support work that cannot reasonably be performed in a timely fashion by an employer's own employees, and who will be or may be exposed to the hazards at an emergency response scene, are not required to meet the training required in this subsection for the employer's regular employees. However, these personnel must be given an initial briefing at the site before their participation in any emergency response. The initial briefing must include instruction in the wearing of appropriate personal protective equipment, what chemical hazards are involved, and what duties are to be performed. All other appropriate safety and health precautions provided to the employer's own employees must be used to assure the safety and health of these personnel.

NEW SECTION

WAC 296-62-41019 Specialist employees. Employees who, in the course of their regular job duties, work with and are trained in the hazards of specific hazardous substances, and who will be called upon to provide technical advice or assistance at a hazardous substance release incident to the individual in charge, must receive training or demonstrate competency in the area of their specialization annually.

NEW SECTION

WAC 296-62-41020 Training.

NEW SECTION

WAC 296-62-41021 Training before participation. Training must be based on the duties and functions to be performed by each responder of an emergency response organi-

zation. The skill and knowledge levels required for all new responders, those hired after the effective date of this standard, must be conveyed to them through training before they are permitted to take part in actual emergency operations on an incident.

Employees who participate, or are expected to participate, in emergency response, must be given training in accordance with the following:

(1) First responder awareness level. First responders at the awareness level are individuals who are likely to witness or discover a hazardous substance release and who have been trained to initiate an emergency response sequence by notifying the proper authorities of the release. They would take no further action beyond notifying the authorities of the release. First responders at the awareness level must have sufficient training or have had sufficient experience to objectively demonstrate competency in the following areas:

(a) An understanding of what hazardous substances are and the risks associated with them in an incident.

(b) An understanding of the potential outcomes associated with an emergency created when hazardous substances are present.

(c) The ability to recognize the presence of hazardous substances in an emergency.

(d) The ability to identify the hazardous substances, if possible.

(e) An understanding of the role of the first responder awareness individual in the employer's emergency response plan including site security and control and the United States Department of Transportation's Emergency Response Guidebook.

(f) The ability to realize the need for additional resources and to make appropriate notifications to the communication center.

(2) First responder operations level. First responders at the operations level are individuals who respond to releases or potential releases of hazardous substances as part of the initial response to the site for the purpose of protecting nearby persons, property, or the environment from the effects of the release. They are trained to respond in a defensive fashion without actually trying to stop the release. Their function is to contain the release from a safe distance, keep it from spreading, and protect exposures. First responders at the operational level must have received at least eight hours of training or have had sufficient experience to objectively demonstrate competency in the following areas in addition to those listed for the awareness level and the employer must so certify:

(a) Knowledge of the basic hazard and risk assessment techniques.

(b) Know how to select and use proper personal protective equipment provided to the first responder operational level.

(c) An understanding of basic hazardous materials terms.

(d) Know how to perform basic control, containment, and/or confinement operations within the capabilities of the resources and personal protective equipment available with their unit.

(e) Know how to implement basic decontamination procedures.

PERMANENT

(f) An understanding of the relevant standard operating procedures and termination procedures.

(3) Hazardous materials technician. Hazardous materials technicians are individuals who respond to releases or potential releases for the purpose of stopping the release. They assume a more aggressive role than a first responder at the operations level in that they will approach the point of release in order to plug, patch, or otherwise stop the release of hazardous substance. Hazardous materials technicians must have received at least 24 hours of training equal to the first responder operations level and in addition have competency in the following areas and the employer must so certify:

(a) Know how to implement the employer's emergency response plan.

(b) Know the classification, identification, and verification of known and unknown materials by using field survey instruments and equipment.

(c) Be able to function within an assigned role in the incident command system.

(d) Know how to select and use proper specialized chemical personal protective equipment provided to the hazardous materials technician.

(e) Understand hazard and risk assessment techniques.

(f) Be able to perform advance control, containment, and/or confinement operations within the capabilities of the resources and personal protective equipment available with the unit.

(g) Understand and implement decontamination procedures.

(h) Understand termination procedures.

(i) Understand basic chemical and toxicological terminology and behavior.

(4) Hazardous materials specialist. Hazardous materials specialists are individuals who respond with and provide support to hazardous materials technicians. Their duties parallel those of the hazardous materials technician, however, those duties require a more directed or specific knowledge of the various substances they may be called upon to contain. The hazardous materials specialist would also act as the site liaison with federal, state, local, and other government authorities in regard to site activities.

Hazardous materials specialists shall have received at least 24 hours of training equal to the technician level and in addition have competency in the following areas and the employer must so certify:

(a) Know how to implement the local emergency response plan.

(b) Understand classification, identification, and verification of known and unknown materials by using advanced survey instruments and equipment.

(c) Know of the state emergency response plan.

(d) Be able to select and use proper specialized chemical personal protective equipment provided to the hazardous materials specialist.

(e) Understand in-depth hazard and risk techniques.

(f) Be able to perform specialized control, containment, and/or confinement operations within the capabilities of the resources and personal protective equipment available.

(g) Be able to determine and implement decontamination procedures.

(h) Have the ability to develop a site safety and control plan.

(i) Understand chemical, radiological, and toxicological terminology and behavior.

(5) On scene incident commander. Incident commanders, who will assume control of the incident scene beyond the first responder awareness level, must receive at least 24 hours of training equal to the first responder operations level and in addition have competency in the following areas and the employer must so certify:

(a) Know and be able to implement the employer's incident command system.

(b) Know how to implement the employer's emergency response plan.

(c) Know and understand the hazards and risks associated with employees working in chemical protective clothing.

(d) Know how to implement the local emergency response plan.

(e) Know of the state emergency response plan and of the Federal Regional Response Team.

(f) Know and understand the importance of decontamination procedures.

NEW SECTION

WAC 296-62-41023 Trainers. Trainers who teach any of the above training subjects must have satisfactorily completed a training course for teaching the subjects they are expected to teach, such as the courses offered by the United States National Fire Academy, or they must have the training and/or academic credentials and instructional experience necessary to demonstrate competent instructional skills and a good command of the subject matter of the courses they are to teach.

NEW SECTION

WAC 296-62-41025 Refresher training. (1) Those employees who are trained in accordance with WAC 296-62- must receive annual refresher training of sufficient content and duration to maintain their competencies, or must demonstrate competency in those areas at least yearly.

(2) A statement must be made of the training or competency, and if a statement of competency is made, the employer must keep a record of the methodology used to demonstrate competency.

NEW SECTION

WAC 296-62-41030 Employee personal protective equipment.

NEW SECTION

WAC 296-62-41031 Personal protective equipment selection. (1) Personal protective equipment (PPE) must be selected and used which will protect employees from the hazards and potential hazards they are likely to encounter as identified during the site characterization and analysis.

(2) Personal protective equipment selection must be based on an evaluation of the performance characteristics of the PPE relative to the requirements and limitations of the site, the task-specific conditions and duration, and the hazards and potential hazards identified at the site.

(3) Positive pressure self-contained breathing apparatus, or positive pressure air-line respirators equipped with an escape air supply must be used when chemical exposure levels present will create a substantial possibility of immediate death, immediate serious illness or injury, or impair the ability to escape.

(4) Totally encapsulating chemical protective suits (protection equivalent to Level A protection as recommended in Appendix B) must be used in conditions where skin absorption of a hazardous substance may result in a substantial possibility of immediate death, immediate serious illness or injury, or impair the ability to escape.

(5) The level of protection provided by PPE selection must be increased when additional information or site conditions indicate that increased protection is necessary to reduce employee exposures below permissible exposure limits and published exposure levels for hazardous substances and health hazards. (See WAC 296-62-41082 - Appendix B for guidance on selecting PPE ensembles.)

Note: The level of employee protection provided may be decreased when additional information or site conditions show that decreased protection will not result in increased hazardous exposures to employees.

(6) Personal protective equipment must be selected and used to meet the requirements of chapter 296-24 WAC, Part A-2, and additional requirements specified in this part.

NEW SECTION

WAC 296-62-41033 Totally encapsulating chemical protective suits. (1) Totally encapsulating suits must protect employees from the particular hazards which are identified during site characterization and analysis.

(2) Totally encapsulating suits must be capable of maintaining positive air pressure. (See WAC 296-62-41081 - Appendix A for a test method which may be used to evaluate this requirement.)

(3) Totally encapsulating suits must be capable of preventing inward test gas leakage of more than 0.5 percent. (See WAC 296-62-41081 - Appendix A for a test method which may be used to evaluate this requirement.)

NEW SECTION

WAC 296-62-41035 Personal protective equipment (PPE) program. A written personal protective equipment program, which is part of the emergency response plan required in WAC 296-62-41011 must be established. The PPE program must address the elements listed below. When elements, such as donning and doffing procedures, are provided by the manufacturer of a piece of equipment and are attached to the plan, they need not be rewritten into the plan as long as they adequately address the procedure or element.

(1) PPE selection based on site hazards,

- (2) PPE use and limitations of the equipment,
- (3) Work mission duration,
- (4) PPE maintenance and storage,
- (5) PPE decontamination and disposal,
- (6) PPE training and proper fitting,
- (7) PPE donning and doffing procedures,
- (8) PPE inspection procedures before, during, and after use,
- (9) Evaluation of the effectiveness of the PPE program, and
- (10) Limitations during temperature extremes, heat stress, and other appropriate medical considerations.

NEW SECTION

WAC 296-62-41040 Medical surveillance and consultation for emergency response.

NEW SECTION

WAC 296-62-41041 Employees covered. The medical surveillance program must be instituted by the employer for the following employees:

(1) All employees who are or may be exposed to hazardous substances or health hazards at or above the permissible exposure limits or, if there is no permissible exposure limit, above the published exposure levels for these substances, without regard to the use of respirators, for 30 days or more a year;

(2) Members of an organized and designated HAZMAT team and hazardous materials specialists must receive a baseline physical examination and be provided with medical surveillance.

(3) Any emergency response employees who exhibit signs or symptoms which may have resulted from exposure to hazardous substances during the course of an emergency incident, either immediately or subsequently, must be provided with medical consultation as required in WAC 296-62-41041(2).

NEW SECTION

WAC 296-62-41042 Frequency of medical examinations and consultations. Medical examinations and consultations must be made available by the employer to each employee covered under subsection (1) of this section on the following schedules:

(1) For employees covered under WAC 296-62-41041 (1) and (2):

(a) Before assignment;

(b) At least once every twelve months for each employee covered unless the attending physician believes a longer interval (not greater than biennially) is appropriate;

(c) At termination of employment or reassignment to an area where the employee would not be covered if the employee has not had an examination within the last six months;

(d) As soon as possible upon notification by an employee that the employee has developed signs or symptoms indicating possible overexposure to hazardous substances or health

hazards, or that the employee has been injured or exposed above the permissible exposure limits, or published exposure levels in an emergency situation;

(e) At more frequent times, if the examining physician determines that an increased frequency of examination is medically necessary.

(2) For employees covered under WAC 296-62-41042 (1)(c) and for all employees including those employees covered by chapter 296-62 WAC, Part R who may have been injured, received a health impairment, developed signs or symptoms which may have resulted from exposure to hazardous substances resulting from an emergency incident, or exposed during an emergency incident to hazardous substances at concentrations above the permissible exposure limits or the published exposure levels without the necessary personal protective equipment being used:

(a) As soon as possible following the emergency incident or development of signs or symptoms;

(b) At additional times, if the examining physician determines that follow-up examinations or consultations are medically necessary.

NEW SECTION

WAC 296-62-41043 Content of medical examinations and consultations. (1) Medical examinations required by WAC 296-62-41042 must include a medical and work history (or updated history if one is in the employee's file) with special emphasis on symptoms related to the handling of hazardous substances and health hazards, and to fitness for duty including the ability to wear any required PPE under conditions (i.e., temperature extremes) that may be expected at the worksite.

(2) The content of medical examinations or consultations made available to employees under this section shall be determined by the examining physician. The guidelines in the Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities (see Appendix D, Reference #10) should be consulted.

NEW SECTION

WAC 296-62-41044 Examination by a physician and costs. All medical examinations and procedures must be performed by or under the supervision of a licensed physician, preferably one knowledgeable in occupational medicine, and must be provided without cost to the employee, without loss of pay, and at a reasonable time and place.

NEW SECTION

WAC 296-62-41045 Information provided to the physician. The employer must provide one copy of this standard and its appendices to the examining physician, and in addition, the following for each employee:

(1) A description of the employee's duties as they relate to the employee's exposures;

(2) The employee's exposure levels or anticipated exposure levels;

(3) A description of any personal protective equipment used or to be used;

(4) Information from previous medical examinations of the employee which is not readily available to the examining physician; and

(5) Information required in WAC 296-62-071 through 296-62-07121.

NEW SECTION

WAC 296-62-41046 Physician's written opinion. (1) The employer must obtain and furnish the employee with a copy of a written opinion from the examining physician containing the following:

(a) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health from work in hazardous waste operations or emergency response or from respirators use.

(b) The physician's recommended limitations upon the employees assigned work.

(c) The results of the medical examination and tests if requested by the employee.

(d) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(2) The written opinion obtained by the employer must not reveal specific findings or diagnoses unrelated to occupational exposures.

NEW SECTION

WAC 296-62-41047 Recordkeeping of medical surveillance activities. (1) An accurate record of the medical surveillance required by this section must be retained. This record must be retained for the period specified and meet the criteria of chapter 296-62 WAC, Part B.

(2) The record required in (a) of this subsection must include at least the following information:

(a) The name and Social Security number of the employee;

(b) Physicians' written opinions, recommended limitations, and results of examinations and tests;

(c) Any employee medical complaints related to exposure to hazardous substances;

(d) A copy of the information provided to the examining physician by the employer, with the exception of the standard and its appendices.

NEW SECTION

WAC 296-62-41060 Post emergency response operations.

NEW SECTION

WAC 296-62-41061 Removal of hazardous substances. Upon completion of the emergency response, if it is determined that it is necessary to remove hazardous sub-

stances, health hazards, and materials contaminated with them (such as contaminated soil or other elements of the natural environment) from the site of the incident, the employer conducting the clean-up must comply with chapter 296-62 WAC, Part P.

NEW SECTION

WAC 296-62-41063 Employees training and protective equipment. Where the clean-up is done on plant property using plant or workplace employees, such employees must have completed the training requirements of WAC 296-24-567(1), 296-62-071, and 296-62-054, and other appropriate safety and health training made necessary by the tasks that they are expected to be performed such as personal protective equipment and decontamination procedures. All equipment to be used in the performance of the clean-up work must be in serviceable condition and must have been inspected before use.

NEW SECTION

WAC 296-62-41080 Appendices to Part R—Emergency response.

Note: The following appendices serve as nonmandatory guidelines to assist employees and employers in complying with the appropriate requirements of this part. However, WAC 296-62-41030 makes mandatory in certain circumstances the use of Level A and Level B personal protective equipment protection.

NEW SECTION

WAC 296-62-41081 Appendix A—Personal protective equipment test methods. This appendix sets forth the nonmandatory examples of tests which may be used to evaluate compliance with WAC 296-62-41030. Other tests and other challenge agents may be used to evaluate compliance.

(1) Totally encapsulating chemical protective suit pressure test.

(a) Scope.

(i) This practice measures the ability of a gas tight totally encapsulating chemical protective suit material, seams, and closures to maintain a fixed positive pressure. The results of this practice allow the gas tight integrity of a total-encapsulating chemical protective suit to be evaluated.

(ii) Resistance of the suit materials to permeation, penetration, and degradation by specific hazardous substances is not determined by this test method.

(b) Definition of terms.

(i) "Totally encapsulated chemical protective suit (TECP suit)" means a full body garment which is constructed of protective clothing materials; covers the wearer's torso, head, arms, and legs; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer and respirator by itself or in combination with the wearer's gloves and boots.

(ii) "Protective clothing material" means any material or combination of materials used in an item of clothing for the

purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.

(iii) "Gas tight" means for the purpose of this test method the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.

(c) Summary of test method. The TECP suit is visually inspected and modified for the test. The test apparatus is attached to the suit to permit inflation to the pretest suit expansion pressure for removal of suit wrinkles and creases. The pressure is lowered to the test pressure and monitored for three minutes. If the pressure drop is excessive, the TECP suit fails the test and is removed from service. The test is repeated after leak location and repair.

(d) Required supplies.

(i) Source of compressed air.

(ii) Test apparatus for suit testing including a pressure measurement device with a sensitivity of at least 1/4 inch water gauge.

(iii) Vent valve closure plugs or sealing tape.

(iv) Soapy water solution and soft brush.

(v) Stopwatch or appropriate timing device.

(e) Safety precautions. Care must be taken to provide the correct pressure safety devices required for the source of compressed air used.

(f) Test procedure. Before each test, the tester shall perform a visual inspection of the suit. Check the suit for seam integrity by visually examining the seams and gently pulling on the seams. Ensure that all air supply lines, fittings, visor, zippers, and valves are secure and show no signs of deterioration.

(i) Seal off the vent valves along with any other normal inlet or exhaust points (such as umbilical air line fittings or facepiece opening) with tape or other appropriate means (caps, plugs, fixture, etc.). Care should be exercised in the sealing process not to damage any of the suit components.

(ii) Close all closure assemblies.

(iii) Prepare the suit for inflation by providing an improvised connection point on the suit for connecting an airline. Attach the pressure test apparatus to the suit to permit suit inflation from a compressed air source equipped with a pressure indicating regulator. The leak tightness of the pressure test apparatus should be tested before and after each test by closing off the end of the tubing attached to the suit and assuring a pressure of three inches water gauge for three minutes can be maintained. If a component is removed for the test, that component must be replaced and a second test conducted with another component removed to permit a complete test of the ensemble.

(iv) The pretest expansion pressure (A) and the suit test pressure (B) must be supplied by the suit manufacturer, but in no case must they be less than (A)= 3 inches water gauge and (B)=2 inches water gauge. The ending suit pressure (C) must be no less than eighty percent of the test pressure (B); i.e., the pressure drop must not exceed twenty percent of the test pressure (B).

(v) Inflate the suit until the pressure inside is equal to pressure (A), the pretest expansion suit pressure. Allow at least one minute to fill out the wrinkles in the suit. Release sufficient air to reduce the suit pressure to pressure (B), the

suit test pressure. Begin timing. At the end of three minutes, record the suit pressure as pressure (C), the ending suit pressure. The difference between the suit test pressure and the ending suit test pressure (B)-(C) must be defined as the suit pressure drop.

(vi) If the suit pressure drop is more than twenty percent of the suit test pressure (B) during the three minute test period, the suit fails the test and must be removed from service.

(g) Retest procedure.

(i) If the suit fails the test check for leaks by inflating the suit to pressure (A) and brushing or wiping the entire suit (including seams, closures, lens gaskets, glove-to-sleeve joints, etc.) with a mild soap and water solution. Observe the suit for the formation of soap bubbles, which is an indication of a leak. Repair all identified leaks.

(ii) Retest the TECP suit as outlined in (f) of this subsection.

(h) Report. Each TECP suit tested by this practice must have the following information recorded.

(i) Unique identification number, identifying brand name, date of purchase, material of construction, and unique fit features; e.g., special breathing apparatus.

(ii) The actual values for test pressures (A), (B), and (C) must be recorded along with the specific observation times. If the ending pressure (C) is less than eighty percent of the test pressure (B), the suit shall be identified as failing the test. When possible, the specific leak location shall be identified in the test records. Retest pressure data must be recorded as an additional test.

(iii) The source of the test apparatus used must be identified and the sensitivity of the pressure gauge must be recorded.

(iv) Records must be kept for each pressure test even if repairs are being made at the test location.

Caution: Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked. Care should also be exercised to assure that the inside and outside of the suit is completely dry before it is put into storage.

(2) Totally encapsulating chemical protective suit qualitative leak test.

(a) Scope.

(i) This practice semiquantitatively tests gas tight totally encapsulating chemical protective suit integrity by detecting inward leakage of ammonia vapor. Since no modifications are made to the suit to carry out this test, the results from this practice provide a realistic test for the integrity of the entire suit.

(ii) Resistance of the suit materials to permeation, penetration, and degradation is not determined by this test method. ASTM test methods are available to test suit materials for those characteristics and the tests are usually conducted by the manufacturers of the suits.

(b) Definition of terms.

(i) "Totally encapsulated chemical protective suit (TECP suit)" means a full body garment which is constructed of pro-

TECTIVE clothing materials; covers the wearer's torso, head, arms, and legs; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer and respirator by itself or in combination with the wearer's gloves and boots.

(ii) "Protective clothing material" means any material or combination of materials used in an item of clothing for the purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.

(iii) "Gas tight" means for the purpose of this test method the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.

(iv) "Intrusion coefficient." A number expressing the level of protection provided by a gas tight totally encapsulating chemical protective suit. The intrusion coefficient is calculated by dividing the test room challenge agent concentration by the concentration of challenge agent found inside the suit. The accuracy of the intrusion coefficient is dependent on the challenge agent monitoring methods. The larger the intrusion coefficient, the greater the protection provided by the TECP suit.

(c) Summary of recommended practice. The volume of concentrated aqueous ammonia solution (ammonia hydroxide, NH₄OH) required to generate the test atmosphere is determined using the directions outlined in WAC 296-62-41081 (2)(f)(i). The suit is donned by a person wearing the appropriate respiratory equipment (either a positive pressure self-contained breathing apparatus or a supplied air respirator) and worn inside the enclosed test room. The concentrated aqueous ammonia solution is taken by the suited individual into the test room and poured into an open plastic pan. A two-minute evaporation period is observed before the test room concentration is measured using a high range ammonia length of stain detector tube. When the ammonia reaches a concentration of between 1000 and 1200 ppm, the suited individual starts a standardized exercise protocol to stress and flex the suit. After this protocol is completed the test room concentration is measured again. The suited individual exits the test room and his stand-by person measures the ammonia concentration inside the suit using a low range ammonia length of stain detector tube or other more sensitive ammonia detector. A stand-by person is required to observe the test individual during the test procedure, aid the person in donning and doffing the TECP suit and monitor the suit interior. The intrusion coefficient of the suit can be calculated by dividing the average test area concentration by the interior suit concentration. A colorimetric indicator strip of bromophenol blue is placed on the inside of the suit facepiece lens so that the suited individual is able to detect a color change and know if the suit has a significant leak. If a color change is observed the individual should leave the test room immediately.

(d) Required supplies.

(i) A supply of concentrated aqueous ammonium hydroxide, 58% by weight.

(ii) A supply of bromophenol/blue indicating paper, sensitive to 5-10 ppm ammonia or greater over a two-minute period of exposure [pH 3.0 (yellow) to pH 4.6 (blue)].

(iii) A supply of high range (0.5-10 volume percent) and low range (5-700 ppm) detector tubes for ammonia and the corresponding sampling pump. More sensitive ammonia detectors can be substituted for the low range detector tubes to improve the sensitivity of this practice.

(iv) A shallow plastic pan (PVC) at least 12":14":1" and a half pint plastic container (PVC) with tightly closing lid.

(v) A graduated cylinder or other volumetric measuring device of at least fifty milliliters in volume with an accuracy of at least ± 1 milliliters.

(e) Safety precautions.

(i) Concentrated aqueous ammonium hydroxide, NH_4OH is a corrosive volatile liquid requiring eye, skin, and respiratory protection. The person conducting the test must review the MSDS for aqueous ammonia.

(ii) Since the established permissible exposure limit for ammonia is 35 ppm as a 15 minute STEL, only persons wearing a positive pressure self-contained breathing apparatus or a supplied air respirator shall be in the chamber. Normally only the person wearing the total-encapsulating suit will be inside the chamber. A stand-by person shall have a self-contained breathing apparatus, or a positive pressure supplied air respirator available to enter the test area should the suited individual need assistance.

(iii) A method to monitor the suited individual must be used during this test. Visual contact is the simplest but other methods using communication devices are acceptable.

(iv) The test room must be large enough to allow the exercise protocol to be carried out and then to be ventilated to allow for easy exhaust of the ammonia test atmosphere after the test(s) are completed.

(v) Individuals must be medically screened for the use of respiratory protection and checked for allergies to ammonia before participating in this test procedure.

(f) Test procedure.

(i) Measure the test area to the nearest foot and calculate its volume in cubic feet. Multiply the test area volume by 0.2 milliliters of concentrated aqueous ammonia per cubic foot of test area volume to determine the approximate volume of concentrated aqueous ammonia required to generate 1000 ppm in the test area.

(A) Measure this volume from the supply of concentrated ammonia and place it into a closed plastic container.

(B) Place the container, several high range ammonia detector tubes and the pump in the clean test pan and locate it near the test area entry door so that the suited individual has easy access to these supplies.

(ii) In a noncontaminated atmosphere, open a presealed ammonia indicator strip and fasten one end of the strip to the inside of the suit face shield lens where it can be seen by the wearer. Moisten the indicator strip with distilled water. Care must be taken not to contaminate the detector part of the indicator paper by touching it. A small piece of masking tape or equivalent should be used to attach the indicator strip to the interior of the suit face shield.

(iii) If problems are encountered with this method of attachment the indicator strip can be attached to the outside of the respirator facepiece being used during the test.

(iv) Don the respiratory protective device normally used with the suit, and then don the TECP suit to be tested. Check to be sure all openings which are intended to be sealed (zippers, gloves, etc.) are completely sealed. DO NOT, however, plug off any venting valves.

(v) Step into the enclosed test room such as a closet, bathroom, or test booth, equipped with an exhaust fan. No air should be exhausted from the chamber during the test because this will dilute the ammonia challenge concentrations.

(vi) Open the container with the premeasured volume of concentrated aqueous ammonia within the enclosed test room, and pour the liquid into the empty plastic test pan. Wait two minutes to allow for adequate volatilization of the concentrated aqueous ammonia. A small mixing fan can be used near the evaporation pan to increase the evaporation rate of the ammonia solution.

(vii) After two minutes a determination of the ammonia concentration within the chamber should be made using the high range colorimetric detector tube. A concentration of 1000 ppm ammonia or greater must be generated before the exercises are started.

(viii) To test the integrity of the suit the following four minute exercise protocol should be followed:

(A) Raising the arms above the head with at least fifteen raising motions completed in one minute.

(B) Walking in place for one minute with at least fifteen raising motions of each leg in a one-minute period.

(C) Touching the toes with at least ten complete motions of the arms from above the head to touching of the toes in a one-minute period.

(D) Knee bends with at least ten complete standing and squatting motions in a one-minute period.

(ix) If at any time during the test the colorimetric indicating paper should change colors the test should be stopped and (f)(x) and (xi) of this subsection initiated.

(x) After completion of the test exercise, the test area concentration should be measured again using the high range colorimetric detector tube.

(xi) Exit the test area.

(xii) The opening created by the suit zipper or other appropriate suit penetration should be used to determine the ammonia concentration in the suit with the low range length of stain detector tube or other ammonia monitor. The internal TECP suit air should be sampled far enough from the enclosed test area to prevent a false ammonia reading.

(xiii) After completion of the measurement of the suit interior ammonia concentration the test is concluded and the suit is doffed and the respirator removed.

(xiv) The ventilating fan for the test room should be turned on and allowed to run for enough time to remove the ammonia gas. The fan must be vented to the outside of the building.

(xv) Any detectable ammonia in the suit interior (5 ppm ammonia (NH_3) or more for the length of stain detector tube) indicates the suit failed the test. When other ammonia detectors are used, a lower level of detection is possible and it should be specified as the pass/fail criteria.

(xvi) By following this test method an intrusion coefficient of approximately two hundred or more can be measured

with the suit in a completely operational condition. If the intrusion coefficient is two hundred or more, then the suit is suitable for emergency response and field use.

(g) Retest procedures.

(i) If the suit fails this test, check for leaks by following the pressure test in test (A) above.

(ii) Retest the TECP suit as outlined in the test procedure in (f) of this subsection.

(h) Report.

(i) Each gas tight totally encapsulating chemical protective suit tested by this practice shall have the following information recorded.

(A) Unique identification number, identifying brand name, date of purchase, material of construction, and unique suit features; e.g., special breathing apparatus.

(B) General description of test room used for test.

(C) Brand name and purchase date of ammonia detector strips and color change data.

(D) Brand name, sampling range, and expiration date of the length of stain ammonia detector tubes. The brand name and model of the sampling pump should also be recorded. If another type of ammonia detector is used, it should be identified along with its minimum detection limit for ammonia.

(E) Actual test results must list the two test area concentrations, their average, the interior suit concentration, and the calculated intrusion coefficient. Retest data must be recorded as an additional test.

(ii) The evaluation of the data must be specified as "suit passed" or "suit failed" and the date of the test. Any detectable ammonia (5 ppm or greater for the length of stain detector tube) in the suit interior indicates the suit fails this test. When other ammonia detectors are used, a lower level of detection is possible and it should be specified as the pass/fail criteria.

Caution: Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked.

Care should also be exercised to assure that the inside and outside of the suit is completely dry before it is put into storage.

NEW SECTION

WAC 296-62-41082 Appendix B—General description and discussion of the levels of protection and protective gear. (1) This appendix sets forth information about personal protective equipment (PPE) protection levels which may be used to assist employers in complying with the PPE requirements of this section.

(2) As required by the standard, PPE must be selected which will protect employees from the specific hazards which they are likely to encounter during their work on-site.

(3) Selection of the appropriate PPE is a complex process which must take into consideration a variety of factors. Key factors involved in this process are identification of the hazards or suspected hazards, their routes of potential hazard to employees (inhalation, skin absorption, ingestion, and eye or skin contact), and the performance of the PPE materials

(and seams) in providing a barrier to these hazards. The amount of protection provided by PPE is material-hazard specific. That is, protective equipment materials will protect well against some hazardous substances and poorly, or not at all, against others. In many instances, protective equipment materials cannot be found which will provide continuous protection from the particular hazardous substance. In these cases the breakthrough time of the protective material should exceed the work durations.

(4) Other factors in this selection process to be considered are matching the PPE to the employee's work requirements and task-specific conditions. The durability of PPE materials, such as tear strength and seam strength, must be considered in relation to the employee's tasks. The effects of PPE in relation to heat stress and task duration are a factor in selecting and using PPE. In some cases layers of PPE may be necessary to provide sufficient protection, or to protect expensive PPE inner garments, suits or equipment.

(5) The more that is known about the hazards at the site, the easier the job of PPE selection becomes. As more information about the hazards and conditions at the site becomes available, the site supervisor can make decisions to upgrade or downgrade the level of PPE protection to match the tasks at hand.

(6) The following are guidelines which an employer can use to begin the selection of the appropriate PPE. As noted above, the site information may suggest the use of combinations of PPE selected from the different protection levels (i.e., A, B, C, or D) as being more suitable to the hazards of the work. It should be cautioned that the listing below does not fully address the performance of the specific PPE material in relation to the specific hazards at the job site, and that PPE selection, evaluation and reselection is an ongoing process until sufficient information about the hazards and PPE performance is obtained.

(7) Personal protective equipment has been divided into four categories based on the degree of protection afforded (see subsection (8) of this section for further explanation of Levels A, B, C, and D hazards):

(a) Level A. To be selected when the greatest level of skin, respiratory, and eye protection is required. The following constitute Level A equipment; it may be used as appropriate:

(i) Positive pressure, full-facepiece self-contained breathing apparatus (SCBA), or positive pressure supplied-air respirator with escape SCBA, approved by the National Institute for Occupational Safety and Health (NIOSH).

(ii) Totally encapsulating chemical-protective suit.

(iii) Coveralls.*

(iv) Long underwear.*

(v) Gloves, outer, chemical-resistant.

(vi) Gloves, inner, chemical-resistant.

(vii) Boots, chemical-resistant steel toe and shank.

(viii) Hard hat (under suit).*

(ix) Disposable protective suit, gloves, and boots. (Depending on suit construction, may be worn over totally encapsulating suit.)

*Optional, as applicable.

(b) Level B. The highest level of respiratory protection is necessary but a lesser level of skin protection is needed.

The following constitute Level B equipment; it may be used as appropriate:

(i) Positive pressure, full-facepiece self-contained breathing apparatus (SCBA), or positive pressure supplied-air respirator with escape SCBA (NIOSH approved).

(ii) Hooded chemical-resistant clothing (overalls and long-sleeved jacket, coveralls, one or two-piece chemical-splash suit, disposable chemical-resistant overalls).

(iii) Coveralls.*

(iv) Gloves, outer, chemical-resistant.

(v) Gloves, inner, chemical-resistant.

(vi) Boots, outer, chemical-resistant steel toe and shank.

(vii) Boot-covers, outer, chemical-resistant (disposable).*

(viii) Hard hat.

(ix) Face shield.*

*Optional, as applicable.

(c) Level C. The concentration(s) and type(s) of airborne substance(s) is known and the criteria for using air purifying respirators are met. The following constitute Level C equipment; it may be used as appropriate.

(i) Full-face or half-mask, air purifying respirators (NIOSH approved).

(ii) Hooded chemical-resistant clothing (overalls; two-piece chemical-splash suit; disposable chemical-resistant overalls).

(iii) Coveralls.*

(iv) Gloves, outer, chemical-resistant.

(v) Gloves, inner, chemical-resistant.

(vi) Boots (outer), chemical-resistant steel toe and shank.*

(vii) Boot-covers, outer, chemical-resistant (disposable).*

(viii) Hard hat.

(ix) Escape mask.*

(x) Face shield.*

*Optional, as applicable.

(d) Level D. A work uniform affording minimal protection: Used for nuisance contamination only. The following constitute Level D equipment; it may be used as appropriate.

(i) Coveralls.

(ii) Gloves.*

(iii) Boots/shoes, chemical-resistant steel toe and shank.

(iv) Boots, outer, chemical-resistant (disposable).*

(v) Safety glasses or chemical splash goggles.*

(vi) Hard hat.

(vii) Escape mask.*

(viii) Face shield.*

*Optional, as applicable.

(8) Part B. The types of hazards for which Levels A, B, C, and D protection are appropriate are described below:

(a) Level A - Level A protection should be used when:

(i) The hazardous substance has been identified and requires the highest level of protection for skin, eyes, and the respiratory system based on either the measured (or potential for) high concentration of atmospheric vapors, gases, or particulates; or the site operations and work functions involve a high potential for splash, immersion, or exposure to unexpected vapors, gases, or particulates of materials that are

harmful to skin or capable of being absorbed through the intact skin;

(ii) Substances with a high degree of hazard to the skin are known or suspected to be present, and skin contact is possible; or

(iii) Operations are being conducted in confined, poorly ventilated areas, and the absence of conditions requiring Level A have not yet been determined.

(b) Level B protection should be used when:

(i) The type and atmospheric concentration of substances have been identified and require a high level of respiratory protection, but less skin protection;

(ii) The atmosphere contains less than 19.5 percent oxygen; or

(iii) The presence of incompletely identified vapors or gases is indicated by a direct-reading organic vapor detection instrument, but vapors and gases are not suspected of containing high levels of chemicals harmful to skin or capable of being absorbed through the skin.

Note: This involves atmospheres with IDLH concentrations of specific substances that present severe inhalation hazards and that do not represent a severe skin hazard; or that do not meet the criteria for use of air-purifying respirators.

(c) Level C protection should be used when:

(i) The atmospheric contaminants, liquid splashes, or other direct contact will not adversely affect or be absorbed through any exposed skin;

(ii) The types of air contaminants have been identified, concentrations measured, and an air-purifying respirator is available that can remove the contaminants; and

(iii) All criteria for the use of air-purifying respirators are met.

(d) Level D protection should be used when:

(i) The atmosphere contains no known hazard; and

(ii) Work functions preclude splashes, immersion, or the potential for unexpected inhalation of or contact with hazardous levels of any chemicals.

Note: As stated before combinations of personal protective equipment other than those described for Levels A, B, C, and D protection may be more appropriate and may be used to provide the proper level of protection.

(9) As an aid in selecting suitable chemical protective clothing, it should be noted that the National Fire Protection Association (NFPA) has developed standards on chemical protective clothing. The standards that have been adopted include:

(a) NFPA 1991 - Standard on Vapor-Protective Suits for Hazardous Chemical Emergencies (EPA Level A Protective Clothing);

(b) NFPA 1992 - Standard on Liquid Splash-Protective Suits for Hazardous Chemical Emergencies (EPA Level B Protective Clothing);

(c) NFPA 1993 - Standard on Liquid Splash-Protective Suits for Nonemergency, Nonflammable Hazardous Chemical Situations (EPA Level B Protective Clothing).

(10) These standards apply documentation and performance requirements to the manufacture of chemical protective suits. Chemical protective suits meeting these require-

ments are labelled as compliant with the appropriate standard. It is recommended that chemical protective suits that meet these standards be used.

NEW SECTION

WAC 296-62-41084 Appendix C—Compliance guidelines. (1) For hazardous materials specialists (usually members of hazardous materials teams), the training will need to address the care, use and/or testing of chemical protective clothing including totally encapsulating suits, the medical surveillance program, the standard operating procedures for the hazardous materials team including the use of plugging and patching equipment and other subject areas.

(2) Officers and leaders who may be expected to be in charge at an incident will need to be fully knowledgeable of their company's incident command system. They will need to know where and how to obtain additional assistance and be familiar with the local district's emergency response plan and the state emergency response plan.

(3) Specialist employees such as technical experts, medical experts, or environmental experts that work with hazardous materials in their regular jobs, who may be sent to the incident scene by the shipper, manufacturer or governmental agency to advise and assist the person in charge of the incident will have training on an annual basis. Their training must include the care and use of personal protective equipment including respirators; knowledge of the incident command system and how they are to relate to it; and those areas needed to keep them current in their respective field as it relates to safety and health involving specific hazardous substances.

(4) Those skilled support personnel, such as employees who work for public works departments or equipment operators who operate bulldozers, sand trucks, backhoes, etc., who may be called to the incident scene to provide emergency support assistance, will need to have at least a safety and health briefing before entering the area of potential or actual exposure. These specially skilled support personnel, who have not been a part of the emergency plan and do not meet the training requirements, must be made aware of the hazards they face and be provided all necessary protective clothing and equipment required for their tasks.

(5) There are two National Fire Protection Association standards, NFPA 472—"Standard for Professional Competence of Responders to Hazardous Material Incidents" and NFPA 471—"Recommended Practice for Responding to Hazardous Material Incidents," which are excellent resource documents to aid fire departments and other emergency response organizations in developing their training program materials. NFPA 472 provides guidance on the skills and knowledge needed for first responder awareness level, first responder operations level, HAZMAT technicians, and HAZMAT specialist. It also offers guidance for the officer corp who will be in charge of hazardous substance incidents.

(6) Decontamination. Decontamination procedures will be tailored to the specific hazards of the site and will vary in complexity, and number of steps, depending on the level of hazard and the employee's exposure to the hazard. Decontamination procedures and PPE decontamination methods

will vary depending upon the specific substance, since one procedure or method will not work for all substances. Evaluation of decontamination methods and procedures should be performed, as necessary, to assure that employees are not exposed to hazards by reusing PPE. References in WAC 296-62-41085, Appendix D, may be used for guidance in establishing an effective decontamination program. In addition, the United States Coast Guard Manual, "Policy Guidance for Response to Hazardous Chemical Releases," United States Department of Transportation, Washington, D.C. (COMDTINST M16465.30), is a good reference for establishing an effective decontamination program.

(7) Emergency response plans. States, along with designated districts within the states, will be developing or have developed emergency response plans. These state and district plans are to be used in the emergency response plans called for in this standard. Each employer needs to assure that its emergency response plan is compatible with the local plan. The major reference being used to aid in developing the state and local district plans is the Hazardous Materials Emergency Planning Guide, NRT-1. The current Emergency Response Guidebook from the United States Department of Transportation, CMA's CHEMTREC and the Fire Service Emergency Management Handbook may also be used as resources.

(8) Personal protective equipment programs. The purpose of personal protective clothing and equipment (PPE) is to shield or isolate individuals from the chemical, physical, and biologic hazards that may be encountered at a hazardous substance site.

(a) As discussed in Appendix B, no single combination of protective equipment and clothing is capable of protecting against all hazards. Thus PPE should be used in conjunction with other protective methods and its effectiveness evaluated periodically.

(b) The use of PPE can itself create significant worker hazards, such as heat stress, physical and psychological stress, and impaired vision, mobility, and communication. For any given situation, equipment and clothing will be selected that provide an adequate level of protection. However, over protection, as well as under protection, can be hazardous and should be avoided where possible.

(c) Two basic objectives of any PPE program will be to protect the wearer from safety and health hazards, and to prevent injury to the wearer from incorrect use and/or malfunction of the PPE. To accomplish these goals, a comprehensive PPE program will include hazard identification, medical monitoring, environmental surveillance, selection, use, maintenance, and decontamination of PPE and its associated training.

(d) The written PPE program will include policy statements, procedures, and guidelines. Copies will be made available to all employees and a reference copy will be made available at the worksite. Technical data on equipment, maintenance manuals, relevant regulations, and other essential information will also be collected and maintained.

(9) Incident command system (ICS). WAC 296-62-40115(2) requires the implementation of an ICS. The ICS is an organized approach to effectively control and manage operations at an emergency incident. The individual in

charge of the ICS is the senior official responding to the incident. The ICS is not much different than the "command post" approach used for many years by the fire service. During large complex fires involving several companies and many pieces of apparatus, a command post would be established. This enables one individual to be in charge of managing the incident, rather than having several officers from different companies making separate, and sometimes conflicting, decisions. The individual in charge of the command post would delegate responsibility for performing various tasks to subordinate officers. Additionally, all communications were routed through the command post to reduce the number of radio transmissions and eliminate confusion. However, strategy, tactics, and all decisions were made by one individual.

(a) The ICS is a very similar system, except it is implemented for emergency response to all incidents, both large and small, that involve hazardous substances.

(b) For a small incident, the individual in charge of the ICS may perform many tasks of the ICS. There may not be any, or little, delegation of tasks to subordinates. For example, in response to a small incident, the individual in charge of the ICS, in addition to normal command activities, may become the safety officer and may designate only one employee (with proper equipment) as a back-up to provide assistance if needed. WISHA does recommend, however, that at least two employees be designated as back-up personnel since the assistance needed may include rescue.

(c) To illustrate the operation of the ICS, the following scenario might develop during a small incident, such as an overturned tank truck with a small leak of flammable liquid.

(d) The first responding senior officer would implement and take command of the ICS. That person would size-up the incident and determine if additional personnel and apparatus were necessary; would determine what actions to take to control the leak; and, determine the proper level of personal protective equipment. If additional assistance is not needed, the individual in charge of the ICS would implement actions to stop and control the leak using the fewest number of personnel that can effectively accomplish the tasks. The individual in charge of the ICS then would designate him or herself as the safety officer and two other employees as a back-up in case rescue may become necessary. In this scenario, decontamination procedures would not be necessary.

(e) A large complex incident may require many employees and difficult, time-consuming efforts to control. In these situations, the individual in charge of the ICS will want to delegate different tasks to subordinates in order to maintain a span of control that will keep the number of subordinates, that are reporting, to a manageable level.

(f) Delegation of tasks at large incidents may be by location, where the incident scene is divided into sectors, and subordinate officers coordinate activities within the sector that they have been assigned.

(g) Delegation of tasks can also be by function. Some of the functions that the individual in charge of the ICS may want to delegate at a large incident are: Medical services; evacuation; water supply; resources (equipment, apparatus); media relations; safety; and, site control (integrate activities with police for crowd and traffic control). Also for a large incident, the individual in charge of the ICS will designate

several employees as back-up personnel; and a number of safety officers to monitor conditions and recommend safety precautions.

(h) Therefore, no matter what size or complexity an incident may be, by implementing an ICS there will be one individual in charge who makes the decisions and gives directions; and, all actions and communications are coordinated through one central point of command. Such a system should reduce confusion, improve safety, organize and coordinate actions, and should facilitate effective management of the incident.

(10) Site safety and control plans.

(a) The safety and security of response personnel and others in the area of an emergency response incident site should be of primary concern to the incident commander. The use of a site safety and control plan could greatly assist those in charge of assuring the safety and health of employees on the site.

(b) A comprehensive site safety and control plan should include the following: Summary analysis of hazards on the site and a risk analysis of those hazards; site map or sketch; site work zones (clean zone, transition or decontamination zone, work or hot zone); use of the buddy system; site communications; command post or command center; standard operating procedures and safe work practices; medical assistance and triage area; hazard monitoring plan (air contaminant monitoring, etc.); decontamination procedures and area; and other relevant areas. This plan should be a part of the employer's emergency response plan or an extension of it to the specific site.

(11) Medical surveillance programs.

(a) Workers handling hazardous substances may be exposed to toxic chemicals, safety hazards, biologic hazards, and radiation. Therefore, a medical surveillance program is essential to assess and monitor workers' health and fitness for employment in hazardous waste operations and during the course of work; to provide emergency and other treatment as needed; and to keep accurate records for future reference.

(b) The Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities developed by the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), the United States Coast Guard (USCG), and the Environmental Protection Agency (EPA); October 1985 provides an excellent example of the types of medical testing that should be done as part of a medical surveillance program.

(12) New technology and spill containment programs.

Where hazardous substances may be released by spilling from a container that will expose employees to the hazards of the materials, the employer will need to implement a program to contain and control the spilled material. Diking and ditching, as well as use of absorbents like diatomaceous earth, are traditional techniques which have proven to be effective over the years. However, in recent years new products have come into the marketplace, the use of which complement and increase the effectiveness of these traditional methods. These new products also provide emergency responders and others with additional tools or agents to use to reduce the hazards of spilled materials.

These agents can be rapidly applied over a large area and can be uniformly applied or otherwise can be used to build a small dam, thus improving the workers' ability to control spilled material. These application techniques enhance the intimate contact between the agent and the spilled material allowing for the quickest effect by the agent or quickest control of the spilled material. Agents are available to solidify liquid spilled materials, to suppress vapor generation from spilled materials, and to do both. Some special agents, which when applied as recommended by the manufacturer, will react in a controlled manner with the spilled material to neutralize acids or caustics, or greatly reduce the level of hazard of the spilled material.

There are several modern methods and devices for use by emergency response personnel or others involved with spill control efforts to safely apply spill control agents to control spilled material hazards. These include portable pressurized applicators similar to hand-held portable fire extinguishing devices, and nozzle and hose systems similar to portable fire fighting foam systems which allow the operator to apply the agent without having to come into contact with the spilled material. The operator is able to apply the agent to the spilled material from a remote position.

The solidification of liquids provides for rapid containment and isolation of hazardous substance spills. By directing the agent at run-off points or at the edges of the spill, the reactant solid will automatically create a barrier to slow or stop the spread of the material. Clean-up of hazardous substances is greatly improved when solidifying agents, acid or caustic neutralizers, or activated carbon absorbents are used. Properly applied, these agents can totally solidify liquid hazardous substances or neutralize or absorb them, which results in materials which are less hazardous and easier to handle, transport, and dispose of. The concept of spill treatment, to create less hazardous substances, will improve the safety and level of protection of employees working at spill clean-up operations or emergency response operations to spills of hazardous substances.

The use of vapor suppression agents for volatile hazardous substances, such as flammable liquids and those substances which present an inhalation hazard, is important for protecting workers. The rapid and uniform distribution of the agent over the surface of the spilled material can provide quick vapor knockdown. There are temporary and long-term foam-type agents which are effective on vapors and dusts, and activated carbon adsorption agents which are effective for vapor control and soaking-up of the liquid. The proper use of hose lines or hand-held portable pressurized applicators provides good mobility and permits the worker to deliver the agent from a safe distance without having to step into the untreated spilled material. Some of these systems can be recharged in the field to provide coverage of larger spill areas than the design limits of a single charged applicator unit. Some of the more effective agents can solidify the liquid flammable hazardous substances and at the same time elevate the flashpoint above 140°F so the resulting substance may be handled as a nonhazardous waste material if it meets the United States Environmental Protection Agency's 40 CFR Part 261 requirements (see particularly Sec. 261.21).

All workers performing hazardous substance spill control work are expected to wear the proper protective clothing and equipment for the materials present and to follow the employer's established standard operating procedures for spill control. All involved workers need to be trained in the established operating procedures; in the use and care of spill control equipment; and in the associated hazards and control of such hazards of spill containment work.

These new tools and agents are the things that employers will want to evaluate as part of their new technology program. The treatment of spills of hazardous substances or wastes at an emergency incident as part of the immediate spill containment and control efforts is sometimes acceptable to EPA and a permit exception is described in 40 CFR 264.1 (g)(8) and 265.1 (c)(11).

NEW SECTION

WAC 296-62-41085 Appendix D—References. The following references may be consulted for further information on the subject of this notice:

- (1) OSHA Instruction DFO CPL 2.70 - January 29, 1986, Special Emphasis Program: Hazardous Waste Sites.
- (2) OSHA Instruction DFO CPL 2-2.37A - January 29, 1986, Technical Assistance and Guidelines for Superfund and Other Hazardous Waste Site Activities.
- (3) OSHA Instruction DTS CPL 2.74 - January 29, 1986, Hazardous Waste Activity Form, OSHA 175.
- (4) Hazardous Waste Inspections Reference Manual, U.S. Department of Labor, Occupational Safety and Health Administration, 1986.
- (5) Memorandum of Understanding Among the National Institute for Occupational Safety and Health, the Occupational Safety and Health Administration, the United States Coast Guard, and the United States Environmental Protection Agency; Guidance for Worker Protection During Hazardous Waste Site Investigations and Clean-up and Hazardous Substance Emergencies; December 18, 1980.
- (6) National Priorities List, 1st Edition, October 1984; U.S. Environmental Protection Agency, Revised periodically.
- (7) The Decontamination of Response Personnel, Field Standard Operating Procedures (F.S.O.P.) 7; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, December 1984.
- (8) Preparation of a Site Safety Plan, Field Standard Operating Procedures (F.S.O.P.) 9; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, April 1985.
- (9) Standard Operating Safety Guidelines; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, Environmental Response Team; November 1984.
- (10) Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities, National Institute for Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), U.S. Coast Guard

(USCG), and Environmental Protection Agency (EPA); October 1985.

(11) Protecting Health and Safety at Hazardous Waste Sites: An Overview, U.S. Environmental Protection Agency, EPA/625/9-85/006; September 1985.

(12) Hazardous Waste Sites and Hazardous Substance Emergencies, NIOSH Worker Bulletin, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health; December 1982.

(13) Personal Protective Equipment for Hazardous Materials Incidents: A Selection Guide; U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health; October 1984.

(14) Fire Service Emergency Management Handbook, International Association of Fire Chiefs Foundation, 101 East Holly Avenue, Unit 10B, Sterling, VA 22170, January 1985.

(15) Emergency Response Guidebook, U.S. Department of Transportation, Washington, D.C., 1987.

(16) Report to the Congress on Hazardous Materials Training, Planning and Preparedness, Federal Emergency Management Agency, Washington, D.C., July 1986.

(17) Workbook for Fire Command, Alan V. Brunacini and J. David Beageron, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, 1985.

(18) Fire Command, Alan V. Brunacini, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, 1985.

(19) Incident Command System, Fire Protection Publications, Oklahoma State University, Stillwater, OK 74078, 1983.

(20) Site Emergency Response Planning, Chemical Manufacturers Association, Washington, D.C. 20037, 1986.

(21) Hazardous Materials Emergency Planning Guide, NRT-1, Environmental Protection Agency, Washington, D.C., March 1987.

(22) Community Teamwork: Working Together to Promote Hazardous Materials Transportation Safety. U.S. Department of Transportation, Washington, D.C., May 1983.

(23) Disaster Planning Guide for Business and Industry, Federal Emergency Management Agency, Publication No. FEMA 141, August 1987.

NEW SECTION

WAC 296-62-41086 Appendix E—Training curriculum guidelines. The following nonmandatory general criteria may be used for assistance in developing training curriculum used to meet the training requirements of Part R.

These are generic guidelines and they are not presented as a complete training curriculum for any specific employer. Site-specific training programs must be developed on the basis of a needs assessment of the emergency response operation in accordance with this chapter (chapter 296-62 WAC, Part R).

The guidance set forth here presents a highly effective program that in the areas covered would meet or exceed the regulatory requirements. In addition, other approaches could meet the regulatory requirements.

Suggested general criteria:

Definitions:

Suggested core criteria:

"Competent" means possessing the skills, knowledge, experience, and judgment to perform assigned tasks or activities satisfactorily as determined by the employer.

"Demonstration" means the showing by actual use of equipment or procedures.

"Hands-on training" means training in a simulated work environment that permits each student to have experience performing tasks, making decisions, or using equipment appropriate to the job assignment for which the training is being conducted.

"Initial training" means training required before beginning work.

"Lecture" means an interactive discourse with a class lead by an instructor.

"Proficient" means meeting a stated level of achievement.

"Site-specific" means individual training directed to the operations of a specific job site.

"Training hours" means the number of hours devoted to lecture, learning activities, small group work sessions, demonstration, evaluations, or hands-on experience.

(1) Training facility. The training facility should have available sufficient resources, equipment, and site locations to perform concise and hands-on training when appropriate. Training facilities should have sufficient organization, support staff, and services to conduct training in each of the courses offered.

(2) Training director. Each training program should be under the direction of a training director who is responsible for the program. The training director should have a minimum of two years of employee education experience.

(3) Instructors. Instructors should be deemed competent on the basis of previous documented experience in their area of instruction, successful completion of a "train-the-trainer" program specific to the topics they will teach, and an evaluation of instructional competence by the training director.

(a) Instructors should be required to maintain professional competency by participating in continuing education or professional development programs or by successfully completing an annual refresher course and having an annual review by the training director.

(b) The annual review by the training director should include observation of an instructor's delivery, a review of those observations with the trainer, and an analysis of any instructor or class evaluations completed by the students during the previous year.

(4) Course materials. The training director should approve all course materials to be used by the training provider. Course materials should be reviewed and updated at least annually. Materials and equipment should be in good working order and maintained properly.

(a) All written and audio-visual materials in training curricula should be peer reviewed by technically competent outside reviewers or by a standing advisory committee.

(b) Reviewers should possess expertise in the following disciplines were applicable: Occupational health, industrial hygiene and safety, chemical/environmental engineering,

employee education, or emergency response. One or more of the peer reviewers should be an employee experienced in the work activities to which the training is directed.

(5) Students. The program for accepting students should include:

(a) Assurance that the student is or will be involved in work where chemical exposures are likely and that the student possesses the skills necessary to perform the work.

(b) A policy on the necessary medical clearance.

(6) Ratios. Student-instructor ratios should not exceed thirty students per instructor. Hands-on activity requiring the use of personal protective equipment should have the following student-instructor ratios: For Level C or Level D personal protective equipment the ratio should be ten students per instructor. For Level A or Level B personal protective equipment the ratio should be five students per instructor.

(7) Proficiency assessment. Proficiency should be evaluated and documented by the use of a written assessment and a skill demonstration selected and developed by the training director and training staff. The assessment and demonstration should evaluate the knowledge and individual skills developed in the course of training. The level of minimum achievement necessary for proficiency shall be specified in writing by the training director.

(a) If a written test is used, there should be a minimum of fifty questions. If a written test is used in combination with a skills demonstration, a minimum of twenty-five questions should be used. If a skills demonstration is used, the tasks chosen and the means to rate successful completion should be fully documented by the training director.

(b) The content of the written test or of the skill demonstration shall be relevant to the objectives of the course.

The written test and skill demonstration should be updated as necessary to reflect changes in the curriculum and any update should be approved by the training director.

(c) The proficiency assessment methods, regardless of the approach or combination of approaches used, should be justified, documented and approved by the training director.

(d) The proficiency of those taking the additional courses for supervisors should be evaluated and documented by using proficiency assessment methods acceptable to the training director. These proficiency assessment methods must reflect the additional responsibilities borne by supervisory personnel in hazardous waste operations or emergency response.

(8) Course certificate. Written documentation should be provided to each student who satisfactorily completes the training course. The documentation should include:

(a) Student's name.

(b) Course title.

(c) Course date.

(d) Statement that the student has successfully completed the course.

(e) Name and address of the training provider.

(f) An individual identification number for the certificate.

(g) List of the levels of personal protective equipment used by the student to complete the course.

(i) This documentation may include a certificate and an appropriate wallet-sized laminated card with a photograph of the student and the above information.

(ii) When such course certificate cards are used, the individual identification number for the training certificate should be shown on the card.

(9) Recordkeeping. Training providers should maintain records listing the dates courses were presented, the names of the individual course attendees, the names of those students successfully completing each course, and the number of training certificates issued to each successful student. These records should be maintained for a minimum of five years after the date an individual participated in a training program offered by the training provider. These records should be available and provided upon the student's request or as mandated by law.

(10) Program quality control. The training director should conduct or direct an annual written audit of the training program. Program modifications to address deficiencies, if any, should be documented, approved, and implemented by the training provider. The audit and the program modification documents should be maintained at the training facility.

Suggested Program Quality Control Criteria:

Factors listed here are suggested criteria for determining the quality and appropriateness of employee health and safety training for hazardous waste operations and emergency response.

(a) Training plan. Adequacy and appropriateness of the training program's curriculum development, instructor training, distribution of course materials, and direct student training should be considered, including:

(i) The duration of training, course content, and course schedules/agendas;

(ii) The different training requirements of the various target populations, as specified in the appropriate generic training curriculum;

(iii) The process for the development of curriculum, which includes appropriate technical input, outside review, evaluation, program pretesting.

(iv) The adequate and appropriate inclusion of hands-on, demonstration, and instruction methods;

(v) Adequate monitoring of student safety, progress, and performance during the training.

(b) Program management, training director, staff, and consultants. Adequacy and appropriateness of staff performance and delivering an effective training program should be considered, including:

(i) Demonstration of the training director's leadership in assuring quality of health and safety training;

(ii) Demonstration of the competency of the staff to meet the demands of delivering high quality hazardous waste employee health and safety training;

(iii) Organization charts establishing clear lines of authority;

(iv) Clearly defined staff duties including the relationship of the training staff to the overall program;

(v) Evidence that the training organizational structure suits the needs of the training program;

(vi) Appropriateness and adequacy of the training methods used by the instructors;

(vii) Sufficiency of the time committed by the training director and staff to the training program;

(viii) Adequacy of the ratio of training staff to students;

(ix) Availability and commitment of the training program of adequate human and equipment resources in the areas of:

- (A) Health effects;
- (B) Safety;
- (C) Personal protective equipment (PPE);
- (D) Operational procedures;
- (E) Employee protection practices/procedures;
- (x) Appropriateness of management controls;

(xi) Adequacy of the organization and appropriate resources assigned to assure appropriate training;

(xii) In the case of multiple-site training programs, adequacy of management of the satellite centers.

(c) Training facilities and resources. Adequacy and appropriateness of the facilities and resources for supporting the training program should be considered, including:

- (i) Space and equipment to conduct the training;
- (ii) Facilities for representative hands-on training;
- (iii) In the case of multiple-site programs, equipment and facilities at the satellite centers;

(iv) Adequacy and appropriateness of the quality control and evaluations program to account for instructor performance;

(v) Adequacy and appropriateness of the quality control and evaluation program to ensure appropriate course evaluation, feedback, updating, and corrective action;

(vi) Adequacy and appropriateness of disciplines and expertise being used within the quality control and evaluation program;

(vii) Adequacy and appropriateness of the role of student evaluations to provide feedback for training program improvement.

(d) Quality control and evaluation. Adequacy and appropriateness of quality control and evaluation plans for training programs should be considered, including:

(i) A balanced advisory committee and/or competent outside reviewers to give overall policy guidance;

(ii) Clear and adequate definition of the composition and active programmatic role of the advisory committee or outside reviewers;

(iii) Adequacy of the minutes or reports of the advisory committee or outside reviewers' meetings or written communication;

(iv) Adequacy and appropriateness of the quality control and evaluations program to account for instructor performance;

(v) Adequacy and appropriateness of the quality control and evaluation program to ensure appropriate course evaluation, feedback, updating, and corrective action;

(vi) Adequacy and appropriateness of disciplines and expertise being used within the quality control and evaluation program;

(vii) Adequacy and appropriateness of the role of student evaluations to provide feedback for training program improvement.

(e) Students. Adequacy and appropriateness of the program for accepting students should be considered, including:

(i) Assurance that the student already possess the necessary skills for their job, including necessary documentation;

(ii) Appropriateness of methods the program uses to ensure that recruits are capable of satisfactorily completing training;

(iii) Review and compliance with any medical clearance policy.

(f) Institutional environment and administrative support. The adequacy and appropriateness of the institutional environment and administrative support system for the training program should be considered, including:

(i) Adequacy of the institutional commitment to the employee training program;

(ii) Adequacy and appropriateness of the administrative structure and administrative support.

(g) Summary of evaluation questions. Key questions for evaluating the quality and appropriateness of an overall training program should include the following:

- (i) Are the program objectives clearly stated?
- (ii) Is the program accomplishing its objectives?
- (iii) Are appropriate facilities and staff available?
- (iv) Is there an appropriate mix of classroom, demonstration, and hands-on training?
- (v) Is the program providing quality employee health and safety training that fully meets the intent of regulatory requirements?

(vi) What are the program's main strengths?

(vii) What are the program's main weaknesses?

(viii) What is recommended to improve the program?

(ix) Are instructors instructing according to their training outlines?

(x) Is the evaluation tool current and appropriate for the program content?

(xi) Is the course material current and relevant to the target group?

Suggested Training Curriculum Guidelines:

The following training curriculum guidelines are for those operations specifically identified in this Part R as requiring training. Issues such as qualifications of instructors, training certification, and similar criteria appropriate to all categories of operations addressed in this Part R have been covered in the preceding section and are not addressed in each of the generic guidelines.

(h) Emergency response training.

(i) General considerations. Emergency response organizations are required to consider the topics listed in WAC 296-62-41020. Emergency response organizations may use some or all of the following topics to supplement those mandatory topics when developing their response training programs. Many of the topics would require an interaction between the response provider and the individuals responsible for the site where the response would be expected.

(A) Hazard recognition, including:

(I) Nature of hazardous substances present;

(II) Practical applications of hazard recognition, including presentations on biology, chemistry, and physics.

(B) Principles of toxicology, biological monitoring, and risk assessment.

(C) Safe work practices and general site safety.

(D) Engineering controls and hazardous waste operations.

(E) Site safety plans and standard operating procedures.

- (F) Decontamination procedures and practices.
- (G) Emergency procedures, first aid, and self-rescue.
- (H) Safe use of field equipment.
- (I) Storage, handling, use and transportation of hazardous substances.
- (J) Use, care, and limitations of personal protective equipment.
- (K) Safe sampling techniques.
- (L) Rights and responsibilities of employees under WISHA and other related regulations and laws concerning right-to-know, safety and health, compensations and liability.
- (M) Medical monitoring requirements.
- (N) Community relations.
- (ii) Suggested criteria for specific courses.
 - (A) First responder awareness level.
 - (I) Review of and demonstration of competency in performing the applicable skills of WAC 296-62-41010.
 - (II) Hands-on experience with the U.S. Department of Transportation's Emergency Response Guidebook (ERG) and familiarization with chapter 296-62 WAC, Part C, the hazard communication standard.
 - (III) Review of the principles and practices for analyzing an incident to determine both the hazardous substances present and the basic hazard and response information for each hazardous substance present.
 - (IV) Review of procedures for implementing actions consistent with the local emergency response plan, the organization's standard operating procedures, and the current edition of DOT's ERG including emergency notification procedures and follow-up communications.
 - (V) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.
 - (VI) Awareness and knowledge of the competencies for the First Responder at the Awareness Level covered in the National Fire Protection Association's Standard No. 472, Professional Competence of Responders to Hazardous Materials Incidents.
 - (B) First responder operations level.
 - (I) Review of and demonstration of competency in performing the applicable skills of WAC 296-62-41010.
 - (II) Hands-on experience with the U.S. Department of Transportation's Emergency Response Guidebook (ERG), manufacturer material safety data sheets, CHEMTREC/CANUTEC, shipper or manufacturer contacts, and other relevant sources of information addressing hazardous substance releases. Familiarization with chapter 296-62 WAC, Part C, the hazard communication standard.
 - (III) Review of the principles and practices for analyzing an incident to determine the hazardous substances present, the likely behavior of the hazardous substance and its container, the types of hazardous substance transportation containers and vehicles, and the types and selection of the appropriate defensive strategy for containing the release.
 - (IV) Review of procedures for implementing continuing response actions consistent with the local emergency response plan, the organization's standard operating procedures, and the current edition of DOT's ERG including

extended emergency notification procedures and follow-up communications.

(V) Review of the principles and practice for proper selection and use of personal protective equipment.

(VI) Review of the principles and practice of personnel and equipment decontamination.

(VII) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(VIII) Awareness and knowledge of the competencies for the First Responder at the Operations Level covered in the National Fire Protection Association's Standard No. 472, Professional Competence of Responders to Hazardous Materials Incidents.

(C) Hazardous materials technician.

(I) Review of and demonstration of competency in performing the applicable skills of WAC 296-62-41010.

(II) Hands-on experience with written and electronic information relative to response decision making including, but not limited to, the U.S. Department of Transportation's Emergency Response Guidebook (ERG), manufacturer material safety data sheets, CHEMTREC/CANUTEC, shipper or manufacturer contacts, computer data bases and response models, and other relevant sources of information addressing hazardous substance releases. Familiarization with chapter 296-62 WAC, Part C, the hazard communication standard.

(III) Review of the principles and practices for analyzing an incident to determine the hazardous substances present, their physical and chemical properties, the likely behavior of the hazardous substance and its container, the types of hazardous substance transportation containers and vehicles involved in the release, the appropriate strategy for approaching release sites and containing the release.

(IV) Review of procedures for implementing continuing response actions consistent with the local emergency response plan, the organization's standard operating procedures, and the current edition of DOT's ERG including extended emergency notification procedures and follow-up communications.

(V) Review of the principles and practice for proper selection and use of personal protective equipment.

(VI) Review of the principles and practices of establishing exposure zones, proper decontamination and medical surveillance stations and procedures.

(VII) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(VIII) Awareness and knowledge of the competencies for the Hazardous Materials Technician covered in the National Fire Protection Association's Standard No. 472, Professional Competence of Responders to Hazardous Materials Incidents.

(D) Hazardous materials specialist.

(I) Review of and demonstration of competency in performing the applicable skills of WAC 296-62-41010.

(II) Hands-on experience with retrieval and use of written and electronic information relative to response decision

making including, but not limited to, the U.S. Department of Transportation's Emergency Response Guidebook (ERG), manufacturer material safety data sheets, CHEMTREC/CANUTEC, shipper or manufacturer contacts, computer data bases and response models, and other relevant sources of information addressing hazardous substance releases. Familiarization with chapter 296-62 WAC, Part C, the hazard communication standard.

(III) Review of the principles and practices for analyzing an incident to determine the hazardous substances present, their physical and chemical properties, and the likely behavior of the hazardous substance and its container, vessel, or vehicle.

(IV) Review of the principles and practices for identification of the types of hazardous substance transportation containers, vessels and vehicles involved in the release; selecting and using the various types of equipment available for plugging or patching transportation containers, vessels or vehicles; organizing and directing the use of multiple teams of hazardous material technicians and selecting the appropriate strategy for approaching release sites and containing or stopping the release.

(V) Review of procedures for implementing continuing response actions consistent with the local emergency response plan, the organization's standard operating procedures, including knowledge of the available public and private response resources, establishment of an incident command post, direction of hazardous material technician teams, and extended emergency notification procedures and follow-up communications.

(VI) Review of the principles and practice for proper selection and use of personal protective equipment.

(VII) Review of the principles and practices of establishing exposure zones and proper decontamination, monitoring and medical surveillance stations and procedures.

(VIII) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(IX) Awareness and knowledge of the competencies for the Off-site Specialist Employee covered in the National Fire Protection Association's Standard No. 472, Professional Competence of Responders to Hazardous Materials Incidents.

(E) Incident commander.

The incident commander is the individual who, at any one time, is responsible for and in control of the response effort. This individual is the person responsible for the direction and coordination of the response effort. An incident commander's position should be occupied by the most senior, appropriately trained individual present at the response site. Yet, as necessary and appropriate by the level of response provided, the position may be occupied by many individuals during a particular response as the need for greater authority, responsibility, or training increases. It is possible for the first responder at the awareness level to assume the duties of incident commander until a more senior and appropriately trained individual arrives at the response site.

Therefore, any emergency responder expected to perform as an incident commander should be trained to fulfill the

obligations of the position at the level of response they will be providing including the following:

(I) Ability to analyze a hazardous substance incident to determine the magnitude of the response problem.

(II) Ability to plan and implement an appropriate response plan within the capabilities of available personnel and equipment.

(III) Ability to implement a response to favorably change the outcome of the incident in a manner consistent with the local emergency response plan and the organization's standard operating procedures.

(IV) Ability to evaluate the progress of the emergency response to ensure that the response objectives are being met safely, effectively, and efficiently.

(V) Ability to adjust the response plan to the conditions of the response and to notify higher levels of response when required by the changes to the response plan.

WSR 99-07-098

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Order 190—Filed March 23, 1999, 10:45 a.m.]

Date of Adoption: March 22, 1999.

Purpose: Repeals three rules that have been incorporated into WAC 468-38-110 Escort vehicle requirements, approved November 30, 1998.

Citation of Existing Rules Affected by this Order: Repealing WAC 468-38-150, 468-38-170, and 468-38-210.

Statutory Authority for Adoption: RCW 46.44.090.

Adopted under preproposal statement of inquiry filed as WSR 99-04-058 on January 29, 1999.

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 3.

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

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.

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

March 22, 1999

Gerald E. Smith

Deputy Secretary, Operations

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 468-38-150

Flagpersons.

WAC 468-38-170 Amber lights on escort vehicles.
 WAC 468-38-210 Two-way radio.

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.

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

March 22, 1999

Gary Moore
 Director

WSR 99-07-101
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed March 23, 1999, 11:59 a.m.]

Date of Adoption: March 22, 1999.

Purpose: To reduce fees that were raised in excess of amount allowed by Initiative 601.

Citation of Existing Rules Affected by this Order: Amending WAC 296-400A-045.

Statutory Authority for Adoption: RCW 18.106.125.

Adopted under notice filed as WSR 99-03-109 on January 20, 1999.

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

AMENDATORY SECTION (Amending WSR 98-13-126, filed 6/17/98, effective 7/20/98)

WAC 296-400A-045 What fees will I have to pay?
 The following are the department's plumbers fees:

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
Examination application	Per examination	\$ 108.25
Reciprocity application	Per application	\$ 108.25
Trainee certificate*	One year	\$ 32.50
Trainee certificate	Less than one year	\$3.00 per month with a minimum fee of \$21.50
Temporary permit	90 days	\$ ((54.25)) <u>54.00</u>
Journeyman or specialty certificate**	Two years	\$ ((87.00)) <u>86.75</u>
Journeyman or specialty certificate	Less than two years	\$3.50 per month with a minimum fee of \$ ((32.75)) <u>32.50</u>
Medical gas endorsement examination application***	Per application	\$40.00
Medical gas endorsement**	One year	\$30.00
Medical gas endorsement	Less than one year	\$2.50 per month with a minimum fee of \$17.50
Medical gas endorsement examination fee***		See note below.
Medical gas endorsement training course fee****		See note below.
Reinstatement of a journeyman certificate		\$ ((174.00)) <u>173.50</u>
Replacement of all certificates		\$ 32.50

* The trainee certificate shall expire one year from the date of issuance and be renewed on or before the date of expiration.

** This fee applies to either the original issuance or a renewal of a certificate. If you have passed the plumbers certificate of competency examination or the medical gas piping installer endorsement examination and paid the certificate fee, you will be issued a plumber certificate of competency or a medical gas endorsement that will expire on your birthdate.

The annual renewal of a Medical Gas Piping Installer Endorsement shall include a continuity affidavit verifying that brazing

work has been performed within the past year.

*** This fee is paid directly to a nationally recognized testing agency under contract with the department. It covers the cost of preparing and administering the written competency examination and the materials necessary to conduct the practical competency examination required for the medical gas piping system installers endorsement. **This fee is not paid to the department.**

**** This fee is paid directly to a training course provider approved by the department, in consultation with the state advisory board of plumbers. It covers the cost of providing training courses

PERMANENT

required for the medical gas piping system installer endorsement.
This fee is not paid to the department.

If your birth year is:

(1) In an even-numbered year, your certificate will expire on your birthdate in the next even-numbered year.

(2) In an odd-numbered year, your certificate will expire on your birthdate in the next odd-numbered year.

WSR 99-07-102
PERMANENT RULES
STATE BOARD OF EDUCATION

[Filed March 23, 1999, 12:09 p.m.]

Date of Adoption: March 19, 1999.

Purpose: These new sections created supporting endorsements for teacher certificates in math, biology, chemistry, earth science, and physics.

Statutory Authority for Adoption: RCW 28A.305.130 (1) and (2), 28A.410.010.

Adopted under notice filed as WSR 99-04-110 on February 3, 1999.

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 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.

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

March 23, 1999

Larry Davis

Executive Director

NEW SECTION

WAC 180-82-315 Designated science: Biology—Secondary, supporting. In order to receive a supporting endorsement in designated science: Biology, the candidate shall have completed a state approved preparation program in designated science: Biology which shall be comprised of the appropriate pedagogy courses and field experiences/internship, pursuant to chapter 180-78A WAC, as well as twenty-four quarter credit hours (sixteen semester credit hours) in the subject areas below. Through the completion of this course work and/or an alternative performance-based assessment acceptable to the college/university, the candidate shall have demonstrated knowledge and skills from the following areas*:

- (1) Botany with lab.

- (2) Zoology with lab.

- (3) Genetics.

- (4) Microbiology or cell biology with lab.

- (5) Chemistry with lab.

- (6) Ecology.

- (7) Evolution.

- (8) Lab safety, practice, and management.

- (9) Lab, inquiry-based experience.

- (10) Relationship of the concepts of science to contemporary, historical, technological, and societal issues.

* Program must include #(8) Lab safety, practice and management.

NEW SECTION

WAC 180-82-317 Designated science: Chemistry—Secondary, supporting. In order to receive a supporting endorsement in designated science: Chemistry, the candidate shall have completed a state approved preparation program in designated science: Chemistry which shall be comprised of the appropriate pedagogy courses and field experiences/internship, pursuant to chapter 180-78A WAC, as well as twenty-four quarter credit hours (sixteen semester credit hours) in the subject areas below. Through the completion of this course work and/or an alternative performance-based assessment acceptable to the college/university, the candidate shall have demonstrated knowledge and skills from the following areas*:

- (1) General principles of chemistry with lab (i.e., inorganic, physical, and analytical).

- (2) Advanced study in organic chemistry with lab.

- (3) Quantitative analysis with lab.

- (4) Biochemistry with lab.

- (5) Physics.

- (6) Lab safety, practice, and management.

- (7) Lab, inquiry-based experience.

- (8) Relationship of the concepts of science to contemporary, historical, technological, and societal issues.

* Program must include #(6) Lab safety, practice and management.

NEW SECTION

WAC 180-82-319 Designated science: Earth science—Secondary, supporting. In order to receive a supporting endorsement in designated science, the candidate shall have completed a state approved preparation program in designated science: Earth science which shall be comprised of the appropriate pedagogy courses and field experience/internship, pursuant to chapter 180-78A WAC, as well as twenty-four quarter credit hours (sixteen semester credit hours) in the subject areas below. Through the completion of this course work and/or an alternative performance-based assessment acceptable to the college/university, the candidate shall have demonstrated knowledge and skills from the following areas*:

- (1) Physical geology.

- (2) Historical geology.

- (3) Environmental issues related to earth science.

- (4) Oceanography.

- (5) Astronomy.
- (6) Meteorology.
- (7) Lab safety, practice, and management.
- (8) Lab, inquiry-based experience.
- (9) Relationship of the concepts of science to contemporary, historical, technological, and societal issues.

* Program must include #(7) Lab safety, practice and management.

NEW SECTION

WAC 180-82-321 Designated science: Physics—Secondary, supporting. In order to receive a supporting endorsement in designated science: Physics, the candidate shall have completed a state approved preparation program in designated science: Physics which shall be comprised of the appropriate pedagogy courses and field experiences/internship, pursuant to chapter 180-78A WAC, as well as twenty-four quarter credit hours (sixteen semester credit hours) in the subject areas below. Through the completion of this course work and/or an alternative performance-based assessment acceptable to the college/university the candidate shall have demonstrated knowledge and skills in the following areas:

- (1) General principles of physics, with lab.
- (2) Lab safety, practice and management.
- (3) Lab, inquiry-based experience.
- (4) Relationships of the concepts of science to contemporary, historical, technological and societal issues.

NEW SECTION

WAC 180-82-349 Mathematics—Secondary, supporting. In order to receive a supporting endorsement in mathematics, the candidate shall have completed a state approved preparation program in mathematics which shall be comprised of the appropriate pedagogy courses and field experiences/internship, pursuant to chapter 180-78A WAC, as well as twenty-four quarter credit hours (sixteen semester credit hours) in the subject areas below. Through the completion of this course work and/or an alternative performance-based assessment acceptable to the college/university, the candidate shall have demonstrated knowledge and skills in the following areas:

- (1) Geometry (Euclidean and non-Euclidean).
- (2) Probability and statistics.
- (3) Logic and problem solving.
- (4) History of math or foundations of math.

WSR 99-07-112

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed March 24, 1999, 8:38 a.m.]

Date of Adoption: March 24, 1999.

Purpose: The rules relating to ethylene dibromide (EDB) tolerances are obsolete. The United States Environmental Protection Agency canceled the registration and use

of EDB in 1989. This order repeals the Washington state rules regarding EDB.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-228-340.

Statutory Authority for Adoption: Chapters 15.58 and 17.21 RCW.

Adopted under preproposal statement of inquiry filed as WSR 99-04-007 on January 21, 1999.

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 1.

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.

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

March 24, 1999

Jim Jesernig

Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-228-340

Establishing tolerances for the chemical ethylene dibromide (EDB).

WSR 99-07-113

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed March 24, 1999, 8:41 a.m.]

Date of Adoption: March 24, 1999.

Purpose: The rules relating to heptachlor treated grain seed are obsolete. The United States Environmental Protection Agency canceled registration and commercial use of heptachlor in 1988. This order repeals the Washington state heptachlor rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-228-320 and 16-228-330.

Statutory Authority for Adoption: Chapters 15.58 and 17.21 RCW.

Adopted under preproposal statement of inquiry filed as WSR 99-04-006 on January 21, 1999.

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 2.

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.

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

March 24, 1999

Jim Jesernig
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-228-320 Heptachlor treated grain seed—Definition.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-228-330 Use and distribution.

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

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

March 22, 1999

Kris Van Gorkom
Deputy Secretary

NEW SECTION

WAC 246-850-060 Examination requirements. (1)

An applicant for licensure as an orthotist must successfully complete the following examinations:

(a) The orthotic written multiple choice examination prepared and administered by the American Board for Certification in Orthotics and Prosthetics, Inc., administered after July 1, 1991. The passing score is determined by utilizing a criterion-referenced cut score methodology.

(b) The orthotic written simulation examination prepared and administered by the American Board for Certification in Orthotics and Prosthetics, Inc., administered after July 1, 1991. The passing score is determined by utilizing a criterion-referenced cut score methodology.

(2) An applicant for licensure as a prosthetist must successfully complete the following examinations:

(a) The prosthetic written multiple choice examination prepared and administered by the American Board for Certification in Orthotics and Prosthetics, Inc., administered after July 1, 1991. The passing score is determined by utilizing a criterion-referenced cut score methodology.

(b) The prosthetic written simulation examination prepared and administered by the American Board for Certification in Orthotics and Prosthetics, Inc., administered after July 1, 1991. The passing score is determined by utilizing a criterion-referenced cut score methodology.

PERMANENT

WSR 99-07-122

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed March 24, 1999, 9:40 a.m.]

Date of Adoption: February 25, 1999.

Purpose: Designation of a licensing examination for orthotists and prosthetists.

Statutory Authority for Adoption: RCW 18.200.050(8).

Adopted under notice filed as WSR 99-03-083 on January 20, 1999.

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

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

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

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

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

WSR 99-07-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 99-14—Filed March 5, 1999, 1:13 p.m., effective March 11, 1999,
12:01 a.m.]

Date of Adoption: March 3, 1999.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-56-28500S and 232-28-61900D; and
amending WAC 220-56-285, 220-57-160, and 232-28-619.

Statutory Authority for Adoption: RCW 75.08.080 and
77.12.040.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Closes mainstem Columbia River to salmon, shad and steelhead fishing because of predicted poor returns of spring chinook salmon in 1999. The steelhead fishery during this time frame is incidental to the spring chinook fishery. The primary shad migration time frame does not begin until mid-May. These rules are consistent with actions of the joint Washington/Oregon state hearing on sport fisheries held on January 28, 1999. These rules will conform Washington and Oregon rules in concurrent waters of the Columbia River. There is insufficient time to promulgate permanent rules.

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 3, Amended 0, Repealed 2.

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.

Effective Date of Rule: March 11, 1999, 12:01 a.m.

March 3, 1999

J. P. Koenings

Director

NEW SECTION

WAC 220-56-28500S Shad - Areas and seasons Notwithstanding the provisions of WAC 220-56-285 effective 12:01 a.m. March 11, 1999 through May 15, 1999 it is unlawful to take, fish for, or possess shad in those waters of the Columbia River from Bonneville Dam downstream to the mouth.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. May 15, 1999:

WAC 220-56-28500S Shad—Areas and seasons

NEW SECTION

WAC 220-57-16000R Columbia River - Salmon season and areas Notwithstanding the provisions of WAC 220-57-160 (7) (8) effective 12:01 a.m. March 11, 1999 until further notice it is unlawful to take, fish for, or possess salmon in the Columbia River from the Interstate 5 Bridge downstream to the mouth.

NEW SECTION

WAC 232-28-61900D Exceptions to statewide rules Notwithstanding the provisions of WAC 232-28-619 effective 12:01 a.m. March 11, 1999 through March 31, 1999 it is unlawful to take, fish for, or possess steelhead in those waters of the Columbia River from Bonneville Dam downstream to the mouth.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. March 31, 1999:

WAC 232-28-61900D Exceptions to statewide rules

WSR 99-07-007

EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 99-15—Filed March 5, 1999, 1:15 p.m.]

Date of Adoption: March 3, 1999.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-270.

Statutory Authority for Adoption: RCW 75.08.080.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The smelt return to the Columbia River basin is expected to be poor in 1999. There is insufficient time to promulgate permanent rules.

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.

EMERGENCY

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

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

Effective Date of Rule: Immediately.

March 3, 1999

J. P. Koenings

Director

NEW SECTION

WAC 220-56-27000E Smelt—Areas and seasons. Notwithstanding the provisions of WAC 220-56-270, effective immediately until further notice, the Washington Columbia River tributaries are closed to fishing for smelt.

**WSR 99-07-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 99-16—Filed March 5, 1999, 3:03 p.m.]

Date of Adoption: March 3, 1999.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-35000V and 220-56-38000P; and amending WAC 220-56-350 and 220-56-380.

Statutory Authority for Adoption: RCW 77.12.040.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These regulations are necessary to shorten or close seasons to protect smaller than normal populations of clams and oysters. There is insufficient time to promulgate permanent rules.

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 2, Amended 0, Repealed 2.

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.

Effective Date of Rule: Immediately.

March 3, 1999

J. P. Koenings

Director

NEW SECTION

WAC 220-56-35000W Clams other than razor clams—areas and seasons. Notwithstanding the provisions of WAC 220-56-350, immediately until further notice, it is unlawful to harvest or possess clams, cockles, or mussels taken for personal use from the following public tidelands during the closed periods herein, and lawful to harvest only during the open periods specified herein:

- (1) Cline Spit - **Closed** until further notice.
- (2) Eagle Creek - **Open** through April 30.
- (3) Fort Flagler State Park - **Closed** May 1 until further notice.
- (4) Mystery Bay State Park - **Open** through April 30.
- (5) North Sequim Bay State Park - **Closed** until further notice.
- (6) Oak Bay County Park - **Closed** through April 30.
- (7) Pillar Point County Park - **Open** through April 30.
- (8) Potlatch State Park - **Open** through March 31.
- (9) Sequim Bay State Park - **Closed** until further notice.
- (10) West Dewatto (DNR 44A) - **Closed** March 16 until further notice.

NEW SECTION

WAC 220-56-38000Q Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to harvest or possess oysters taken for personal use from the following public tidelands except as provided below:

- (1) Eagle Creek - **Closed** April 1 until further notice.
- (2) Point Whitney Tidelands - **Closed** until further notice.
- (3) Potlatch State Park - **Closed** April 16 until further notice.
- (4) West Dewatto (DNR 44A) - **Closed** March 16 until further notice.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-56-35000V Clams other than razor clams—Areas and seasons. (98-255)
- WAC 220-56-38000P Oysters—Areas and seasons. (98-255)

EMERGENCY

WSR 99-07-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 99-17—Filed March 5, 1999, 3:47 p.m.]

Date of Adoption: March 5, 1999.

Purpose: Commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-32-05100K; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 75.08.080.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation modifies standard tribal winter season fishery to eliminate weekend closure. This regulation is consistent with provisions of the Columbia River fish management plan and associated management agreements. Conforms state rules with tribal rules and is consistent with compact action of March 5, 1999. There is insufficient time to promulgate permanent regulations.

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

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

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

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.

Effective Date of Rule: Immediately.

March 5, 1999

J. P. Koening

Director

NEW SECTION

WAC 220-32-05100K Columbia River salmon seasons above Bonneville Dam Notwithstanding the provisions of WAC 220-32-051, WAC 220-32-052, WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, shad, carp, or sturgeon taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H, except those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, shad, carp, or sturgeon under the following provisions:

1) Open Periods: Effective immediately until 4:00 p.m. March 20, 1999.

2) Open Areas: SMCRA 1F, 1G, 1H

3) Gear: No mesh size restriction

4) It is unlawful to retain sturgeon less than 48 inches or greater than 60 inches in length.

5) Allowable sale includes: salmon, sturgeon, shad, and carp.

6) Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a) Hood River are those waters along the Oregon side of the Columbia River and extends to mid-stream at right angles to the tread of the Columbia River between markers located approximately 0.85 miles down river from the west bank at the end of the break wall at the west end of the port of Hood River and 1/2 mile upriver from the east bank.

b) Herman Creek are those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

c) Deschutes River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

d) Umatilla River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

e) Big White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located 1/2 mile downstream from the west bank upstream to Light "35".

f) Wind River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.

g) Klickitat River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad tunnel approximately 1/8 miles downstream from the west bank.

h) Little White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately 1/2 mile upstream from the eastern shoreline.

3) Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

a) Area 1F (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of the Gods, and downstream from the west end of the 3 Mile Rapids located approximately 1.8 miles below the Dalles Dam.

b) Area 1G includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread

of the river to a point in mid-river, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

c) Area 1H includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2 mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 4:01 p.m. March 20, 1999:

WAC 220-32-05100K Columbia River salmon seasons above Bonneville Dam.

**WSR 99-07-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 99-18—Filed March 11, 1999, 3:06 p.m.]

Date of Adoption: March 11, 1999.

Purpose: Commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100I; and amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 75.08.080.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Harvestable amounts of sea cucumbers exist in the Griffin Bay special management area. Prohibition of all diving within two days of the scheduled sea cucumbers opening discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to promulgate permanent rules.

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

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

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

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.

Effective Date of Rule: Immediately.

March 11, 1999

J. P. Koenings
Director

NEW SECTION

WAC 220-52-07100I Sea cucumbers Notwithstanding the provisions of WAC 220-52-071, effective immediately until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) The Griffin Bay Special Management Area is only open on March 22, 1999. The maximum daily landing for a vessel on March 22, 1999 is 900 pounds of sea cucumbers.

(2) It is unlawful to dive for any purpose from a commercially-licensed fishing vessel, except vessels actively fishing geoducks under contract with the Washington Department of Natural Resources, on March 20 and March 21, 1999.

(3) Griffin Bay Special Management Area is defined as those waters of San Juan Channel and Upright Channel within the following lines: north of a line from Cattle Point on San Juan Island to Davis Point on Lopez Island, south of a line projected from Flat Point on Lopez Island to the northernmost point of Turn Island and thence projected true west to San Juan Island.

(4) All shellfish diver gear rules in WAC 220-52-071 remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective one hour after official sunset March 22, 1999:

WAC 220-52-07100I Sea cucumbers.

**WSR 99-07-057
EMERGENCY RULES
STATE BOARD FOR
COMMUNITY AND TECHNICAL COLLEGES**

[Filed March 16, 1999, 2:02 p.m.]

Date of Adoption: March 4, 1999.

Purpose: Exceptional faculty awards trust fund.

Citation of Existing Rules Affected by this Order: Amending WAC 131-16-450.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is

EMERGENCY

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Clarifies how many grant awards are allowed per college in each biennium.

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

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

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

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

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

Effective Date of Rule: Immediately.

March 11, 1999

Claire C. Krueger

Executive Assistant and

Agency Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-15-007, filed 7/2/98, effective 8/2/98)

WAC 131-16-450 Exceptional faculty awards trust fund. (1) Pursuant to chapter 29, Laws of 1990, the community and technical college exceptional faculty award program shall be subject to the following limitations:

(a) All funds generated by and through this program shall be credited to the college district's exceptional faculty local endowment trust fund, from which only the earnings of such funds may be expended for the purpose of this program.

(b) Authorization to transfer funds from the exceptional faculty award trust fund in the state treasury to a college district endowment fund shall be contingent upon certification by the college district that no less than twenty-five thousand dollars of matching cash donations from private sources has been deposited in the district endowment fund.

(c) Grants to individual colleges shall not exceed: ~~((Two))~~ Four grants to each college, ~~((each year, beginning July 1, 1998))~~ in any single biennium.

(d) Award of requested grants to colleges shall be contingent upon determination by the state board for community and technical college that the request is consistent with and meets the requirements of these guidelines. Further, if grant requests exceed available funds, the state board for community and technical college shall select the recipients.

(e) Funds granted for the purposes of the faculty awards program shall be held in trust by the district for the college to which such funds were specifically awarded.

(f) Each college district shall establish procedures by which awards may be named in honor of a donor, benefactor,

or honoree; may designate the use of funds; and may renew or redesignate the award annually.

(g) By September 1 of each year beginning in 1991, each district shall report to the state board for community and technical college the amount of contributed endowment funds, their earnings, type of investments, and uses made during the previous fiscal year.

(h) The process for determining awards shall be subject to collective bargaining, except that the amount of individual awards and the recipient(s) shall be determined by the district board of trustees.

(i) Only persons holding faculty assignments as defined by RCW 28B.52.020(2) shall be eligible to receive awards under this section.

(2) The award of exceptional faculty grants from the district endowment fund shall be subject to the following limitations:

(a) The proceeds from the endowment fund shall be used to pay expenses for faculty awards, which may include in-service training, temporary substitute or replacement costs directly associated with faculty development programs, conferences, travel, publication and dissemination of exemplary projects; to make a one time supplement to the salary of the holder or holders of a faculty award, for the duration of the award; or to pay expenses associated with the holder's program area.

(b) Funds from this program shall not be used to supplant existing faculty development funds.

WSR 99-07-074

EMERGENCY RULES

FOREST PRACTICES BOARD

[Filed March 17, 1999, 11:29 a.m.]

Date of Adoption: February 10, 1999.

Purpose: To modify forest practices rules that define Type 2 and 3 waters in WAC 222-16-030, and define requirements for the Forest Practices Board manual.

Citation of Existing Rules Affected by this Order: Amending WAC 222-12-090 Forest Practices Board manual and 222-16-030 Water typing system.

Statutory Authority for Adoption: RCW 76.09.040 and chapter 34.05 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The Forest Practices Board (FPB) and the Department of Ecology (DOE) find good cause for an emergency to modify the water typing rules. This document organizes and summarizes information presented to and discussed by the board in public meetings.

The reasons for findings are as follows:

New data has shown that the physical characteristics of streams, as defined in the current forest practices rules, are no longer accurate. Accurate water typing is critical to public resource protection. This emergency rule updates those physical characteristics based on current knowledge so that appropriate resource protection can be provided to fish habitat and water quality.

This emergency rule establishes presumptions for determining fish use in the absence of field verification and is necessary during permanent rule making updating the water type rules and associated riparian protection. Because water typing triggers riparian protection through the forest practices rules, watershed analysis, and some local land use decisions, the definitions used to determine water types must reflect current knowledge about fish use and habitat. Due to significant field verification of water types and research, more is known today about fish distribution and the physical characteristics of fish habitat than was known when the existing water type definitions were written (see WAC 222-16-030). In addition, the 303(d) water quality and actual and potential ESA listings cause increased pressure on the forest practices regulation system that will result in increased cost and complexities for all participants. If the water typing system is not upgraded immediately, it will contribute to potential listings and increase the associated burdens of such listings.

In August 1994, the Point-No-Point Treaty Council published a report, Stream Typing Errors in Washington Water Type Maps for Watersheds of Hood Canal and the Southwest Olympic Peninsula. Simultaneously, the Quinault Indian Nation and the Department of Fish and Wildlife were also reviewing water types in the southwest part of the Olympic Peninsula. Data from these studies indicated that 72% of the Type 4 streams were actually Type 2 or 3 streams. In addition, projects funded by the United States Fish and Wildlife Service with cooperation from some western Cascade landowners and Washington trout have also resulted in significant upgrades.

The intent of the Forest Practices Act is to meet water quality standards under the Clean Water Act. As indicated by the number of water bodies listed under section 303(d) of the Clean Water Act, water quality standards are not being met. The number of water bodies included on the Department of Ecology's 303(d) water quality limited list has increased and now includes many forested streams. Numerous fish stocks are being considered for listing under the Endangered Species Act. The state has water quality antidegradation regulatory requirements. These requirements demand that the beneficial in-stream uses, such as salmonid habitat, be fully protected. Changes in water quality are not allowed that violate the standards set to fully protect these uses. Further, degradation of water quality, even where it does not cause a violation of the standards, is not allowed unless all known, available, and reasonable best management practices are being used to reduce the affect on water quality; and the activity has been found to be in the overriding public interest. Water quality standards cannot be met if inaccurate stream typing information is used in assessing the impacts of forest practices.

The public has a strong interest in protecting public resources, including water, and fish, especially those listed as endangered and threatened species. Immediate action is nec-

essary to ensure that impacts from forest practices near water are carefully evaluated while the board is in the process of adopting permanent rules. Without an emergency rule, public resources, including the habitat of threatened and endangered species, could be significantly impacted by forest practices because of incorrect water typing.

The FPB and DOE maintain rule-making files for this emergency rule that have detailed background information supporting these findings. Please contact Judith Holter, DNR, at (360) 902-1412 or Doug Rushton, DOE, at (360) 407-6180 if you would like to inspect these files.

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 0, Repealed 0.

Effective Date of Rule: Immediately.

February 10, 1999

Jennifer M. Belcher

Commissioner of Public Lands

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-12-090 Forest practices board manual.

When approved by the board the manual serves as an advisory technical supplement to these forest practices regulations. The department, in cooperation with the departments of fish and wildlife, agriculture, ecology, and such other agencies, affected Indian tribes, or interested parties as may have appropriate expertise, is directed to prepare, and submit to the board for approval, revisions to the forest practices board manual. The manual shall include:

- (1) **Method for determination of adequate shade requirements on streams** needed for use with WAC 222-30-040.
- (2) **The standard methods** for measuring channel width, stream gradient and flow which are used in the water typing criteria WAC 222-16-030.
- (3) **A chart** for establishing recommended permanent culvert sizes and associated data.
- (4) **Guidelines** for clearing slash and debris from Type 4 and 5 Waters.
- (5) **Guidelines** for landing location and construction.
- (6) **Guidelines** for determining acceptable stocking levels.
- (7) **Guidelines** for calculating average widths of riparian management zones.

- (8) **Guidelines** for wetland delineation.
- (9) **Guidelines** for wetland replacement or substitution.
- (10) A list of nonnative wetland plant species.

(11) The standard methodology, which shall specify the quantitative methods, indices of resource conditions, and definitions, for conducting watershed analysis under chapter 222-22 WAC. The department, in consultation with Timber/Fish/Wildlife's Cooperative Monitoring, Evaluation and Research Committee (CMER), may make minor modifications to the version of the standard methodology approved by the board. Substantial amendments to the standard methodology requires approval by the board.

(12) A list of special concerns related to aerial application of pesticides developed under WAC 222-16-070(3).

(13) **Guidelines for determining fish use for the purpose of typing waters under WAC 222-16-030.**

(14) **Survey protocol for marbled murrelets.** The Pacific seabird survey protocol in effect March 1, 1997, shall be used when surveying for marbled murrelets in a stand. Surveys conducted before the effective date of this rule are valid if they were conducted in substantial compliance with generally accepted survey protocols in effect at the beginning of the season in which they were conducted.

(15) The department shall, in consultation with the department of fish and wildlife, develop **platform protocols** for use by applicants in estimating the number of platforms, and by the department in reviewing and classifying forest practices under WAC 222-16-050. These protocols shall include:

- (a) A sampling method to determine platforms per acre in the field;
- (b) A method to predict the number of platforms per acre based on information measurable from typical forest inventories. The method shall be derived from regression models or other accepted statistical methodology, and incorporate the best available data; and
- (c) Other methods determined to be reliable by the department, in consultation with the department of fish and wildlife.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-16-030 Water typing system. *The department in cooperation with the departments of fish and wildlife, and ecology, and in consultation with affected Indian tribes shall classify streams, lakes and ponds and prepare stream classification maps showing the location of Type 1, 2, 3 and 4 Waters within the various forested areas of the state. Such maps shall be available for public inspection at region offices of the department. The waters will be classified using the following criteria. If a dispute arises concerning a water type the department shall make available informal conferences, which shall include the departments of fish and wildlife, and ecology, and affected Indian tribes and those contesting the adopted water types. These conferences shall be established under procedures established in WAC 222-46-020.

***(1) "Type 1 Water"** means all waters, within their ordinary high-water mark, as inventoried as "shorelines of the state" under chapter 90.58 RCW and the rules promul-

gated pursuant to chapter 90.58 RCW, but not including those waters' associated wetlands as defined in chapter 90.58 RCW.

***(2) "Type 2 Water"** shall mean segments of natural waters which are not classified as Type 1 Water and have a high fish, wildlife, or human use. These are segments of natural waters and periodically inundated areas of their associated wetlands, which:

(a) Are diverted for domestic use by more than 100 residential or camping units or by a public accommodation facility licensed to serve more than 100 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type 2 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type 2 Water upstream from the point of diversion for 1,500 feet and tributaries if highly significant for protection of downstream water quality. The department may allow additional harvest beyond the requirements of Type 2 Water designation provided the department determines after a landowner-requested on-site assessment by the department of fish and wildlife, department of ecology, the affected tribes and interested parties that:

(i) The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

(ii) Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;

(c) Are within a federal, state, local, or private campground having more than 30 camping units: *Provided*, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit, trail or other park improvement;

~~((e))~~ (d) Are used by substantial numbers of anadromous or resident game fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have highly significant fish populations:

(i) Stream segments having a defined channel 20 feet or greater in width between the ordinary high-water marks and having a gradient of less than 4 percent.

(ii) Lakes, ponds, or impoundments having a surface area of 1 acre or greater at seasonal low water; or

~~((e))~~ (e) Are used by salmonids for off-channel habitat. These areas are critical to the maintenance of optimum survival of juvenile salmonids. This habitat shall be identified based on the following criteria:

(i) The site must be connected to a stream bearing salmonids and accessible during some period of the year; and

(ii) The off-channel water must be accessible to juvenile salmonids through a drainage with less than a 5% gradient.

***(3) "Type 3 Water"** shall mean segments of natural waters which are not classified as Type 1 or 2 Water and have a moderate to slight fish, wildlife, and human use. These are

segments of natural waters and periodically inundated areas of their associated wetlands which:

(a) Are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type 3 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Are used by significant numbers of anadromous or resident game fish for spawning, rearing or migration. Guidelines for determining fish use are described in the Forest Practices Board Manual. If fish use has not been determined:

(i) Waters having the following characteristics are presumed to have significant anadromous or resident game fish use:

~~((#))~~ (A) Stream segments having a defined channel of ~~((5))~~ 2 feet or greater in width between the ordinary high-water marks in Western Washington; or 3 feet or greater in width between the ordinary high-water marks in Eastern Washington; and having a gradient ~~((of less than 12))~~ 16 percent ~~((and not upstream of a falls of more than 10 vertical feet))~~ or less;

(B) Stream segments having a defined channel of 2 feet or greater in width between the ordinary high-water marks in Western Washington; or 3 feet or greater in width between the ordinary high-water marks in Eastern Washington; and having a gradient greater than 16 percent and less than or equal to 20 percent; and having greater than 50 acres in contributing basin size in Western Washington; or greater than 175 acres in contributing basin size in Eastern Washington based on hydrographic boundaries;

(ii) The department shall waive or modify the characteristics in (i) above where:

(A) Waters have confirmed, long term, naturally occurring water quality parameters incapable of supporting anadromous or resident game fish;

(B) Snowmelt streams have short flow cycles that do not support successful life history phases of anadromous or resident game fish. These streams typically have no flow in the winter months and discontinue flow by June 1; or

(C) Sufficient information about a geographic region is available to support a departure from the characteristics in (i), as determined in consultation with the department of fish and wildlife, department of ecology, affected tribes and interested parties.

~~((#))~~ (iii) Ponds or impoundments having a surface area of less than 1 acre at seasonal low water and having an outlet to an anadromous fish stream.

~~((e))~~ Are used by significant numbers of resident game fish. Waters with the following characteristics are presumed to have significant resident game fish use:

(i) Stream segments having a defined channel of 10 feet or greater in width between the ordinary high-water marks; and a summer low flow greater than 0.3 cubic feet per second; and a gradient of less than 12 percent.

~~((#))~~ (iv) For resident game fish ponds or impoundments having a surface area greater than 0.5 acre at seasonal low water; or

~~((#))~~ (c) Are highly significant for protection of downstream water quality. Tributaries which contribute greater than 20 percent of the flow to a Type 1 or 2 Water are presumed to be significant for 1,500 feet from their confluence with the Type 1 or 2 Water or until their drainage area is less than 50 percent of their drainage area at the point of confluence, whichever is less.

* (4) "Type 4 Water" classification shall be applied to segments of natural waters which are not classified as Type 1, 2 or 3, and for the purpose of protecting water quality downstream are classified as Type 4 Water upstream until the channel width becomes less than 2 feet in width between the ordinary high-water marks. Their significance lies in their influence on water quality downstream in Type 1, 2, and 3 Waters. These may be perennial or intermittent.

* (5) "Type 5 Water" classification shall be applied to all natural waters not classified as Type 1, 2, 3 or 4; including streams with or without well-defined channels, areas of perennial or intermittent seepage, ponds, natural sinks and drainageways having short periods of spring or storm runoff.

* (6) For purposes of this section:

(a) "Residential unit" means a home, apartment, residential condominium unit or mobile home, serving as the principal place of residence.

(b) "Camping unit" means an area intended and used for:

(i) Overnight camping or picnicking by the public containing at least a fireplace, picnic table and access to water and sanitary facilities; or

(ii) A permanent home or condominium unit or mobile home not qualifying as a "residential unit" because of part time occupancy.

(c) "Resident game fish" means game fish as described in the Washington game code that spend their life cycle in fresh water. Steelhead, searun cutthroat and Dolly Varden trout are anadromous game fish and should not be confused with resident game fish.

(d) "Public accommodation facility" means a business establishment open to and licensed to serve the public, such as a restaurant, tavern, motel or hotel.

(e) "Natural waters" only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.

(f) "Seasonal low flow" and "seasonal low water" mean the conditions of the 7-day, 2-year low water situation, as measured or estimated by accepted hydrologic techniques recognized by the department.

(g) "Channel width and gradient" means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States geological survey topographic maps.

(h) "Intermittent streams" means those segments of streams that normally go dry.

WSR 99-07-075
EMERGENCY RULES
FOREST PRACTICES BOARD

[Filed March 17, 1999, 11:32 a.m.]

Date of Adoption: February 10, 1999.

Purpose: To modify forest practices rules to provide greater protection for threatened and endangered salmonids that have been listed by the federal government. This is a procedural rule that classifies forest practices in mapped areas as Class IV-Special, requiring additional environmental review.

Citation of Existing Rules Affected by this Order: Amending WAC 222-10-040 Class IV-Special threatened and endangered species SEPA policies, 222-16-010 General definitions, 222-16-050 Classes of forest practices, 222-16-080 Critical wildlife habitats (state) and critical habitat (federal) of threatened and endangered species, 222-24-050 Road maintenance and 222-30-040 Shade requirements to maintain stream temperature; and new sections WAC 222-16-088 Salmonid listed areas, 222-10-020 SEPA policies for certain forest practices within 200 feet of a Type 1 Water, and 222-10-043 Salmonids.

Statutory Authority for Adoption: RCW 76.09.040 and [76.09.]050 and chapter 34.05 RCW.

Other Authority: Chapter 43.21C RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: This document combines the findings prepared individually for listed steelhead and bull trout. The Forest Practices Board and the Department of Ecology find good cause for an emergency for salmonids, including bull trout. This document organizes and summarizes information presented to and discussed by the board in public meetings. The reasons for this finding are as follows:

1. SALMONID NEEDS.

Salmonid Biology - General: The family *Salmonidae* includes many individual species of salmon, steelhead and trout. Salmonids have several life history phases which include spawning, rearing and migration. Fertilized salmonid eggs require sediment-free and cool water in order to incubate and hatch. Once the eggs hatch, the juvenile salmonids require rearing habitat which includes forage, clean cool water, and cover provided by rocks, banks and large woody debris. Finally, salmonids need to be able to have stream passage at all life history stages.

Bull Trout Biology: Bull trout (*Salvelinus confluentus*), a native char, are a cold water species that moved north and into higher elevations after the last glacial period. Bull trout exhibit both migratory and nonmigratory life history forms (Brown 1994). Resident populations generally spend their entire lives in small headwater streams, whereas migratory populations spawn and rear in headwater tributary streams

for several years before migrating to either larger river systems (fluvial), lakes and reservoirs (adfluvial), or the ocean (anadromous) for adult rearing. Bull trout generally concentrate in reaches influenced by groundwater where temperature and flow conditions may be more stable (Baxter and Hauer, in prep; Baxter et al., to be published; MBTSG 1998).

Bull Trout vs Dolly Varden: Dolly Varden (*Salvelinus malma*) and bull trout (*Salvelinus confluentus*) were considered to be the same species until the late 1970's when Caven-der (1978) provided evidence to suggest that there was a dichotomy. The American Fisheries Society accepted Caven-der's work in 1980 and recognized the separation of the two species (Mongillo 1993). However, the two species are difficult to differentiate in the field; extensive and costly genetic work must be done in the laboratory. Furthermore, their life histories and habitat requirements are similar, if not identical (Mongillo 1993, Brown 1994). Therefore, from a management and recovery perspective, they are currently considered the same species. As pertains to an emergency rule, while coastal and Puget Sound populations can be either species or a combination of Dolly Varden and bull trout, all populations in eastern Washington and the Columbia River drainage are assumed to be bull trout.

How Bull Trout Habitat Requirements Differ from Other Salmonids:

- Temperature requirements for bull trout are colder than for other salmonids (especially for spawning and juvenile rearing); in some cases, so cold as to exclude other salmonids, which would otherwise compete for habitat and food. When living within the same habitat with other salmonids, colder temperatures can give bull trout the competitive advantage (MBTSG 1998).
- Bull trout will often stratify higher in the watershed than other salmonids (especially resident life forms and for spawning and rearing). (Adams 1994.)
- Because bull trout spawn higher in the headwaters, they can be more vulnerable to fish passage problems.
- Bull trout spend a longer period [of] time in the gravels before emergence (220+ days) and thus are more vulnerable to sediment and scouring peak flows.

Factors Limiting Habitat of all Salmonids: In order to provide cool, clean water and habitat that includes pools, clean gravel and stable channels, the following habitat requirements are necessary in order to provide for healthy salmonids: Shade, stable stream banks, large woody debris, and fish passage.

Shade and Stream Temperature. Shade is needed to provide cool water temperatures. To achieve this, trees along the riparian zones of fish-bearing streams and along contributing nonfish-bearing streams must be retained to assure that the solar radiation does not heat the streams to a point that limits the productivity, or in some severe cases, the mortality of salmonids. High temperatures can also block or delay fish migration.

The current state water quality standard for stream temperature is intended to fully protect salmonids. Shade must

be retained, in order to keep water temperatures below 16° centigrade.

Other factors can increase temperature such as sediment deposition and resultant stream widening. Shade removal in nonfish-bearing streams can also contribute to downstream temperature increases in fish-bearing waters. Shade removal can also impact cold groundwater sources and microclimate.

Stream Bank Stability and Forest Roads. Fine sediment in spawning gravel reduces the survival of salmonid eggs. Sediment can also limit the ability for juvenile and adult salmonids to feed. Stream bank instability is a major contributor of sediment to streams. Stability of stream banks is necessary to this as a source of sediment (if banks are disturbed they can introduce sediment). Forest roads can also contribute sediment laden water to streams from ditches and water crossings. Roads can also change hydrologic regime of the stream causing higher peak flows which can cause more sedimentation.

Large Woody Debris. Rearing or juvenile salmonids need pools and cover for refuge and desired feeding conditions. Stream morphology that contains adequate pools requires large woody debris (LWD) on a continuous basis. The LWD provides structure in the streams for the formation of pools and cover. It also moderates the movement of sediment. Trees from the adjacent riparian stand are an important source of LWD.

Fish Passage. Adult fish need to move upstream to access spawning areas. Juvenile fish need to move upstream and downstream to find desirable feeding conditions or take refuge from undesirable environmental conditions. Forest road stream crossings often block fish passage.

Summary. The literature indicates that in order to protect bank stability, a 30-foot buffer is recommended. In addition, to achieve 95% recruitment of the key piece wood, (wood that is large enough to start the forming of log jams indexed by stream size) approximately 100 foot buffer is required. Additional buffers may be needed to account for areas that have high susceptibility to windthrow, provide additional large woody debris (LWD) recruitment, unstable slopes protection, protection of seeps, springs and stream associated wetlands. Other functions include microclimate (air temperature and humidity, etc.).

Additional Factors Limiting Bull Trout Habitat: The decline of bull trout throughout their range has been linked to habitat destruction and migration barriers, as well as other factors such as introduced exotic species (Dambacher and Jones 1997). Bull trout spawning, incubation, and juvenile rearing generally occur in second through fourth order streams which are most susceptible to effects resulting from harvest. Effects may be more obvious on smaller streams than on larger ones. Timber harvest can influence stream temperature, LWD recruitment, local runoff patterns, erosion, sedimentation, channel aggradation, and channel stability (MBTSG 1998).

Shade and Stream Temperature. Bull trout are glacial relics and require a narrow range of cold temperature conditions to rear and reproduce (Adams and Bjornn 1997, Buchanan and Gregory 1997, Brown 1994). Temperatures required to initiate spawning (late August through October) vary from

4-11°C, depending on the drainage (Buchanan and Gregory 1997, Fraley and Shepard 1989, McPhail and Murray 1979, Wydoski and Whitney 1979, Kraemer 1991). Egg incubation (late August through April) occurs at 1-6°C (Buchanan and Gregory 1997, Weaver and White 1985, McPhail and Murray 1979, Brown 1994). Optimal temperature ranges for juvenile rearing occur from 4-10°C (Buchanan and Gregory 1997, McPhail and Murray 1979). In the Flathead drainage in Montana, bull trout juveniles have been rarely observed in streams with summer temperatures exceeding 15°C (Fraley and Shepard 1989). Adults are known to tolerate somewhat higher temperatures (Kraemer 1991, Brown 1994); however, they are seldom found in streams with summer temperatures exceeding 18°C and are often found near cold perennial springs (Shepard et al. 1984b, Brown 1994). Higher densities of adult bull trout have been found to occur at temperatures less than 12°C (Adams 1994, Buchanan and Gregory 1997, Clancy 1996). Optimum temperatures for migration are 10-12°C (Buchanan and Gregory 1997, McPhail and Murray 1979).

Various factors contribute towards providing for cool water in streams (shade, groundwater contribution, elevation, etc.). Shade is the primary factor (impacted by land management) which is needed to reduce solar radiation to the stream, to protect groundwater sources and seeps and springs, and to provide for microclimate. Shade contributing trees within the riparian zone must be retained in both fish bearing and contributing nonfish-bearing streams to maintain cool water temperatures. Sediment deposition and resultant stream widening can also cause an increase in stream temperature, as well as alteration of natural streamflow regimes and reduced groundwater inflows (MBTSG 1998).

The current state water quality standard for stream temperature is targeted to maintain water temperatures below 16 and 18°C depending on the Department of Ecology stream class. However, because bull trout and Dolly Varden have temperature requirements which are below those for other salmonids, the current water quality standard is not adequate. The United States Environmental Protection Agency has established temperature criteria for bull trout (now used as a state water quality standard in Idaho). The temperature standard to meet bull trout requirements is set at 10°C expressed as a consecutive seven-day average of the daily maximum temperatures for June, July, August and September. It is believed that if a summer temperature criterion of 10°C is met, natural seasonal variability in stream temperatures will result in attainment of appropriate thermal requirements during the remainder of the year in bull trout spawning and juvenile rearing areas (United States Environmental Protection Agency 1997).

Sediment and Roads. The long overwinter intragravel incubation and development for bull trout (average two hundred twenty days) leaves them vulnerable to increases in fine sediments and degradation of water quality (Fraley and Shepard 1989). A significant negative correlation between fry emergence of bull trout and the percentage of redd materials smaller than 6.35 mm was found by Weaver and Fraley (1991). Analyses conducted within the Columbia River

Basin support the conclusion that increasing road densities are correlated with declining aquatic habitat conditions and aquatic integrity. Results show that bull trout are less likely to use moderate to highly roaded areas for spawning and rearing, and if found in these areas, they are less likely to be at strong population levels (Lee et al. 1997; Baxter et al., to be published; MBTSG 1998).

Stream bank stability must be maintained to prevent increases in sediment inputs to the stream (from forest practices). Construction and maintenance of roads must be conducted in ways which minimize road density and cut off delivery of sediments to streams. Roads should also be constructed and maintained to prevent changes to the hydrologic regime resulting in higher peak flows and increased sedimentation. Ground disturbance should be minimized and mitigated. Best management practices for sediment and roads should apply to nonfish-bearing streams as well as fish-bearing streams.

Large Woody Debris. Large woody debris is important for the formation of deep pools and habitat complexity needed by bull trout. Adult bull trout prefer deep cold pools, often associated with the cover of large woody debris, for foraging and for holding during migration (Brown 1994, Fraley and Shepherd 1989, Shepard et al. 1984b, Goetz 1989). Juvenile rearing of bull trout is also often associated with pools with shelter-providing large organic debris or clean cobble (McPhail and Murray 1979). A strong preference exists for plunge and scour pools over all other habitat types in Southeast Washington (Brown 1994). Large woody debris is also necessary to maintain the step pool formation in steeper headwater streams inhabited by bull trout, and for sediment storage.

Fish Passage. Due to loss of connectivity, many bull trout populations have become fragmented throughout their range, and remnant headwater populations are all that remain for some drainages. Fish passage barriers result in the loss of genetic exchange, loss in the ability to respond to changes in seasonal habitat requirements and conditions, loss in the ability to recolonize habitats after disturbance regimes, and often extinction of local populations (Rieman et al. 1993, MBTSG 1998). Barriers not only include manmade barriers at road crossings, but also low flows caused from aggregation of excessive coarse sediment, and elevated temperatures.

2. ENDANGERED SPECIES ACT LISTINGS AND THE FOREST PRACTICES ACT.

The Endangered Species Act (ESA) was enacted to conserve threatened and endangered species and the ecosystems upon which they depend. Four ESA listings have occurred in the last year. In August of 1997, upper Columbia steelhead was listed as endangered and the Snake River steelhead was listed as threatened. In March of 1998, the lower Columbia steelhead was listed as threatened. Finally, in June 1998, the Columbia River bull trout was listed as threatened.

ESA listings lead to "take" being prohibited. "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or attempt to engage in any such conduct. "Harm" can include significant habitat modification or degradation. In addition, the listing itself is indicative of the need to provide protection of the habitat required by these species to assure recovery of the species and protection from harm.

A governmental agency can be responsible for a take if it authorizes the activity that exacts a taking. In a March 1998 decision, the United States Court of Appeals for the First Circuit ordered a Massachusetts agency to prevent the taking of the northern right whale, an endangered species. The court found whales could be harmed from entanglement in fishing gear from commercial fishing activities authorized by agency regulations. The court found the state licensed the commercial fishing in a manner likely to cause harm, even though its actions were only an indirect cause. Thus, the Forest Practices Board and the Department of Ecology could be vulnerable for take if permits continue to be approved without consideration of listed species protected from harm. Actions to enforce the ESA could be brought by the federal government or other third parties.

The ESA requires federal agencies to examine the impact of their actions on protected species. The Washington Forest Practices Board has been working with the United States Fish and Wildlife Service (USFWS) to have the existing state forest practice rules for the northern spotted owl recognized as part of a proposed federal rule providing protection of that species under the ESA. The USFWS has consulted with the National Marine Fisheries Service (NMFS) regarding how the anadromous (listed and proposed to be listed) fish may be impacted by the proposed federal rule. In a letter dated September 16, 1998, NMFS concluded that the existing state forest practice rules "do not leave adequate riparian buffers to provide the important ecosystem functions necessary to support the biological requirements of anadromous salmonids." NMFS indicated that "any further degradation of habitat conditions that reduces essential habitat functions may have a significant impact, which poses an unacceptable risk to the survival and recovery" of certain salmonid evolutionarily significant units (ESUs), including the upper Columbia steelhead addressed in the emergency rule.

Oregon had developed a plan to protect salmonids which was relied on by NMFS in its decision not to list certain species of salmonids as threatened. The Oregon plan was based largely on future actions and voluntary efforts. In June 1998, a federal court rejected this decision as inadequate to prevent endangerment to salmonids under the ESA. In Washington, the forest practice rules also rely on voluntary efforts. The watershed analysis process (chapter 222-22 WAC) is entirely voluntary. Voluntary efforts are not adequate to prevent endangerment to already listed salmonids. Emergency action is necessary because of the state's obligation to comply with the ESA. This emerging and unexpected development makes it clear that the existing rules are not adequate and the listed species are in jeopardy.

3. CONTINUING TO APPROVE FOREST PRACTICES PERMITS IN LISTED AREAS.

Forest Practices Applications in Listed Areas: The listed areas of the state contain nearly more than eleven million acres of nonfederal land, of which about 4.3 million acres are state and private forest land covered by the current forest practice rules. The number of ESU acres are:

Listed Areas (ESUs)	Total Nonfederal Acres	State and Private Forest Land Acres
Steelhead only	2,874,463	1,398,034
Bull trout only	5,122,388	2,190,251
Steelhead/bull trout Overlapping Areas	3,108,211	750,994
Total	11,105,062	4,339,279

Most of the habitat that salmonids seek for spawning and rearing are in the forested areas of the state. This portion of the habitat continues to be critical to the survival and well-being of these species. (See also the map in WAC 222-16-088.)

When the ESA listings occurred, there were approximately 823 forest practices applications/notifications already approved in the steelhead listed areas, and 575 in bull trout listed areas. Since operations under these permits may have some impact on salmonid habitat, these applicants were sent letters notifying them of the listings. If they had questions, the letter said they should contact National Marine Fisheries Service directly for clarification whether their operations may cause a concern for listed steelhead.

Since the listings, one hundred forty one applications/notifications have been approved within two hundred feet of listed steelhead waters, and one hundred twenty within two hundred feet of listed bull trout waters. These permits contain a note to applicants warning them that this state permit does not necessarily meet federal law under the ESA.

The department estimates that, additionally, about 1,700 to 1,800 applications in steelhead and bull trout ESUs will be approved between now and when a permanent rule might be adopted and become effective (estimated to be July 1, 2000). Since permits are effective for a two-year period, applications approved prior to a new permanent rule taking effect in 2000 would be valid until 2002. Thus, nearly four years from now, some salmonid habitat would still be at risk absent an emergency rule.

The Forest Practices Act (chapter 76.09 RCW) requires protection of public resources. In order to protect these listed salmonids, the habitat associated with spawning, rearing and migration needs to be protected.

Why Current Forest Practices Rules are Inadequate for All Listed Salmonids: Current and newly-approved forest practice operations conducted under the existing rules could cause additional harm to ESA-listed salmonids because continued harvests in riparian areas would decrease shade, bank stability, and large woody debris, and continued road construction in these areas would also impact salmonid habitat. Specific impacts are categorized as follows:

Shade and Stream Temperature. Under the current forest practices rules, shade is required to meet current temperature criteria at sixteen or eighteen degrees centigrade. At the present time, it is likely that shade is not fully provided on Type 3 streams because landowners only have to seek shade as far as the maximum width riparian management zone (RMZ). The maximum width RMZs for Type 3 streams are currently fifty feet on streams greater than five feet wide and twenty-five feet on streams that are less than five feet wide.

An additional factor where current rules are inadequate for meeting temperature requirements involves removal of shade in nonfish-bearing waters which contribute to the temperature of fish-bearing waters downstream. This removal of shade elevates the water temperature which then cumulatively elevates temperatures downstream.

Stream Bank Stability and Forest Roads. Under the current rules, bank stability may be protected. On the westside of the state, the protection only extends to twenty-five feet. On the eastside, the recommended protection is thirty feet. However, if shade is provided (meeting current shade rule) and leave tree requirements are met, additional tree removal that would provide bank stability is also possible.

Roads are covered by the current rules; however, existing information would lead us to believe that standards need to be upgraded and that roads are out of compliance with existing rules as much as half the time as documented in the 1991 Compliance Report prepared by Timber, Fish and Wildlife's Field Implementation Committee. Preliminary findings from an on-going internal audit by the Department of Natural Resources also show that construction of roads in certain areas of the state indicate that the minimum standards are not adequate to protect public resources. Furthermore, greater efforts should be made to reduce road densities or minimize further increases in road densities, depending on the basin.

Large Woody Debris. Under the current rules, LWD is only provided at a minimal level. The number of leave trees required to be retained in the RMZ is not based on the ability to improve both near and long-term continuous LWD recruitment. Input of LWD to stream channels generally occurs within one tree height from the channel edge (FEMAT 1993, McDade et al. 1990). Removal of trees from within this area results in a reduction of LWD recruitment to the stream channel. Furthermore, under current rules, harvest of the larger conifers within the RMZ is allowed, which if retained, would contribute towards the key piece functional sizes of LWD needed in the stream.

Summary. Given the above information, current forest practice rules are deficient, particularly in providing LWD, adequate shade, bank stability, and excessive contributions of sediment from roads and ground disturbance.

Additional Reasons Why Current Rules are Inadequate for Listed Bull Trout: All of the above information applies to bull trout, plus the following:

Shade and Stream Temperature. Current forest practice rules require retention of shade to meet water quality standards of 16 or 18°C, depending on the Department of Ecology stream class. Bull trout have temperature requirements which are cooler than the current water quality standards. Removal of available shade can result in stream temperatures exceeding the preference and tolerance levels of bull trout. Currently, it is likely that shade is not fully provided on Type 3 streams because landowners only have to seek shade as far as the maximum width RMZ (fifty feet on streams wider than five feet, and twenty-five feet on streams less than five feet). Furthermore, no shade is required on nonfish-bearing streams which can result in elevated stream temperatures in downstream fish-bearing waters. Protection of groundwater sources and seeps and springs in nonfish-bearing waters is also not included in current forest practice rules.

EMERGENCY

Though it is agreed upon that spawning and juvenile rearing life stages have the cooler temperature requirement, management should not focus merely on headwater streams and compromise shade and resulting cool water temperatures in lower elevation reaches, which adult bull trout use for foraging and migration. Though adult bull trout can tolerate somewhat higher temperatures, the natural increase in stream temperatures as elevation lowers makes it more difficult to maintain temperature requirements.

4. PROTECTING PUBLIC RESOURCES AND CLASS IV-SPECIAL CLASSIFICATION.

The public has a strong interest in protecting public resources, including water, fish, and wildlife, especially those listed as endangered and threatened species. Immediate action is necessary to ensure that impacts from forest practices in the salmonid listed areas are carefully evaluated while the board is in the process of adopting permanent rules. Without an emergency rule, habitat of these threatened and endangered species could be significantly impacted by forest practices.

The Forest Practices Act requires that forest practices which have the potential for a substantial impact on the environment be classified as Class IV so that they receive additional environmental review under the State Environmental Policy Act (chapter 43.21C RCW). SEPA recognizes the critical importance of restoring and maintaining environmental quality to the public welfare and the importance of full disclosure of adverse environmental impacts caused by agency actions. The Forest Practices Board is obligated under the law to identify those forest practices that have potential for substantial impact on the environment and classify them as Class IV-Special so that additional SEPA review is conducted. If there is the potential for damage to the habitat of a state or federal listed species, then there is potential for substantial impact on the environment. An emergency rule would not necessarily prohibit harvest; it would require additional review to evaluate environmental impacts. This process includes public notice and a public comment period.

As described above, certain forest practices in the salmonid listed areas have the potential for impact on listed salmonids. This impact is substantial because of the number of forest practices in the listed areas and because the current rules are inadequate. Absent permanent rules that adequately prevent these impacts, RCW 76.09.050 and SEPA require the emergency rule change in classification.

5. STATE WATER QUALITY REQUIREMENTS.

The intent of the Forest Practices Act is to meet water quality standards under the Water Pollution Control Act. As indicated by the 2,600 miles of Washington's streams and rivers listed under section 303(d) of the Clean Water Act, water quality standards are not being met. Temperature increases attributed to forestry activities cause 303(d) listings. In 1996, streams with elevated temperatures comprised the largest group on the entire 303(d) list. Temperature limits in the water quality standards are intended to fully protect in-stream beneficial uses by preventing any decrease in salmonid health or reproductive success. This goal is consistent with the state water quality antidegradation regulatory requirements. These requirements demand that the beneficial in-stream uses, such as salmonid habitat, be fully protected. Changes in

water quality are not allowed that violate the standards set to fully protect these uses. Further, degradation of water quality, even where it does not cause a violation of the standards, is not allowed unless all known, available, and reasonable best management practices are being used to reduce the effect on water quality; and the activity has been found to be in the overriding public interest.

6. RULE-MAKING FILES.

The Forest Practices Board and the Department of Ecology maintain rule-making files for this emergency rule that have detailed background information supporting these findings. Please contact Judith Holter, DNR, at (360) 902-1412 or Doug Rushton, DOE, at (360) 407-6180 if you would like to inspect these files.

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 3, Amended 6, 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.

Effective Date of Rule: Immediately.

February 10, 1999

Jennifer M. Belcher

Commissioner of Public Lands

NEW SECTION

WAC 222-10-020 *SEPA policies for certain forest practices within 200 feet of a Type 1 Water. The following policies shall apply to Class IV-Special forest practices, within the salmonid listed areas map in WAC 222-16-088, involving construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas within 200 feet of Type 1 Waters.

*(1) In order to determine whether forest practices are likely to have a probable significant adverse impact, and therefore require an environmental impact statement, the applicant must submit to the department additional information prepared by a qualified expert on: Whether the proposed activity is within the channel migration zone of the Type 1 Water; whether the proposed activity has the potential for accelerating erosional and depositional processes of the Type 1 Water; whether the proposal will have an impact on salmonid spawning, rearing, or migration habitat; and whether the proposal will adversely impact a threatened or endangered species. (See WAC 222-10-043.) In addition, the report must identify specific mitigation measures designed to reduce the impacts to avoid any probable significant adverse impacts identified above.

* (2) The department will evaluate the proposal in consultation with the department of ecology, the department of fish and wildlife, local government, and affected Indian tribes. If the proposal is likely to cause significant adverse impacts to salmonid spawning, rearing, or migration habitat, accelerate erosional and depositional processes of the Type I Water, or cause significant adverse impacts to a threatened or endangered species, then it is likely to have a probable significant adverse impact on the environment. If the department determines, in consultation with the department of fish and wildlife and affected Indian tribes, that the impacts can be mitigated or that the threatened and endangered species is not likely to occur because of a significant long-term passage barrier such as a dam or waterfall in the case of migrating salmonids or determines that certain stream reaches have unsuitable habitat conditions to support bull trout, then the proposal is not likely to have a probable significant adverse impact on the environment.

* (3) If a local permit is required, then the local government is lead agency and the department shall forward the additional information, the environmental checklist, and the forest practices application to the local government for completing SEPA. (See WAC 222-20-040(4).)

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-10-040 Class IV-Special threatened and endangered species SEPA policies. In addition to the SEPA policies established elsewhere in this chapter, the following policies shall apply to Class IV-Special forest practices involving threatened or endangered species.

* (1) The department shall consult with the department of fish and wildlife, other agencies with expertise, affected landowners, affected Indian tribes, and others with expertise when evaluating the impacts of forest practices. If the department does not follow the recommendations of the department of fish and wildlife, the department shall set forth in writing a concise explanation of the reasons for its action.

* (2) In order to determine whether forest practices are likely to have a probable significant adverse impact, and therefore require an environmental impact statement, the department shall evaluate whether the forest practices reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of the survival or recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

* (3) Specific mitigation measures or conditions shall be designed to reduce any probable significant adverse impacts identified in subsection (2) of this section.

* (4) The department shall consider the species-specific policies in WAC 222-10-041 ((and)) northern spotted owls, WAC 222-10-042 marbled murrelets, and WAC 222-10-043 salmonids when reviewing and evaluating SEPA documents and the impacts of forest practices.

NEW SECTION

WAC 222-10-043 *Salmonids. The following policies shall apply to Class IV-Special forest practices, within the

salmonid listed areas map in WAC 222-16-088, if the forest practices may cause adverse impacts to salmonids.

* (1) In order to determine whether forest practices are likely to have a probable significant adverse impact, and therefore require an environmental impact statement, the applicant must submit to the department additional information prepared by a qualified expert that includes: An evaluation of the channel condition; information on how the proposal will provide for bank stability, sediment and mass wasting attenuation, adequate shade, near and long-term large woody debris recruitment, and protection from windthrow. In addition, the report must identify specific mitigation measures designed to reduce the impacts to avoid any probable significant adverse impacts identified above.

* (2) Roads, skid trails, or yarding corridors may not occupy or disturb more than 10 percent of the soil in the riparian management zone unless the landowner submits mitigation measures that provide equivalent replacement of habitat.

* (3) Harvesting, road construction, aerial applications of pesticides, or site preparation that is likely to cause significant adverse impacts to salmonid spawning, rearing, or migration habitat are likely to have a probable significant adverse impact on the environment except when the department determines, in consultation with the department of fish and wildlife, that the impacts can be mitigated.

* (4) The department shall consult with the department of fish and wildlife, the department of ecology, affected Indian tribes, and other interested parties to determine if the proposal will maintain a fully functioning riparian management zone. To meet this goal, the department will review whether the forest practices reasonably would be expected, directly or indirectly, to: Increase protection from sediment and mass wasting impacts; maintain bank stability; maintain shade; maintain near or long-term large woody debris that is key-piece size or larger and indexed to the size of the channel; and, protect riparian functions from windthrow in site-specific circumstances. If the above functions are not adequately provided, then the forest practice is likely to have a probable significant adverse impact on the environment. If the department determines, in consultation with the department of fish and wildlife and affected Indian tribes, that the impacts can be mitigated or that the threatened and endangered species is not likely to occur because of a significant long-term passage barrier such as a dam or waterfall in the case of migrating salmonids or determines that certain stream reaches have unsuitable habitat conditions to support bull trout, then the proposal is not likely to have a probable significant adverse impact on the environment.

AMENDATORY SECTION (Amending WSR 98-07-047, filed 3/13/98, effective 5/1/98)

WAC 222-16-010 General definitions.* Unless otherwise required by context, as used in these regulations:

"Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"Appeals board" means the forest practices appeals board established in the act.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"Board" means the forest practices board established by the act.

"Bog" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western Hemlock, lodgepole pine, cedar, whitepine, crabapple, or aspen, and may be associated with open water. This includes nutrient-poor fens. See the *Forest Practices Board Manual*.

"Borrow pit" shall mean an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Columbia River Gorge National Scenic Area or CRGNSA" means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

"CRGNSA special management area" means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

"CRGNSA special management area guidelines" means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is neces-

sary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: *Provided*, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means the introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local government entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" shall mean a bona fide conversion to an active use which is incompatible with timber growing.

"Cooperative habitat enhancement agreement (CHEA)" see WAC 222-16-105.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

"Critical nesting season" means for marbled murrelets - April 1 to August 31.

"Critical wildlife habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Daily peak activity" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practice activities which would reasonably be expected to cause significant damage to a public resource.

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"Dispersal habitat" see WAC 222-16-085(2).

"Dispersal support" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

"Eastern Washington" means the lands of the state lying east of an administrative line which approximates the change from the Western Washington timber types to the Eastern Washington timber types described as follows:

Beginning at the International Border and Okanogan National Forest boundary at the N1/4 corner Section 6, T. 40N, R. 24E., W.M., south and west along the Pasayten Wilderness boundary to the west line of Section 30, T. 37N, R. 19E.,

Thence south on range line between R. 18E. and R. 19E., to the Lake Chelan-Sawtooth Wilderness at Section 31, T. 35N, R. 19E.,

Thence south and east along the eastern wilderness boundary of Lake Chelan-Sawtooth Wilderness to the west line of Section 18, T. 31N, R. 19E. on the north shore of Lake Chelan,

Thence south on the range line between R. 18E. and R. 19E. to the SE corner of T. 28N, R. 18E.,

Thence west on the township line between T. 27N, and T. 28N to the NW corner of T. 27N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the Alpine Lakes Wilderness at Section 31, T. 26N, R. 17E.,

Thence south along the eastern wilderness boundary to the west line of Section 6, T. 22N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the SE corner of T. 22N, R. 16E.,

Thence west along township line between T. 21N, and T. 22N to the NW corner of T. 21N, R. 15E.,

Thence south along range line between R. 14E. and R. 15E. to SW corner of T. 20N, R. 15E.,

Thence east along township line between T. 19N, and T. 20N to the SW corner of T. 20N, R. 16E.,

Thence south along range line between R. 15E. and R. 16E. to the SW corner of T. 18N, R. 16E.,

Thence west along township line between T. 17N, and T. 18N to the SE corner of T. 18N, R. 14E.,

Thence south along range line between T. 14E. and R. 15E. to the SW corner of T. 14N, R. 15E.,

Thence south and west along Wenatchee National Forest Boundary to the NW corner of T. 12N, R. 14E.,

Thence south along range line between R. 13E. and R. 14E. to SE corner of T. 10N, R. 13E.,

Thence west along township line between T. 9N, and T. 10N to the NW corner of T. 9N, R. 12E.,

Thence south along range line between R. 11E. and R. 12E. to SE corner of T. 8N, R. 11E.,

Thence west along township line between T. 7N, and T. 8N to the Gifford Pinchot National Forest Boundary,

Thence south along Forest Boundary to SE corner of Section 33, T. 7N, R. 11E.,

Thence west along township line between T. 6N, and T. 7N to SE corner of T. 7N, R. 9E.,

Thence south along Skamania-Klickitat County line to Oregon-Washington state line.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Erodible soils" means those soils exposed or displaced by a forest practice operation, that would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-30-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities. Fill does not include the growing or harvesting of timber including, but not limited to, slash burning, site preparation,

reforestation, precommercial thinning, intermediate or final harvesting, salvage of trees, brush control, or fertilization.

"Flood level - 50 year." For purposes of field interpretation of these regulations, the 50-year flood level shall be considered to refer to a vertical elevation measured from the ordinary high-water mark which is 1.25 times the vertical distance between the average stream bed and the ordinary high-water mark, and in horizontal extent shall not exceed 2 times the channel width measured on either side from the ordinary high-water mark, unless a different area is specified by the department based on identifiable topographic or vegetative features or based on an engineering computation of flood magnitude that has a 2 percent chance of occurring in any given year. The 50-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

"Forest land owner" shall mean any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: *Provided*, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest land owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- Road and trail construction;
- Harvesting, final and intermediate;
- Precommercial thinning;
- Reforestation;
- Fertilization;
- Prevention and suppression of diseases and insects;
- Salvage of trees; and
- Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest trees" excludes trees cultivated by agricultural methods in growing cycles shorter than ten years: *Provided*, That Christmas trees are forest trees and: *Provided further*, That this exclusion applies only to trees planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Historic site" includes:

Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or

Places associated with a personality important in history; or

Places where significant historical events are known to have occurred even though no physical evidence of the event remains.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

- Mass wasting;
- Surface and road erosion;
- Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);
- Large organic debris;
- Shading; and
- Stream bank and bed stability.

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practice activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local government entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Marbled murrelet detection area" means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet

detection was made and the eight sections of land immediately adjacent to that section.

"Marbled murrelet nesting platform" means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Northern spotted owl site center" means the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.

Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.

Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

(a) A nest is located; or

(b) Downy chicks or eggs or egg shells are found; or

(c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or

(d) Birds calling from a stationary location within the area; or

(e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(4) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(5) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"Operator" shall mean any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: *Provided*, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights-of-way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Public resources" means water, fish, and wildlife and in addition shall mean capital improvements of the state or its political subdivisions.

"Qualified expert" means a person qualified for level 2 certification in the watershed analysis process, plus having at least 3 additional years of experience in the evaluation of relevant problems in forested lands.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in water volume and velocity.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the

state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian management zone" means a specified area alongside Type 1, 2 and 3 Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salmonid listed areas" means the geographic areas as mapped in WAC 222-16-088. Detailed maps are available from the department at its regional offices.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Shorelines of the state" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"Side casting" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practice activities.

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl dispersal habitat" see WAC 222-16-085(2).

"Spotted owl special emphasis areas (SOSEA)" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wild-

life, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least 40% of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"Suitable spotted owl habitat" see WAC 222-16-085(1).

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the lands of the state lying west of the administrative line described in the definition of Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird,

reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 98-07-047, filed 3/13/98, effective 5/1/98)

WAC 222-16-050 Classes of forest practices. There are 4 classes of forest practices created by the act. All forest practices (including those in Classes I and II) must be conducted in accordance with the forest practices regulations.

(1) **"Class IV - special."** Application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the State Environmental Policy Act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be conducted.

* (a) Aerial application of pesticides in a manner identified as having the potential for a substantial impact on the environment under WAC 222-16-070 or ground application of a pesticide within a Type A or B wetland.

(b) Specific forest practices listed in WAC 222-16-080 on lands designated as:

(i) Critical wildlife habitat (state) of threatened or endangered species; or

(ii) Critical habitat (federal) of threatened or endangered species except those excluded by the board under WAC 222-16-080(3).

(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the boundaries of any national park, state park, or any park of a local governmental entity, except harvest of less than 5 MBF within any developed park recreation area and park managed salvage of merchantable forest products.

* (d) Construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on slide prone areas as defined in WAC 222-24-020(6) and field verified by the department, in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC, when such slide prone areas occur on an uninterrupted slope above water typed pursuant to WAC 222-16-030, Type A or Type B Wetland, or capital improvement of the state or its political subdivisions where there is potential for a substantial debris flow or mass failure to cause significant impact to public resources.

* (e) Timber harvest in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC, on slide prone areas, field verified by the department, where soils, geologic structure, and local hydrology indicate that canopy removal has the potential for increasing slope instability, when such areas occur on an uninterrupted slope above any water typed pursuant to WAC 222-16-030, Type A or Type B Wetland, or a capital improvement of the state or its political subdivisions where there is a potential for a substantial debris flow or mass failure to cause significant impact to public resources.

(f) Timber harvest, in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on snow avalanche slopes within those areas designated by the department, in consultation with department of transportation, as high avalanche hazard.

(g) Timber harvest, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on archaeological or historic sites registered with the Washington state office of archaeology and historic preservation, or on sites containing evidence of Native American cairns, graves, or glyptic records, as provided for in chapters 27.44 and 27.53 RCW. The department shall consult with affected Indian tribes in identifying such sites.

* (h) Forest practices subject to a watershed analysis conducted under chapter 222-22 WAC in an area of resource sensitivity identified in that analysis which deviates from the prescriptions (which may include an alternate plan) in the watershed analysis.

* (i) Filling or draining of more than 0.5 acre of a wetland.

* (j) Construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas within 200 feet of a Type 1 Water within the areas on the salmonid listed map in WAC 222-16-088. Road construction means any new

road construction, reconstruction, or road maintenance activity that is not a Class I forest practice.

(2) "Class IV - general." Applications involving the following circumstances are "Class IV - general" forest practices unless they are listed in "Class IV - special." Upon receipt of an application, the department will determine the lead agency for purposes of compliance with the State Environmental Policy Act pursuant to WAC 197-11-924 and 197-11-938(4) and RCW 43.21C.037(2). Such applications are subject to a 30-day period for approval unless the lead agency determines a detailed statement under RCW 43.21C.030(2)(c) is required. Upon receipt, if the department determines the application is for a proposal that will require a license from a county/city acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable county/city under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4) that the county/city is the lead agency for purposes of compliance with State Environmental Policy Act.

(a) Forest practices (other than those in Class I) on lands platted after January 1, 1960, or on lands being converted to another use.

(b) Forest practices which would otherwise be Class III, but which are taking place on lands which are not to be reforested because of likelihood of future conversion to urban development. (See WAC 222-16-060 and 222-34-050.)

(3) "Class I." Those operations that have been determined to have no direct potential for damaging a public resource are Class I forest practices. When the conditions listed in "Class IV - Special" are not present, these operations may be commenced without notification or application.

(a) Culture and harvest of Christmas trees and seedlings.

* (b) Road maintenance except: (i) Replacement of bridges and culverts across Type 1, 2, 3 or flowing Type 4 Waters; or (ii) movement of material that has a direct potential for entering Type 1, 2, 3 or flowing Type 4 Waters or Type A or B Wetlands.

* (c) Construction of landings less than 1 acre in size, if not within a shoreline area of a Type 1 Water, the riparian management zone of a Type 2 or 3 Water, the ordinary high-water mark of a Type 4 Water, a wetland management zone, a wetland, or the CRGNSA special management area.

* (d) Construction of less than 600 feet of road on a side-slope of 40 percent or less if the limits of construction are not within the shoreline area of a Type 1 Water, the riparian management zone of a Type 2 or Type 3 Water, the ordinary high-water mark of a Type 4 Water, a wetland management zone, a wetland, or the CRGNSA special management area.

* (e) Installation or removal of a portable water crossing structure where such installation does not take place within the shoreline area of a Type 1 Water and does not involve disturbance of the beds or banks of any waters.

* (f) Initial installation and replacement of relief culverts and other drainage control facilities not requiring a hydraulic permit.

(g) Rocking an existing road.

(h) Loading and hauling timber from landings or decks.

(i) Precommercial thinning and pruning, if not within the CRGNSA special management area.

(j) Tree planting and seeding.

(k) Cutting and/or removal of less than 5,000 board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any 12-month period, if not within the CRGNSA special management area.

(l) Emergency fire control and suppression.

(m) Slash burning pursuant to a burning permit (RCW 76.04.205).

*(n) Other slash control and site preparation not involving either off-road use of tractors on slopes exceeding 40 percent or off-road use of tractors within the shorelines of a Type 1 Water, the riparian management zone of any Type 2 or 3 Water, or the ordinary high-water mark of a Type 4 Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(o) Ground application of chemicals, if not within the CRGNSA special management area. (See WAC 222-38-020 and 222-38-030.)

*(p) Aerial application of chemicals (except insecticides), outside of the CRGNSA special management area when applied to not more than 40 contiguous acres if the application is part of a combined or cooperative project with another landowner and where the application does not take place within 100 feet of lands used for farming, or within 200 feet of a residence, unless such farmland or residence is owned by the forest landowner. Provisions of chapter 222-38 WAC shall apply.

(q) Forestry research studies and evaluation tests by an established research organization.

(r) Any of the following if none of the operation or limits of construction takes place within the shoreline area of a Type 1 Water or the riparian management zone of a Type 2 or 3 Water, the ordinary high-water mark of a Type 4 Water or flowing Type 5 Water, or within the CRGNSA special management area and the operation does not involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent:

(i) Any forest practices within the boundaries of existing golf courses.

(ii) Any forest practices within the boundaries of existing cemeteries which are approved by the cemetery board.

(iii) Any forest practices involving a single landowner where contiguous ownership is less than two acres in size.

(s) Removal of beaver structures from culverts on active and inactive roads. A hydraulics project approval from the Washington department of fish and wildlife may be required.

(4) "**Class II.**" Certain forest practices have been determined to have a less than ordinary potential to damage a public resource and may be conducted as Class II forest practices: *Provided*, That no forest practice enumerated below may be conducted as a Class II forest practice if the operation requires a hydraulic project approval (RCW 75.20.100) or is within a "shorelines of the state," or involves a bond in lieu of landowners signature (other than renewals). Such forest practices require an application. No forest practice enumerated below may be conducted as a "Class II" forest practice if it takes place on lands platted after January 1, 1960, or on lands being converted to another use. Such forest practices require a Class IV application. Class II forest practices are the following:

(a) Renewal of a prior Class II notification where no change in the nature and extent of the forest practices is required under rules effective at the time of renewal.

(b) Renewal of a previously approved Class III or IV forest practice application where:

(i) No modification of the uncompleted operation is proposed;

(ii) No notices to comply, stop work orders or other enforcement actions are outstanding with respect to the prior application; and

(iii) No change in the nature and extent of the forest practice is required under rules effective at the time of renewal.

*(c) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type 2 or 3 Water, within the ordinary high-water mark of a Type 4 Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area:

(i) Construction of advance fire trails.

(ii) Opening a new pit of, or extending an existing pit by, less than 1 acre.

*(d) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type 2 or 3 Water, within the ordinary high-water mark of a Type 4 Water, within a wetland management zone or within a wetland; and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent:

Salvage of logging residue.

*(e) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type 2 or 3 Water, within the ordinary high-water mark of a Type 4 Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area, and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent, and if none of the operations are located on lands with a likelihood of future conversion (see WAC 222-16-060):

(i) West of the Cascade summit, partial cutting of 40 percent or less of the live timber volume.

(ii) East of the Cascade summit, partial cutting of 5,000 board feet per acre or less.

(iii) Salvage of dead, down, or dying timber if less than 40 percent of the total timber volume is removed in any 12-month period.

(iv) Any harvest on less than 40 acres.

(v) Construction of 600 or more feet of road, provided that the department shall be notified at least 2 business days before commencement of the construction.

(5) "**Class III.**" Forest practices not listed under Classes IV, I or II above are "Class III" forest practices. Among Class III forest practices are the following:

(a) Those requiring hydraulic project approval (RCW 75.20.100).

*(b) Those within the shorelines of the state other than those in a Class I forest practice.

*(c) Aerial application of insecticides, except where classified as a Class IV forest practice.

***(d)** Aerial application of chemicals (except insecticides), except where classified as Class I or IV forest practices.

***(e)** Harvest or salvage of timber except where classed as Class I, II or IV forest practices.

***(f)** All road construction and reconstruction except as listed in Classes I, II and IV forest practices.

(g) Opening of new pits or extensions of existing pits over 1 acre.

***(h)** Road maintenance involving:

(i) Replacement of bridges or culverts across Type 1, 2, 3, or flowing Type 4 Waters; or

(ii) Movement of material that has a direct potential for entering Type 1, 2, 3 or flowing Type 4 Waters or Type A or B Wetlands.

(i) Operations involving an applicant's bond in lieu of a landowner's signature.

(j) Site preparation or slash abatement not listed in Classes I or IV forest practices.

(k) Harvesting, road construction, site preparation or aerial application of pesticides on lands which contain cultural, historic or archaeological resources which, at the time the application or notification is filed, are:

(i) On or are eligible for listing on the National Register of Historic Places; or

(ii) Have been identified to the department as being of interest to an affected Indian tribe.

(l) Harvesting exceeding 19 acres in a designated difficult regeneration area.

(m) Utilization of an alternate plan. See WAC 222-12-040.

***(n)** Any filling of wetlands, except where classified as Class IV forest practices.

***(o)** Harvesting, site preparation or aerial application of pesticides within 200 feet of a Type 1, 2, or 3 Water, or road construction within 200 feet of a Type 2 or 3 Water, within the areas on the salmonid listed map in WAC 222-16-088.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-16-080 Critical wildlife habitats (state) and critical habitat (federal) of threatened and endangered species. (1) Critical wildlife habitats (state) of threatened or endangered species and specific forest practices designated as Class IV-Special are as follows:

(a) Bald eagle - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of fish and wildlife, between the dates of January 1 and August 15 or 0.25 mile at other times of the year; and within 0.25 mile of a communal roosting site. Communal roosting sites shall not include refuse or garbage dumping sites.

(b) Gray wolf - harvesting, road construction, or site preparation within 1 mile of a known active den site, documented by the department of fish and wildlife, between the dates of March 15 and July 30 or 0.25 mile from the den site at other times of the year.

(c) Grizzly bear - harvesting, road construction, aerial application of pesticides, or site preparation within 1 mile of

a known active den site, documented by the department of fish and wildlife, between the dates of October 1 and May 30 or 0.25 mile at other times of the year.

(d) Mountain caribou - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active breeding area, documented by the department of fish and wildlife.

(e) Oregon silverspot butterfly - harvesting, road construction, aerial or ground application of pesticides, or site preparation within 0.25 mile of an individual occurrence, documented by the department of fish and wildlife.

(f) Peregrine falcon - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of fish and wildlife, between the dates of March 1 and July 30; or harvesting, road construction, or aerial application of pesticides within 0.25 mile of the nest site at other times of the year.

(g) Sandhill crane - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active nesting area, documented by the department of fish and wildlife.

(h) Northern spotted owl - the following shall apply through June 30, 1996: Harvesting, road construction, or aerial application of pesticides on the most suitable 500 acres of nesting, roosting, and foraging habitat surrounding the northern spotted owl site center. The most suitable habitat shall be determined by the department in cooperation with the department of fish and wildlife, tribes, and others with applicable expertise. Consideration shall be given to habitat quality, proximity to the activity center and contiguity in selecting the most suitable 500 acres of habitat.

Beginning July 1, 1996, the following shall apply for the northern spotted owl:

(i) Within a SOSEA boundary (see maps in WAC 222-16-086), except as indicated in (h)(ii) of this subsection, harvesting, road construction, or aerial application of pesticides on suitable spotted owl habitat within a median home range circle that is centered within the SOSEA or on adjacent federal lands.

(ii) Within the Entiat SOSEA, harvesting, road construction, or aerial application of pesticides within the areas indicated for demographic support (see WAC 222-16-086(2)) on suitable spotted owl habitat located within a median home range circle that is centered within the demographic support area.

(iii) Outside of a SOSEA, harvesting, road construction, or aerial application of pesticides, between March 1 and August 31 on the seventy acres of highest quality suitable spotted owl habitat surrounding a northern spotted owl site center located outside a SOSEA. The highest quality suitable habitat shall be determined by the department in cooperation with the department of fish and wildlife. Consideration shall be given to habitat quality, proximity to the activity center and contiguity.

(iv) Small parcel northern spotted owl exemption. Forest practices proposed on the lands owned or controlled by a landowner whose forest land ownership within the SOSEA is less than or equal to 500 acres and where the forest practice is not within 0.7 mile of a northern spotted owl site

center shall not be considered to be on lands designated as critical wildlife habitat (state) for northern spotted owls.

(i) Western pond turtle - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known individual occurrence, documented by the department of wildlife.

(j) Marbled murrelet.

(i) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within an occupied marbled murrelet site.

(ii) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within suitable marbled murrelet habitat within a marbled murrelet detection area.

(iii) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within suitable marbled murrelet habitat containing 7 platforms per acre outside a marbled murrelet detection area.

(iv) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction outside a marbled murrelet detection area within a marbled murrelet special landscape and within suitable marbled murrelet habitat with 5 or more platforms per acre.

(v) Harvesting within a 300 foot managed buffer zone adjacent to an occupied marbled murrelet site that results in less than a residual stand stem density of 75 trees per acre greater than 6 inches in dbh; provided that 25 of which shall be greater than 12 inches dbh including 5 trees greater than 20 inches in dbh, where they exist. The primary consideration for the design of managed buffer zone widths and leave tree retention patterns shall be to mediate edge effects. The width of the buffer zone may be reduced in some areas to a minimum of 200 feet and extended to a maximum of 400 feet as long as the average of 300 feet is maintained.

(vi) Except that the following shall not be critical wildlife habitat (state):

(A) Where a landowner owns less than 500 acres of forest land within 50 miles of saltwater and the land does not contain an occupied marbled murrelet site; or

(B) Where a protocol survey (see WAC 222-12-090(14)) has been conducted and no murrelets were detected. The landowner is then relieved from further survey requirements. However, if an occupied marbled murrelet site is established, this exemption is void.

*(k) Salmonids - harvesting, road construction, aerial applications of pesticides, or site preparation, within the areas on the salmonid listed map in WAC 222-16-088, within 100 feet of a type 1, 2, or 3 water. Road construction means any new road construction, reconstruction, or road maintenance activity that is not a Class I forest practice.

(2) The following critical habitats (federal) designated by the United States Secretary of the Interior, or specific forest practices within those habitats, have been determined to not have the potential for a substantial impact on the environment:

Marbled murrelet critical habitat 50 C.F.R. §17.95(b), 61 Fed. Reg. 26256 as a result of provisions of the state's marbled murrelet rule.

(3) For the purpose of identifying forest practices which have the potential for a substantial impact on the environment

with regard to threatened or endangered species newly listed by the Washington fish and wildlife commission and/or the United States Secretary of the Interior, the department shall after consultation with the department of fish and wildlife, prepare and submit to the board a proposed list of critical wildlife habitats (state) of threatened or endangered species. This list shall be submitted to the board within 15 days of the listing of the species. The department shall, at a minimum, consider potential impacts of forest practices on habitats essential to meeting the life requisites for each species listed as threatened or endangered. Those critical wildlife habitats (state) adopted by the board shall be added to the list in subsection (1) of this section. See WAC 222-16-050 (1)(b)(i).

(4) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior which do not have the potential for a substantial impact on the environment, the department shall, after consultation with the department of fish and wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for exclusion from Class IV - special forest practices. The department shall submit the list to the board within 120 days of the date the United States Secretary of the Interior publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats excluded by the board from Class IV - Special shall be added to the list in subsection (2) of this section. See WAC 222-16-050 (1)(b)(ii).

(5)(a) Except for bald eagles under subsection (1)(a) of this section, the critical wildlife habitats (state) of threatened and endangered species and specific forest practices designated in subsection (1) of this section are intended to be interim. These interim designations shall expire for a given species on the earliest of:

(i) The effective date of a regulatory system for wildlife protection referred to in (b) of this subsection or of substantive rules on the species.

(ii) The delisting of a threatened or endangered species by the Washington fish and wildlife commission.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend a regulatory system, including baseline rules for wildlife protection. To the extent possible, this system shall:

(i) Use the best science and management advice available;

(ii) Use a landscape approach to wildlife protection;

(iii) Be designed to avoid the potential for substantial impact to the environment;

(iv) Protect known populations of threatened and endangered species of wildlife from negative effects of forest practices consistent with RCW 76.09.010; and

(v) Consider and be consistent with recovery plans adopted by the department of fish and wildlife pursuant to RCW 77.12.020(6) or habitat conservation plans or 16 U.S.C. 1533(d) rule changes of the Endangered Species Act.

(6) Regardless of any other provision in this section, forest practices applications shall not be classified as Class IV-Special based on critical wildlife habitat (state) (WAC 222-16-080(1)) or critical habitat (federal) (WAC 222-16-050 (1)(b)(ii)) for a species if the forest practices are consistent

with one of the following proposed for protection of the species:

(a) A habitat conservation plan and permit or an incidental take statement covering such species approved by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. §1536 (b) or 1539 (a); an "unlisted species agreement" covering such species approved by the U.S. Fish and Wildlife Service or National Marine Fisheries Service; or a "no-take letter" or other cooperative or conservation agreement entered into with a federal or state fish and wildlife agency pursuant to its statutory authority for fish and wildlife protection that addresses the needs of the affected species and that is subject to review under the National Environmental Protection Act, 42 U.S.C. §4321 et seq., or the State Environmental Policy Act, chapter 43.21C RCW, as applicable;

(b) A rule adopted by the U.S. Fish and Wildlife Service for the conservation of a particular threatened species pursuant to 16 U.S.C. 1533(d);

(c) A special wildlife management plan (SWMP) developed by the landowner and approved by the department in consultation with the department of fish and wildlife;

(d) A bald eagle management plan approved under WAC 232-12-292;

(e) A landowner option plan (LOP) for northern spotted owls developed pursuant to WAC 222-16-100(1); or

(f) A cooperative habitat enhancement agreement (CHEA) developed pursuant to WAC 222-16-105.

In those situations where one of the options above has been used, forest practices applications may still be classified as Class IV-Special based upon the presence of one or more of the factors listed in WAC 222-16-050(1), other than critical wildlife habitat (state) or critical habitat (federal) for the species covered by the existing plan.

(7) The department, in consultation with the department of fish and wildlife, shall review each SOSEA to determine whether the goals for that SOSEA are being met through approved plans, permits, statements, letters, or agreements referred to in subsection (6) of this section. Based on the consultation, the department shall recommend to the board the suspension, deletion, modification or reestablishment of the applicable SOSEA from the rules. The department shall conduct a review for a particular SOSEA upon approval of a landowner option plan, a petition from a landowner in the SOSEA, or under its own initiative.

(8) The department, in consultation with the department of fish and wildlife, shall report annually to the board on the status of the northern spotted owl to determine whether circumstances exist that substantially interfere with meeting the goals of the SOSEAs.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-24-050 Road maintenance. *(1) Road maintenance and abandonment plan.

(a) The department will identify priorities for road maintenance and abandonment plans by watershed administrative unit by region using information such as the Lower Columbia Steelhead Conservation Initiative. The department shall choose priority WAUs every spring and fall.

(b) Landowners with 500 acres or more of ownership within the areas on the salmonid listed map in WAC 222-16-088 and in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC, must submit within 90 days after notification in the spring or by June 30 after notification in the fall by the department, for department approval, a road maintenance and abandonment plan for those drainages or road systems, within the identified watershed administrative units, that are active or will be active within two years. This subsection does not apply to landowners with an approved habitat conservation plan that has specific provisions for road maintenance.

(c) Landowners with less than 500 acres within the areas on the salmonid listed map in WAC 222-16-088 and in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC must submit a road maintenance and abandonment plan covering their entire ownership within the priority WAUs as per (a) of this subsection to the department prior to or concurrently with a forest practice notification or application for proposed road or harvest activities. Once approved, the landowner should attach or reference the approved road maintenance and abandonment plan when submitting subsequent applications.

(d) Landowners not required to submit road maintenance and abandonment plans under (b) or (c) of this subsection, when notified by the department, shall submit a plan for department approval for road maintenance and abandonment for those drainages or road systems the department determines based on physical evidence to have a potential to damage public resources.

~~((The))~~ (e) All road maintenance and abandonment plans ((is)) are subject to annual review. The plan must pay particular attention to those road segments that block fish passage or have the potential to deliver water or sediment to any typed water, and shall include:

- (i) Ownership maps showing the road or road system;
- (ii) Road status, whether active, inactive, orphan, abandoned or planned for abandonment;
- (iii) Maintenance schedule and priorities for the year; and
- (iv) Plan for further maintenance and reconstruction beyond the current year for repair of extensive damage.

~~((b))~~ (f) The plan shall be submitted to the department region office on or before June 30, 1988, and each June 30th thereafter unless the department agrees that no further plans are necessary.

~~((e))~~ (g) The department will review the plan annually with the landowner to determine whether it will be effective and is being implemented.

~~((d))~~ (h) Such plans shall also be reviewed with departments of ecology, fish and wildlife, ((and)) affected Indian tribes, and interested parties, any of whom may request the department to hold an informal conference with the landowner.

(NOTE: The road maintenance and abandonment training manual and other materials made available by the department can be used for guidance in developing road maintenance and abandonment plans.)

*(2) Active roads. An active road is a forest road being actively used for hauling of logs, pulpwood, chips, or other major forest products or rock and other road building materials. To the extent necessary to prevent damage to public resources, the following maintenance shall be conducted on such roads:

(a) Culverts and ditches shall be kept functional.

(b) Road surface shall be maintained as necessary to minimize erosion of the surface and the subgrade.

(c) During and on completion of operations, road surface shall be crowned, outsloped, or water barred and berms removed from the outside edge except those intentionally constructed for protection of fills.

*(3) Inactive roads. An inactive road is a forest road on which commercial hauling is discontinued for 1 or more logging seasons, and the forest landowner desires continuation of access for fire control, forest management activities, Christmas tree growing operations, occasional or incidental use for minor forest products harvesting or similar activities on such inactive roads:

(a) Before the first winter rainy season following termination of active use, nonfunctional ditches and culverts shall be cleared and the road surface shall be crowned, outsloped, water barred or otherwise left in a condition not conducive to accelerated erosion or interrupt water movement within wetlands; and

(b) Thereafter, except as provided in (c) of this subsection, the landowner shall clear or repair ditches or culverts which he/she knows or should know to be nonfunctional and causing or likely to cause material damage to a public resource.

(c) The landowner shall not be liable for penalties or monetary damages, under the act, for damage occurring from a condition brought about by public use, unless he/she fails to make repairs as directed by a notice to comply.

*(4) Additional culverts/maintenance. If the department determines based on physical evidence that the above maintenance has been or will be inadequate to protect public resources and that additional measures will provide adequate protection it shall require the landowner or operator to either elect to:

(a) Install additional or larger culverts or other drainage improvements as deemed necessary by the department; or

(b) Agree to an additional road maintenance program. Such improvements in drainage or maintenance may be required only after a field inspection and opportunity for an informal conference.

*(5) Abandoned roads. An abandoned road is a forest road which the forest landowner has abandoned in accordance with procedures of (a) through (e) of this subsection.

Roads are exempt from maintenance only after (e) of this subsection is completed:

(a) Roads are outsloped, water barred, or otherwise left in a condition suitable to control erosion and maintain water movement within wetlands; and

(b) Ditches are left in a suitable condition to reduce erosion; and

(c) The road is blocked so that four wheel highway vehicles can not pass the point of closure at the time of abandonment; and

(d) Bridges, culverts, and fills on all waters are removed, except where the department determines other measures would provide adequate protection to public resources.

(e) The department shall determine whether the road has been abandoned according to procedures of this subsection. If the department determines the road is properly abandoned, it shall within thirty days notify the landowner in writing that the road is officially abandoned.

*** (6) Brush control.** Chemical control of roadside brush shall not be done where chemicals will directly enter any Type 1, 2, or 3 or flowing Type 4 or 5 Water or Type A or B Wetlands. Refer to WAC 222-38-020 for additional information.

*** (7) Road surface treatment.**

(a) Apply oil to the road surface only when the temperature is above 55 degrees F and during the season when there is a minimal chance of rain for the next 48 hours. Use of waste oil is subject to RCW 70.95I.060(5).

(b) Water the road surface prior to application of oil to assist in penetration.

(c) Construct a temporary berm along the road shoulder wherever needed to control runoff of the applied chemical.

(d) Take extreme care to avoid excess application of road chemicals. Shut off the flow at all bridges.

(e) When cleaning out chemical storage tanks or the application equipment tanks used for storage and application of road treatment materials, dispose of the rinse water fluids on the road surface or in a place safe from potential contamination of water.

(f) The use of dry road chemicals shall be in compliance with WAC 222-38-020.

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

WAC 222-30-040 Shade requirements to maintain stream temperature. *(1) Determination of adequate shade. The temperature prediction method in subsections (2) and (3) of this section shall be used to determine appropriate shade levels for flowing Type 1, 2, and 3 Waters to prevent excessive water temperatures which may have detrimental impact on aquatic resources.

*** (2) Temperature prediction method.**

(a) In addition to the riparian management zone requirements, leave trees shall be retained in riparian management zones on flowing Type 1, 2, and 3 Waters ~~((as provided by))~~,

(b) Leave trees shall also be retained as needed within the first 50 feet horizontal distance from the ordinary high water mark along the first 500 feet of flowing Type 4 or 5 Waters above Type 1, 2, and 3 Waters in the salmonid listed

areas map in WAC 222-16-088. This provision, however, does not apply to landowners with an approved habitat conservation plan that has specific provisions for salmonids.

(c) The temperature prediction method is described in the board manual ~~((which))~~ and it includes the following considerations:

~~((a))~~ (i) Minimum shade retention requirements; and

~~((b))~~ (ii) Regional water temperature characteristics; and

~~((c))~~ (iii) Elevation; and

~~((d))~~ (iv) Temperature criteria defined for stream classes in chapter 173-201A WAC.

* (3) Leave tree requirements for shade. The method described in subsection (2) of this section shall be used to establish the minimum shade cover based on site specific characteristics. When site specific data indicate that preharvest conditions do not meet the minimums established by the method, no additional shade removal from riparian management zones will be allowed.

(4) **Waivers.** The department may waive or modify the shade requirements where:

(a) The applicant agrees to a staggered setting program producing equal or greater shade requirements to maintain stream temperature; or

(b) The applicant provides alternative means of stream temperature control satisfactory to the department; or

(c) The temperature method indicates that additional shade will not affect stream temperature.

WSR 99-07-077

EMERGENCY RULES

DEPARTMENT OF ECOLOGY

[Order 99-04—Filed March 17, 1999, 3:12 p.m.]

Date of Adoption: March 9, 1999.

Purpose: To adopt by reference modifications to the forest practices rules to provide greater protection for federally listed threatened and endangered salmonids (including bull trout). This procedural rule classifies forest practices in mapped areas as Class IV-Special, requiring additional environmental review. Includes revisions of Type 2 and 3 waters and defines requirements for the Forest Practices Board manual. Supercedes emergency rule filed on November 23, 1998.

Citation of Existing Rules Affected by this Order: Amending chapter 173-202 WAC.

Statutory Authority for Adoption: RCW 90.48.420, 76.09.040, and chapter 34.05 RCW.

Other Authority: Chapter 43.21A RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: For stream typing, data shows many streams were mistyped and this emergency rule would correct those errors and provide protection commensurate with resource values and based on current information. Typ-

ing of streams affects protection measures. Salmonid (including bull trout) part will provide additional protection through environmental review of salmonid species listed as threatened or endangered by the National Marine Fisheries Service. This action will help manage forestry activities that might negatively impact listed fish.

WATERTYPING:

The Forest Practices Board (FPB) and the Department of Ecology (DOE) find good cause for an emergency to modify the water typing rules. This document organizes and summarizes information presented to and discussed by the board in public meetings. The reasons for findings are as follows:

New data has shown the physical characteristics of streams, as defined in the current forest practices rules, are no longer accurate. Accurate water typing is critical to public resource protection. This emergency rule updates those physical characteristics based on current knowledge so that appropriate resource protection can be provided to fish habitat and water quality.

This emergency rule establishes presumptions for determining fish use in the absence of field verification and is necessary during permanent rule making updating the water type rules and associated riparian protection. Because water typing triggers riparian protection through the forest practices rules, watershed analysis, and some local land use decisions, the definitions used to determine water types must reflect current knowledge about fish use and habitat. Due to significant field verification of water types and research, more is known today about fish distribution and the physical characteristics of fish habitat than was known when the existing water type definitions were written (see WAC 222-16-030). In addition, the Clean Water Act section 303(d) listings, and actual and potential Endangered Species Act listings cause increased pressure on the forest practices regulation system that will result in increased cost and complexities for all participants. If the water typing system is not upgraded immediately, it will contribute to potential listings and increase the associated burdens of such listings.

In August 1994, the Point-No-Point Treaty Council published a report, Stream Typing Errors in Washington Water Type Maps for Watersheds of Hood Canal and the Southwest Olympic Peninsula. Simultaneously, the Quinault Indian Nation and the Department of Fish and Wildlife were also reviewing water types in the southwest part of the Olympic Peninsula. Data from these studies indicated that 72% of the Type 4 streams were actually Type 2 or 3 streams. In addition, projects funded by the United States Fish and Wildlife Service with cooperation from some western Cascade landowners and Washington trout have also resulted in significant upgrades.

The intent of the Forest Practices Act is to meet water quality standards under the Clean Water Act. As indicated by the number of water bodies listed under section 303(d) of the Clean Water Act, water quality standards are not being met. The number of water bodies included on the Department of Ecology's 303(d) water quality limited list has increased and now includes many forested streams. Numerous fish stocks are being considered for listing under the Endangered Species Act. The state has water quality antidegradation regulatory requirements. These requirements demand that the ben-

eficial in-stream uses, such as salmonid habitat, be fully protected. Changes in water quality are not allowed that violate the standards set to fully protect these uses. Further, degradation of water quality, even where it does not cause a violation of the standards, is not allowed unless all known, available, and reasonable best management practices are being used to reduce the affect on water quality; and the activity has been found to be in the overriding public interest. Water quality standards cannot be met if inaccurate stream typing information is used in assessing the impacts of forest practices.

The public has a strong interest in protecting public resources, including water, and fish, especially those listed as endangered and threatened species. Immediate action is necessary to ensure that impacts from forest practices near water are carefully evaluated while the board and ecology are in the process of adopting permanent rules. Without an emergency rule, public resources, including the habitat of threatened and endangered species, could be significantly impacted by forest practices because of incorrect water typing.

The FPB and DOE maintain rule-making files for this emergency rule that have detailed background information supporting these findings. Please contact Judith Holter, DNR at (360) 902-1412 or Doug Rushton, DOE at (360) 407-6180 if you would like to inspect these files.

SALMONIDS:

The Forest Practices Board and the Department of Ecology find good cause for an emergency for salmonids, including bull trout. This document organizes and summarizes information presented to and discussed by the board in public meetings. The reasons for this finding are as follows:

1. SALMONID NEEDS.

Salmonid Biology - General: The family *Salmonidae* includes many individual species of salmon, steelhead and trout. Salmonids have several life history phases which include spawning, rearing and migration. Fertilized salmonid eggs require sediment-free and cool water in order to incubate and hatch. Once the eggs hatch, the juvenile salmonids require rearing habitat which includes forage, clean cool water, and cover provided by rocks, banks and large woody debris. Finally, salmonids need to be able to have stream passage at all life history stages.

Bull Trout Biology: Bull trout (*Salvelinus confluentus*), a native char, are a cold water species that moved north and into higher elevations after the last glacial period. Bull trout exhibit both migratory and nonmigratory life history forms (Brown 1994). Resident populations generally spend their entire lives in small headwater streams, whereas migratory populations spawn and rear in headwater tributary streams for several years before migrating to either larger river systems (fluvial), lakes and reservoirs (adfluvial), or the ocean (anadromous) for adult rearing. Bull trout generally concentrate in reaches influenced by groundwater where temperature and flow conditions may be more stable (Baxter and Hauer, in prep; Baxter et al., to be published; MBTSG 1998).

Bull Trout vs Dolly Varden: Dolly Varden (*Salvelinus malma*) and bull trout (*Salvelinus confluentus*) were considered to be the same species until the late 1970's when Caven-der (1978) provided evidence to suggest that there was a dichotomy. The American Fisheries Society accepted Caven-der's work in 1980 and recognized the separation of the two

species (Mongillo 1993). However, the two species are difficult to differentiate in the field; extensive and costly genetic work must be done in the laboratory. Furthermore, their life histories and habitat requirements are similar, if not identical (Mongillo 1993, Brown 1994). Therefore, from a management and recovery perspective, they are currently considered the same species. As pertains to an emergency rule, while coastal and Puget Sound populations can be either species or a combination of Dolly Varden and bull trout, all populations in eastern Washington and the Columbia River drainage are assumed to be bull trout.

How Bull Trout Habitat Requirements Differ from Other Salmonids:

- Temperature requirements for bull trout are colder than for other salmonids (especially for spawning and juvenile rearing); in some cases, so cold as to exclude other salmonids, which would otherwise compete for habitat and food. When living within the same habitat with other salmonids, colder temperatures can give bull trout the competitive advantage (MBTSG 1998).
- Bull trout will often stratify higher in the watershed than other salmonids (especially resident life forms and for spawning and rearing). (Adams 1994.)
- Because bull trout spawn higher in the headwaters, they can be more vulnerable to fish passage problems.
- Bull trout spend a longer period [of] time in the gravels before emergence (220+ days) and thus are more vulnerable to sediment and scouring peak flows.

Factors Limiting Habitat of all Salmonids: In order to provide cool, clean water and habitat that includes pools, clean gravel and stable channels, the following habitat requirements are necessary in order to provide for healthy salmonids: Shade, stable stream banks, large woody debris, and fish passage.

Shade and Stream Temperature. Shade is needed to provide cool water temperatures. To achieve this, trees along the riparian zones of fish-bearing streams and along contributing nonfish-bearing streams must be retained to assure that the solar radiation does not heat the streams to a point that limits the productivity, or in some severe cases, the mortality of salmonids. High temperatures can also block or delay fish migration.

The current state water quality standard for stream temperature is intended to fully protect salmonids. Shade must be retained, in order to keep water temperatures below 16° centigrade.

Other factors, such as sediment deposition and resultant stream widening, can increase temperature. Shade removal in nonfish-bearing streams can also contribute to downstream temperature increases in fish-bearing waters. Shade removal can also impact cold groundwater sources and microclimate.

Stream Bank Stability and Forest Roads. Fine sediment in spawning gravel reduces the survival of salmonid eggs. Sediment can also limit the ability for juvenile and adult salmonids to feed. Stream bank instability is a major contributor of sediment to streams. Stability of stream banks is necessary to this as a source of sediment (if banks are disturbed

they can introduce sediment). Forest roads can also contribute sediment laden water to streams from ditches and water crossings. Roads can also change hydrologic regime of the stream causing higher peak flows which can cause more sedimentation.

Large Woody Debris. Rearing or juvenile salmonids need pools and cover for refuge and desired feeding conditions. Stream morphology that contains adequate pools requires large woody debris (LWD) on a continuous basis. The LWD provides structure in the streams for the formation of pools and cover. It also moderates the movement of sediment. Trees from the adjacent riparian stand are an important source of LWD.

Fish Passage. Adult fish need to move upstream to access spawning areas. Juvenile fish need to move upstream and downstream to find desirable feeding conditions or take refuge from undesirable environmental conditions. Forest road stream crossings often block fish passage.

Summary. The literature indicates that in order to protect bank stability, a thirty-foot buffer is recommended. In addition, to achieve 95% recruitment of the key piece wood, (wood that is large enough to start the forming of log jams indexed by stream size) approximately one hundred foot buffer is required. Additional buffers may be needed to account for areas that have high susceptibility to windthrow, provide additional large woody debris (LWD) recruitment, unstable slopes protection, protection of seeps, springs and stream associated wetlands. Other functions include microclimate (air temperature and humidity, etc.).

Additional Factors Limiting Bull Trout Habitat: The decline of bull trout throughout their range has been linked to habitat destruction and migration barriers, as well as other factors such as introduced exotic species (Dambacher and Jones 1997). Bull trout spawning, incubation, and juvenile rearing generally occur in second through fourth order streams which are most susceptible to effects resulting from harvest. Effects may be more obvious on smaller streams than on larger ones. Timber harvest can influence stream temperature, LWD recruitment, local runoff patterns, erosion, sedimentation, channel aggradation, and channel stability (MBTSG 1998).

Shade and Stream Temperature. Bull trout are glacial relics and require a narrow range of cold temperature conditions to rear and reproduce (Adams and Bjornn 1997, Buchanan and Gregory 1997, Brown 1994). Temperatures required to initiate spawning (late August through October) vary from 4-11°C, depending on the drainage (Buchanan and Gregory 1997, Fraley and Shepard 1989, McPhail and Murray 1979, Wydoski and Whitney 1979, Kraemer 1991). Egg incubation (late August through April) occurs at 1-6°C (Buchanan and Gregory 1997, Weaver and White 1985, McPhail and Murray 1979, Brown 1994). Optimal temperature ranges for juvenile rearing occur from 4-10°C (Buchanan and Gregory 1997, McPhail and Murray 1979). In the Flathead drainage in Montana, bull trout juveniles have been rarely observed in streams with summer temperatures exceeding 15°C (Fraley and Shepard 1989). Adults are known to tolerate somewhat higher temperatures (Kraemer 1991, Brown 1994); however, they are seldom found in streams with summer temperatures

exceeding 18°C and are often found near cold perennial springs (Shepard et al. 1984b, Brown 1994). Higher densities of adult bull trout have been found to occur at temperatures less than 12°C (Adams 1994, Buchanan and Gregory 1997, Clancy 1996). Optimum temperatures for migration are 10-12°C (Buchanan and Gregory 1997, McPhail and Murray 1979).

Various factors contribute towards providing for cool water in streams (shade, groundwater contribution, elevation, etc.). Shade is the primary factor (impacted by land management) which is needed to reduce solar radiation to the stream, to protect groundwater sources and seeps and springs, and to provide for microclimate. Shade contributing trees within the riparian zone must be retained in both fish-bearing and contributing nonfish-bearing streams to maintain cool water temperatures. Sediment deposition and resultant stream widening can also cause an increase in stream temperature, as well as alteration of natural streamflow regimes and reduced groundwater inflows (MBTSG 1998).

The current state water quality standard for stream temperature is targeted to maintain water temperatures below 16 and 18°C depending on the Department of Ecology stream class. However, because bull trout and Dolly Varden have temperature requirements which are below those for other salmonids, the current water quality standard is not adequate. The United States Environmental Protection Agency has established temperature criteria for bull trout (now used as a state water quality standard in Idaho). The temperature standard to meet bull trout requirements is set at 10°C expressed as a consecutive seven-day average of the daily maximum temperatures for June, July, August and September. It is believed that if a summer temperature criterion of 10°C is met, natural seasonal variability in stream temperatures will result in attainment of appropriate thermal requirements during the remainder of the year in bull trout spawning and juvenile rearing areas (United States Environmental Protection Agency 1997).

Sediment and Roads. The long overwinter intragravel incubation and development for bull trout (average two hundred twenty days) leaves them vulnerable to increases in fine sediments and degradation of water quality (Fraley and Shepard 1989). A significant negative correlation between fry emergence of bull trout and the percentage of redd materials smaller than 6.35 mm was found by Weaver and Fraley (1991). Analyses conducted within the Columbia River Basin support the conclusion that increasing road densities are correlated with declining aquatic habitat conditions and aquatic integrity. Results show that bull trout are less likely to use moderate to highly roaded areas for spawning and rearing, and if found in these areas, they are less likely to be at strong population levels (Lee et al. 1997; Baxter et al., to be published; MBTSG 1998).

Stream bank stability must be maintained to prevent increases in sediment inputs to the stream (from forest practices). Construction and maintenance of roads must be conducted in ways which minimize road density and cut off delivery of sediments to streams. Roads should also be constructed and maintained to prevent changes to the hydrologic regime resulting in higher peak flows and increased sedimentation.

Ground disturbance should be minimized and mitigated. Best management practices for sediment and roads should apply to nonfish-bearing streams as well as fish-bearing streams.

Large Woody Debris. Large woody debris is important for the formation of deep pools and habitat complexity needed by bull trout. Adult bull trout prefer deep cold pools, often associated with the cover of large woody debris, for foraging and for holding during migration (Brown 1994, Fraley and Shepherd 1989, Shepard et al. 1984b, Goetz 1989). Juvenile rearing of bull trout is also often associated with pools with shelter-providing large organic debris or clean cobble (McPhail and Murray 1979). A strong preference exists for plunge and scour pools over all other habitat types in south-east Washington (Brown 1994). Large woody debris is also necessary to maintain the step pool formation in steeper headwater streams inhabited by bull trout, and for sediment storage.

Fish Passage. Due to loss of connectivity, many bull trout populations have become fragmented throughout their range, and remnant headwater populations are all that remain for some drainages. Fish passage barriers result in the loss of genetic exchange, loss in the ability to respond to changes in seasonal habitat requirements and conditions, loss in the ability to recolonize habitats after disturbance regimes, and often extinction of local populations (Rieman et al. 1993, MBTSG 1998). Barriers not only include manmade barriers at road crossings, but also low flows caused from aggregation of excessive coarse sediment, and elevated temperatures.

2. ENDANGERED SPECIES ACT LISTINGS AND THE FOREST PRACTICES ACT.

The Endangered Species Act (ESA) was enacted to conserve threatened and endangered species and the ecosystems upon which they depend. Four ESA listings have occurred in the last year. In August of 1997, upper Columbia steelhead was listed as endangered and the Snake River steelhead was listed as threatened. In March of 1998, the lower Columbia steelhead was listed as threatened. Finally, in June 1998, the Columbia River bull trout was listed as threatened.

ESA listings lead to "take" being prohibited. "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or attempt to engage in any such conduct. "Harm" can include significant habitat modification or degradation. In addition, the listing itself is indicative of the need to provide protection of the habitat required by these species to assure recovery of the species and protection from harm.

A governmental agency can be responsible for a take if it authorizes the activity that exacts a taking. In a March 1998 decision, the United States Court of Appeals for the First Circuit ordered a Massachusetts agency to prevent the taking of the northern right whale, an endangered species. The court found whales could be harmed from entanglement in fishing gear from commercial fishing activities authorized by agency regulations. The court found the state licensed the commercial fishing in a manner likely to cause harm, even though its actions were only an indirect cause. Thus, the Forest Practices Board and the Department of Ecology could be vulnerable for take if permits continue to be approved without consideration of listed species protected from harm. Actions to

enforce the ESA could be brought by the federal government or other third parties.

The ESA requires federal agencies to examine the impact of their actions on protected species. The Washington Forest Practices Board has been working with the United States Fish and Wildlife Service (USFWS) to have the existing state forest practice rules for the northern spotted owl recognized as part of a proposed federal rule providing protection of that species under the ESA. The USFWS has consulted with the National Marine Fisheries Service (NMFS) regarding how the anadromous (listed and proposed to be listed) fish may be impacted by the proposed federal rule. In a letter dated September 16, 1998, NMFS concluded that the existing state forest practice rules "do not leave adequate riparian buffers to provide the important ecosystem functions necessary to support the biological requirements of anadromous salmonids." NMFS indicated that "any further degradation of habitat conditions that reduces essential habitat functions may have a significant impact, which poses an unacceptable risk to the survival and recovery" of certain salmonid evolutionarily significant units (ESUs), including the upper Columbia steelhead addressed in the emergency rule.

Oregon had developed a plan to protect salmonids which was relied on by NMFS in its decision not to list certain species of salmonids as threatened. The Oregon plan was based largely on future actions and voluntary efforts. In June 1998, a federal court rejected this decision as inadequate to prevent endangerment to salmonids under the ESA. In Washington, the forest practice rules also rely on voluntary efforts. The watershed analysis process (chapter 222-22 WAC) is entirely voluntary. Voluntary efforts are not adequate to prevent endangerment to already listed salmonids. Emergency action is necessary because of the state's obligation to comply with the ESA. This emerging and unexpected development makes it clear that the existing rules are not adequate and the listed species are in jeopardy.

3. CONTINUING TO APPROVE FOREST PRACTICES PERMITS IN LISTED AREAS.

Forest Practices Applications in Listed Areas: The listed areas of the state contain nearly more than eleven million acres of nonfederal land, of which about 4.3 million acres are state and private forest land covered by the current forest practice rules. The number of evolutionarily significant unit (ESU) acres are:

Listed Areas (ESUs)	Total Nonfederal Acres	State and Private Forest Land Acres
Steelhead only	2,874,463	1,398,034
Bull trout only	5,122,388	2,190,251
Steelhead/bull trout Overlapping Areas	3,108,211	750,994
Total	11,105,062	4,339,279

Most of the habitat that salmonids seek for spawning and rearing are in the forested areas of the state. This portion of the habitat continues to be critical to the survival and well-being of these species. (See also the map in WAC 222-16-088.)

When the ESA listings occurred, there were approximately 823 forest practices applications/notifications already approved in the steelhead listed areas, and 575 in bull trout listed areas. Since operations under these permits may have some impact on salmonid habitat, these applicants were sent letters notifying them of the listings. If they had questions, the letter said they should contact National Marine Fisheries Service directly for clarification whether their operations may cause a concern for listed steelhead.

Since the listings, one hundred forty-one applications/notifications have been approved within two hundred feet of listed steelhead waters, and one hundred twenty within two hundred feet of listed bull trout waters. These permits contain a note to applicants warning them that this state permit does not necessarily meet federal law under the ESA.

The Department of Natural Resources estimates that, additionally, about 1,700 to 1,800 applications in steelhead and bull trout ESUs will be approved between now and when a permanent rule might be adopted and become effective (estimated to be July 1, 2000). Since permits are effective for a two-year period, applications approved prior to a new permanent rule taking effect in 2000 would be valid until 2002. Thus, nearly four years from now, some salmonid habitat would still be at risk absent an emergency rule.

The Forest Practices Act (chapter 76.09 RCW) requires protection of public resources. In order to protect these listed salmonids, the habitat associated with spawning, rearing and migration needs to be protected.

Why Current Forest Practices Rules are Inadequate for All Listed Salmonids: Current and newly-approved forest practice operations conducted under the existing rules could cause additional harm to ESA-listed salmonids because continued harvests in riparian areas would decrease shade, bank stability, and large woody debris, and continued road construction in these areas would also impact salmonid habitat. Specific impacts are categorized as follows:

Shade and Stream Temperature. Under the current forest practices rules, shade is required to meet current temperature criteria at sixteen or eighteen degrees centigrade. At the present time, it is likely that shade is not fully provided on Type 3 streams because landowners only have to seek shade as far as the maximum width riparian management zone (RMZ). The maximum width RMZs for Type 3 streams are currently fifty feet on streams greater than five feet wide and twenty-five feet on streams that are less than five feet wide.

An additional factor where current rules are inadequate for meeting temperature requirements involves removal of shade in nonfish-bearing waters which contribute to the temperature of fish-bearing waters downstream. This removal of shade elevates the water temperature which then cumulatively elevates temperatures downstream.

Stream Bank Stability and Forest Roads. Under the current rules, bank stability may be protected. On the westside of the state, the protection only extends to twenty-five feet. On the eastside, the recommended protection is thirty feet. However, if shade is provided (meeting current shade rule) and leave tree requirements are met, additional tree removal that would provide bank stability is also possible.

Roads are covered by the current rules; however, existing information would lead us to believe that standards need

EMERGENCY

to be upgraded and that roads are out of compliance with existing rules as much as half the time as documented in the 1991 *Compliance Report* prepared by Timber, Fish and Wildlife's Field Implementation Committee. Preliminary findings from an on-going internal audit by the Department of Natural Resources also show that construction of roads in certain areas of the state indicate that the minimum standards are not adequate to protect public resources. Furthermore, greater efforts should be made to reduce road densities or minimize further increases in road densities, depending on the basin.

Large Woody Debris. Under the current rules, LWD is only provided at a minimal level. The number of leave trees required to be retained in the RMZ is not based on the ability to improve both near and long-term continuous LWD recruitment. Input of LWD to stream channels generally occurs within one tree height from the channel edge (FEMAT 1993, McDade et al. 1990). Removal of trees from within this area results in a reduction of LWD recruitment to the stream channel. Furthermore, under current rules, harvest of the larger conifers within the RMZ is allowed, which if retained, would contribute towards the key piece functional sizes of LWD needed in the stream.

Summary. Given the above information, current forest practice rules are deficient, particularly in providing LWD, adequate shade, bank stability, and excessive contributions of sediment from roads and ground disturbance.

Additional Reasons Why Current Rules are Inadequate for Listed Bull Trout: All of the above information applies to bull trout, plus the following:

Shade and Stream Temperature. Current forest practice rules require retention of shade to meet water quality standards of 16 or 18°C, depending on the Department of Ecology stream class. Bull trout have temperature requirements which are cooler than the current water quality standards. Removal of available shade can result in stream temperatures exceeding the preference and tolerance levels of bull trout. Currently, it is likely that shade is not fully provided on Type 3 streams because landowners only have to seek shade as far as the maximum width RMZ (fifty feet on streams wider than five feet, and twenty-five feet on streams less than five feet). Furthermore, no shade is required on nonfish-bearing streams which can result in elevated stream temperatures in downstream fish-bearing waters. Protection of groundwater sources and seeps and springs in nonfish-bearing waters is also not included in current forest practice rules.

Though it is agreed upon that spawning and juvenile rearing life stages have the cooler temperature requirement, management should not focus merely on headwater streams and compromise shade and resulting cool water temperatures in lower elevation reaches, which adult bull trout use for foraging and migration. Though adult bull trout can tolerate somewhat higher temperatures, the natural increase in stream temperatures as elevation lowers makes it more difficult to maintain temperature requirements.

4. PROTECTING PUBLIC RESOURCES AND CLASS IV-SPECIAL CLASSIFICATION.

The public has a strong interest in protecting public resources, including water, fish, and wildlife, especially those listed as endangered and threatened species. Immediate action is necessary to ensure that impacts from forest prac-

tices in the salmonid listed areas are carefully evaluated while the board and ecology are in the process of adopting permanent rules. Without an emergency rule, habitat of these threatened and endangered species could be significantly impacted by forest practices.

The Forest Practices Act requires that forest practices which have the potential for a substantial impact on the environment be classified as Class IV so that they receive additional environmental review under the State Environmental Policy Act (chapter 43.21C RCW). SEPA recognizes the critical importance of restoring and maintaining environmental quality to the public welfare and the importance of full disclosure of adverse environmental impacts caused by agency actions. The Forest Practices Board is obligated under the law to identify those forest practices that have potential for substantial impact on the environment and classify them as Class IV-Special so that additional SEPA review is conducted. If there is the potential for damage to the habitat of a state or federal listed species, then there is potential for substantial impact on the environment. An emergency rule would not necessarily prohibit harvest; it would require additional review to evaluate environmental impacts. This process includes public notice and a public comment period.

As described above, certain forest practices in the salmonid listed areas have the potential for impact on listed salmonids. This impact is substantial because of the number of forest practices in the listed areas and because the current rules are inadequate. Absent permanent rules that adequately prevent these impacts, RCW 76.09.050 and SEPA require the emergency rule change in classification.

5. STATE WATER QUALITY REQUIREMENTS.

The intent of the Forest Practices Act is to meet water quality standards under the Water Pollution Control Act. As indicated by the 2,600 miles of Washington's streams and rivers listed as impaired under section 303(d) of the Clean Water Act, water quality standards are often not being met. Temperature increases attributed to forestry activities cause 303(d) listings. In 1996, streams with elevated temperatures comprised the largest group on the entire 303(d) list. Temperature limits in the water quality standards are intended to fully protect in-stream beneficial uses by preventing any decrease in salmonid health or reproductive success. This goal is consistent with the state water quality antidegradation regulatory requirements. These requirements demand that the beneficial in-stream uses, such as salmonid habitat, be fully protected. Changes in water quality are not allowed that violate the standards set to fully protect these uses. Further, degradation of water quality, even where it does not cause a violation of the standards, is not allowed unless all known, available, and reasonable best management practices are being used to reduce the affect on water quality; and the activity has been found to be in the overriding public interest.

6. RULE-MAKING FILES.

The Forest Practices Board and the Department of Ecology maintain rule-making files for this emergency rule that have detailed background information supporting these findings. Please contact Judith Holter, DNR, at (360) 902-1412 or Doug Rushton, DOE, at (360) 407-6180 if you would like to inspect these files.

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.

Effective Date of Rule: Immediately.

March 9, 1999
Tom Fitzsimmons
Director

AMENDATORY SECTION (Amending Order 97-46, filed 3/30/98, effective 4/30/98)

WAC 173-202-020 Certain WAC sections adopted by reference. The following sections of the Washington Administrative Code existing on March ~~((13, 1998))~~ 17, 1999, are hereby adopted by reference as part of this chapter in all respects as though the sections were set forth herein in full:

WAC 222-08-035—Continuing review of forest practices regulations.

WAC 222-10-020—*SEPA policies for certain forest practices within 200 feet of a Type 1 Water.

WAC 222-10-040—*Class IV-Special threatened and endangered species SEPA policies.

WAC 222-10-043—*Salmonids.

WAC 222-12-010—Authority.

WAC 222-12-040—Alternate plans.

WAC 222-12-045—Adaptive management.

WAC 222-12-046—Cumulative effect.

WAC 222-12-070—Enforcement policy.

WAC 222-12-090—Forest practices board manual.

WAC 222-16-010—General definitions.

WAC 222-16-030—Water typing system.

WAC 222-16-035—Wetland typing system.

WAC 222-16-050 (1)(a), (1)(e), (1)(h), (1)(i), (1)(j), (3)(b), (3)(c), (3)(d), (3)(e), (3)(f), (3)(n), (3)(o), (3)(p), (4)(c), (4)(d), (4)(e), (5)(b), (5)(c), (5)(d), (5)(e), (5)(f), (5)(h), (5)(n), (5)(o)—Classes of forest practices.

WAC 222-16-070—Pesticide uses with the potential for a substantial impact on the environment.

WAC 222-16-080—Critical wildlife habitats (state) and critical habitat (federal) of threatened and endangered species.

WAC 222-16-088—*Salmonid listed areas.

WAC 222-22-010—Policy.

WAC 222-22-020—Watershed administrative units.

WAC 222-22-030—Qualification of watershed resource analysts, specialists, and field managers.

WAC 222-22-040—Watershed prioritization.

WAC 222-22-050—Level 1 watershed resource assessment.

WAC 222-22-060—Level 2 watershed resource assessment.

WAC 222-22-070—Prescription recommendation.

WAC 222-22-080—Approval of watershed analysis.

WAC 222-22-090—Use and review of watershed analysis.

WAC 222-22-100—Application review prior to watershed analysis.

WAC 222-24-010—Policy.

WAC 222-24-020 (2), (3), (4), (6)—Road location.

WAC 222-24-025 (2), (5), (6), (7), (8), (9), (10)—Road design.

WAC 222-24-030 (2), (4), (5), (6), (7), (8), (9)—Road construction.

WAC 222-24-035 (1), (2)(c), (2)(d), (2)(e), (2)(f)—Landing location and construction.

WAC 222-24-040 (1), (2), (3), (4)—Water crossing structures.

WAC 222-24-050—Road maintenance.

WAC 222-24-060 (1), (2), (3), (6)—Rock quarries, gravel pits, borrow pits, and spoil disposal areas.

WAC 222-30-010—Policy—Timber harvesting.

WAC 222-30-020 (2), (3), (4), (5), (7)(a), (7)(e), (7)(f), (8)(c)—Harvest unit planning and design.

WAC 222-30-025—Green-up: Even-aged harvest size and timing.

WAC 222-30-030—Stream bank integrity.

WAC 222-30-040—Shade requirements to maintain stream temperature.

WAC 222-30-050 (1), (2), (3)—Felling and bucking.

WAC 222-30-060 (1), (2), (3), (5)(c)—Cable yarding.

WAC 222-30-070 (1), (2), (3), (4), (5), (7), (8), (9)—Tractor and wheeled skidding systems.

WAC 222-30-080 (1), (2)—Landing cleanup.

WAC 222-30-100 (1)(a), (1)(c), (4), (5)—Slash disposal.

WAC 222-34-040—Site preparation and rehabilitation.

WAC 222-38-010—Policy—Forest chemicals.

WAC 222-38-020—Handling, storage, and application of pesticides.

WAC 222-38-030—Handling, storage, and application of fertilizers.

WAC 222-38-040—Handling, storage, and application of other forest chemicals.

WSR 99-07-001
NOTICE OF PUBLIC MEETINGS
SHORELINE COMMUNITY COLLEGE

[Memorandum—March 1, 1999]

The board of trustees of Shoreline Community College will meet to review faculty tenure proposals on two dates in March 1999 prior to tenure consideration at the March 19, 1999, board of trustees meeting.

The board will meet on Wednesday, March 10, 1999, from 2:00 p.m. to 6:00 p.m., and on Friday, March 12, 1999, from 2:00 p.m. to 6:00 p.m.

If you have additional questions, please contact (206) 546-4552.

WSR 99-07-002
NOTICE OF PUBLIC MEETINGS
BELLINGHAM TECHNICAL COLLEGE

[Memorandum—March 4, 1999]

The regularly scheduled meeting of the board of trustees of Bellingham Technical College will be held on Thursday, March 18, 1999, 9-11 a.m., in the College Services Building Board Room on the Bellingham Technical College campus. Call 738-3105 ext. 334 for information.

WSR 99-07-010
RULES OF COURT
STATE SUPREME COURT

[March 4, 1999]

IN THE MATTER OF THE ADOPTION) ORDER
OF THE AMENDMENT TO RAP 16.24) NO. 25700-A-649

The Court having determined that the adoption of an amendment to RAP 16.24 will aid in the prompt and orderly administration of justice and further determined that an emergency exists which necessitates an early adoption;

Now, therefore, it is hereby
ORDERED:

(a) That the amendment as attached hereto is adopted.

(b) That pursuant to the emergency provisions of GR 9(i), the amendment will be published expeditiously and become effective upon publication.

DATED at Olympia, Washington this 4th day of March, 1999.

Richard P. Guy, C.J.

Durham, J.

Alexander, J.

Charles Z. Smith

Sanders, J.

Johnson, J.

Ireland, J.

Madsen, J.

Talmadge, J.

RULE 16.24 STAY OF
EXECUTION IN CAPITAL CASES

(a) ~~An motion application~~ application for stay of execution will be decided by the en banc court, except that ~~the Clerk a commissioner or the clerk~~ a commissioner or the clerk may decide an application for a stay of execution in connection with a first petition for relief from restraint. No stay will be granted until after a death warrant has been issued. When any stay is granted, ~~the clerk a commissioner or the clerk~~ a commissioner or the clerk will immediately notify, in addition to the parties, the Superintendent of the Washington State Penitentiary, and the Attorney General. ~~A stay of execution will dissolve thirty (30) days after a certificate of finality is issued.~~

(b) The petitioner or his or her lawyer may file an application for a stay of execution in connection with a first petition for relief from restraint. This application shall be accompanied by a statement, describing one or more grounds for relief, which shall be deemed to be a petition for relief from restraint with leave granted to amend the petition upon appointment of counsel.

(c) Upon the filing of this application for stay of execution in connection with a first petition for relief from restraint and statement, ~~the Supreme Court Clerk a commissioner or the clerk~~ shall issue a stay of execution, if the statement identified any ground for relief that is not patently frivolous. ~~The stay will remain in effect until the certificate of finality is issued.~~

(d) A stay of execution pending a final disposition of a second or subsequent petition shall not be granted unless the petition makes a substantial showing that the petition is not barred by RCW chapter 10.73 or RAP 16.4(d).

(e) A stay of execution will dissolve when a certificate of finality is issued unless otherwise ordered by the court.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 99-07-011
NOTICE OF PUBLIC MEETINGS
TRANSPORTATION IMPROVEMENT BOARD

[Memorandum—March 5, 1999]

MEETING NOTICE FOR MARCH 1999
TRANSPORTATION IMPROVEMENT BOARD
OLYMPIA, WASHINGTON

Sidewalk Committee, 2:00 p.m. - 3:00 p.m., Thursday, March 25, 1999, at the Tye Hotel, 500 Tye Drive, Coho C Room, Olympia.

Increase Committee, 3:00 p.m. - 5:00 p.m., Thursday, March 25, 1999, at the Tye Hotel, Coho C Room.

Work Session, 7:00 p.m., Thursday, March 25, 1999, at the Tye Hotel, Coho C Room.

Board Meeting, 9:00 a.m., Friday, March 26, 1999, at the Transportation Building Commission Board Room 1D2, 310 Maple Park Avenue S.E., Olympia.

Special Needs: For special accommodations or to request an auxiliary aid, please contact the TIB office at (360) 705-7300 by March 19, 1999.

The next scheduled meeting is April 23, 1999, in Longview. A notice with further detail of the April meeting will be mailed April 2, 1999.

WSR 99-07-017

NOTICE OF PUBLIC MEETINGS

DEPARTMENT OF AGRICULTURE

(Interagency Integrated Pest Management Coordinating Committee)

[Memorandum—March 8, 1999]

Pursuant to RCW 17.15.040, please be advised that the Interagency Integrated Pest Management Coordinating Committee (IIPMCC) will hold its first meeting of 1999 on April 14. The meeting will be held at Central Washington University in Ellensburg, Room 205 in the Student Union Building, from 10:00 a.m. to 1:00 p.m. All meetings of the IIPMCC are open to the public.

During the 1997 regular session of the 55th legislature, SSB 5077 was passed. The bill was signed by Governor Locke and codified as chapter 17.15 RCW. The law affirms that it is the policy of the state of Washington to require all state agencies and institutions of higher education, that have pest responsibilities, to utilize the principles of integrated pest management (IPM). Chapter 17.15 RCW also created the IIPMCC. The IIPMCC meetings allow the members, composed of state agencies and institutions of higher education, share information and promote interagency coordination.

FOR FUTURE INFORMATION CONTACT: Brad Archbold, (360) 902-1923.

WSR 99-07-022

NOTICE OF PUBLIC MEETINGS

WASHINGTON STATE LIBRARY

(Library Commission)

[Memorandum—March 9, 1999]

SPECIAL WASHINGTON STATE LIBRARY COMMISSION MEETING

The Washington State Library Commission will meet during a conference call as indicated below:

DATE: Thursday, March 18, 1999

TIME: 10:15 a.m. - 12:15 p.m.

LOCATION: Conference call initiated from the State Librarian's Office

SUBJECT Library Services and Technology Acts grants

Please note: If a quorum is not present during the conference call, an additional conference call will occur at 3:00 p.m. on March 18, 1999.

Please do not hesitate to contact Gail L. Grocott for additional information regarding the meeting noted above. Ms. Grocott can be reached at (360) 704-5238 or fax (360) 586-7575 or grocott@statelib.wa.gov.

WSR 99-07-035

PROCLAMATION

OFFICE OF THE GOVERNOR

[March 11, 1999]

AMENDMENT TO STATE OF EMERGENCY

The floods and slides, which began January 29, 1999, are continuing to threaten citizens and property in Washington State.

WHEREAS, floods and slides are causing extensive damage to homes, businesses, public utilities, public facilities, and infrastructure in Grays Harbor County

NOW THEREFORE, I, GARY LOCKE, Governor of the state of Washington, as a result of the aforementioned situation and under Chapters 38.08, 38.52, and 43.06 RCW, do hereby amend the Proclamation of March 2, 1999, and further proclaim that a State of Emergency exists in Grays Harbor County.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the state of Washington to be affixed at Olympia this 11th day of March, A.D., Nineteen Hundred and Ninety-Nine.

Gary Locke

Governor of Washington

BY THE GOVERNOR:

Donald F. Whiting

Assistant Secretary of State

WSR 99-07-036

NOTICE OF PUBLIC MEETINGS

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Memorandum—March 8, 1999]

Following is the revised 1999 Public Employees Benefits Board (PEBB) meeting schedule for publication in the *Washington State Register*. The changes to meeting dates are as follows:

- May 18, 1999 Canceled
- June 8, 1999 Changed to June 15 (time and location unchanged)
- July 20, 1999 Canceled

Public Employees Benefits Board
Proposed 1999 Meeting Schedule

If you are a person with a disability and need a special accommodation, please contact Judy Lamm at (360) 923-2828.

MISC.

January 12, 1:00 p.m.
Lacey Community Center

March 29 (Monday evening, 6:30 p.m.)
Cavanaugh's Inn at the Park, Spokane

April 20, 1:00 p.m.
Lacey Community Center

June 15 (tentative), 1:00 p.m.
Tyee, Skokomish Room

July 13, 1:00 p.m.
Tyee, Skokomish Room

July 27, 1:00 p.m.
Tyee, Skokomish Room

August 3, 1:00 p.m.
Tyee, Skokomish Room

August 10, 1:00 (tentative)
Tyee, Skokomish Room

October 5, 8:00 a.m. to 5:00 p.m.
Washington State Training & Conference Center

November 9 (tentative)
Tyee, 1:00, Skokomish

December 7 (tentative)
Tyee, 1:00, Skokomish

If you have questions or need further information, please contact (360) 923-2913.

WSR 99-07-037
NOTICE OF PUBLIC MEETINGS
LAKE WASHINGTON
TECHNICAL COLLEGE
[Memorandum—March 10, 1999]

Pursuant to RCW 42.30.075, we are hereby notifying you of the following amended dates (shown in italics) when the Lake Washington Technical College board of trustees is scheduled to hold regular meetings during 1999:

Monday, January 4, 1999
Monday, February 1, 1999
Monday, March 1, 1999
Monday, April 5, 1999
Monday, May 3, 1999
Monday, June 7, 1999
Tuesday, July 6, 1999

Monday, August 2, 1999
Tuesday, September 7, 1999
Monday, October 4, 1999
Monday, November 1, 1999
Monday, December 6, 1999

Work sessions begin at 6 p.m. in Room W302E at the college; the regular meeting agenda begins at 7 p.m. in Room W305 at the college.

In the event it is necessary to change any of these meeting dates appropriate advertising will take place.

WSR 99-07-038
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed March 12, 1999, 11:22 a.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: CN 181.

Subject: Prehearing procedures.

Effective Date: February 19, 1999.

Document Description: This document gives DCS staff fairly uniform procedures to help resolve disputes at the lowest possible level.

To receive a copy of the interpretive or policy statement, contact Stephanie Schiller, Division of Child Support, P.O. Box 9162, Olympia, WA 98507-9162, phone (360) 664-5230, TDD (360) 753-9122, fax (360) 586-3274, e-mail ssshille@dshs.wa.gov.

March 11, 1999
Stephanie E. Schiller

WSR 99-07-044
NOTICE OF PUBLIC MEETINGS
CONVENTION AND TRADE
CENTER

[Memorandum—March 12, 1999]

The March 17, 1999, regular meeting of the Washington State Convention and Trade Center (WSCTC) board of directors has been cancelled.

A special meeting of the WSCTC board of directors will be held on Wednesday, March 31, 1999, at 1:30 p.m. in Room 310 on the Convention Center, 800 Convention Place, Seattle. The agenda will include a report and action regarding the expansion project and regular staff reports.

If you have any questions regarding this meeting, please call (206) 694-5000.

MISC.

WSR 99-07-045
NOTICE OF PUBLIC MEETINGS
EDMONDS COMMUNITY COLLEGE
[Memorandum—March 11, 1999]

EDMONDS COMMUNITY COLLEGE
BOARD OF TRUSTEES
NOTICE OF SPECIAL MEETINGS
TO MEDIA/OTHER

REVISED

- March 18, 1999 Edmonds Community College Board of Trustees Regular Board Meeting, EdCC, Snohomish Hall, Cascade Conference Room 304A, 20226 68th Avenue West, Lynnwood, WA, 4:00 p.m.
- March 22, 1999* Edmonds Community College VIP Social, EdCC, Brier Hall Cafeteria, 20122 68th Avenue West, Lynnwood, WA, 12:30 - 1:30 p.m. Business: Luncheon to welcome international students.
- March 24, 1999* Grand Opening of the Center for Business, Education & Technology, Quadrant I-5 Corporate Park, 728 134th Street S.W., #128, Everett, WA, 4:00 - 7:00 p.m.

*This event is being scheduled as a special meeting, which is a study session where no action will be taken.

WSR 99-07-046
NOTICE OF PUBLIC MEETINGS
BENTON CLEAN AIR AUTHORITY
[Memorandum—March 8, 1999]

This document serves as notice for the upcoming years monthly meetings of the Benton Clean Air Authority board of directors. As in the past, the board of directors meets on the 3rd Thursday of each month at 7:00 p.m. The location is 5600 Canal Place, Kennewick, WA. The contact person for additional information or questions is myself, Terry Flores. I can be reached at (509) 943-3396 M-F.

Also, please publish that the board of directors, by minute action in March 1998, dropped the word "County" from the agency name. We went from Benton County Clean Air Authority to Benton Clean Air Authority.

WSR 99-07-047
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF AGRICULTURE
(Blueberry Commission)
[Memorandum—March 10, 1999]

I know we are to advise you of our meetings for the coming year previous to January for meetings for 1999 but the commission just met recently and set the following dates for 1999.

- | | | |
|------------------|---|----------|
| May 3, 1999 | Allmendinger Center,
WSU (growers meeting) | Puyallup |
| June 14, 1999 | WSU | Puyallup |
| October 11, 1999 | WSU | Puyallup |
| January 10, 2000 | WSU | Puyallup |

WSR 99-07-048
NOTICE OF PUBLIC MEETINGS
YAKIMA VALLEY
COMMUNITY COLLEGE
[Memorandum—March 9, 1999]

MEETING LOCATION CHANGE

The following location changes are made to Yakima Valley Community College's board of trustees meeting schedule:

- | | | |
|--------------------------------------|-----------|----------------------------------|
| Regular Meeting
July 1, 1999 | 4:30 p.m. | College Boardroom,
Prior Hall |
| Regular Meeting
August 5, 1999 | 4:30 p.m. | College Boardroom,
Prior Hall |
| Regular Meeting
September 2, 1999 | 4:30 p.m. | College Boardroom,
Prior Hall |

The renovation of the Hopf Union Building (regular location for the board's meetings) requires this change.

Should it become necessary, the board chair may cancel any of the above meetings.

For further information, please contact the YVCC president's office, (509) 574-4635.

WSR 99-07-052
OFFICE OF THE GOVERNOR
[Filed March 15, 1999, 4:24 p.m.]

March 15, 1999
Pacific Topsoils, Inc.
14002 35th Avenue SE
Bothell, Washington 98012-4699

Dear Sir:

On January 4, 1999, the Department of Ecology (the "Department") denied your petition requesting that it repeal its rule that amended Chapter 173-20-640 of the Washington Administrative Code to include Thomas Lake as a lake under the

MISC.

purview of the Shoreline Management Act, Chapter 90.58 RCW.

By a petition dated November 11, 1998 and received by this office on February 2, 1999, you timely appealed the Department's denial of your petition to the Governor as authorized by RCW 34.05.330. Your petition seeks to have the Governor direct the Department to repeal the rule that added Thomas Lake to WAC 173-20-640.

On March 11, 1999, in *Webster and Barringer v. Ecology*, Case No. SHB 98-29, the Shorelines Hearings Board (the "Board") issued a Modified Final Findings of Fact, Conclusions of Law and Order that renders your appeal to the Governor moot.

In its ruling, the Board concluded that a final determination of whether Thomas Lake is one of a size that should be included in WAC 173-20-640 should be based on the best science. The Board ordered that the Department's rule amendment adding Thomas Lake to WAC 173-20-640 is invalid, and remanded the matter to the Department to investigate and review all relevant information and, if necessary, do further site investigations to locate the ordinary high water mark of Thomas Lake; and to adopt a regulation that is consistent with the Board's decision.

Because the Board has invalidated the rule you sought to have repealed, your appeal is moot. I encourage you to work with the Department to facilitate its access to all areas surrounding Thomas Lake so that it may efficiently complete its site investigations and locate the ordinary high water mark. Please direct any questions on this matter to my counsel, Everett Billingslea, at 360-753-6780.

Sincerely,

Gary Locke
Governor

WSR 99-07-055
PROCLAMATION
OFFICE OF THE GOVERNOR
[March 16, 1999]

AMENDMENT TO STATE OF EMERGENCY

WHEREAS, the extensive winter floods, winds, and slides that began January 27, 1999 continue to threaten citizens and property in Washington State through March 10, 1999.

WHEREAS, the floods, winds, and slides caused substantial damage to homes, businesses, public utilities, public facilities, and infrastructure in Cowlitz, Douglas, Ferry, King, Pacific, Pierce, Stevens, and Thurston Counties, and the estimated cost of the damage is currently \$18,594,435;

NOW THEREFORE, I, GARY LOCKE, Governor of the state of Washington, as a result of the aforementioned situation and under Chapters 38.08, 38.52, and 43.06 RCW, do hereby amend the Proclamation of February 26, 1999, and further proclaim that a State of Emergency exists in Cowlitz, Dou-

glas, Ferry, King, Pacific, Pierce, Stevens, and Thurston Counties.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the state of Washington to be affixed at Olympia this 16th day of March, A.D., Nineteen Hundred and Ninety-Nine.

Gary Locke
Governor of Washington

BY THE GOVERNOR:
Ralph Munro
Secretary of State

WSR 99-07-058
INSURANCE COMMISSIONER'S OFFICE
[Filed March 16, 1999, 3:38 p.m.]

In the Matter of the Acquisition) No. G 99 - 10
of **UNIGARD SECURITY**)
INSURANCE COMPANY) NOTICE OF HEARING

TO: John Dembeck
Debevoise & Plimpton
875 Third Avenue
New York, New York 10022

Ajit Jain, President
Berkshire Hathaway Group
100 First Stamford Place
Stamford, Connecticut 06902

Michael H. Studley
Vice President and Counsel
John Hancock Mutual Life Insurance Company
Post Office Box 111
Boston, Massachusetts 02118

Richards D. Barger
Barger & Wolen
530 West 6th Street, Ninth Floor
Los Angeles, California 90014

Robert L. Barclay, Managing Director
Dukes Place Holdings, L.P.
Eastgate House
40 Dukes Place
London EC3A 7LP

Unigard Security Insurance Company (USIC) is a Washington domestic insurance company. It is a subsidiary of John Hancock Property and Casualty Holding Company. The ultimate controlling person of USIC is John Hancock Mutual Life Insurance Company.

Dukes Place Holdings, L.P. is a limited partnership organized under the laws of Bermuda. Its administrative offices are located in London, England. Dukes Place Holdings, L.P.

MISC.

currently invests in insurance and reinsurance companies who are in run-off. DP Holdings LLC is a limited liability company organized under the laws of Delaware and holds 99% of interests in Dukes Place Holdings, L.P. Dukes Place Holdings L.P. proposes to acquire all of the common stock and preferred stock of USIC from John Hancock Property and Casualty Holding Company.

Eastgate, Inc., a Delaware corporation, has contracted to manage the run-off of USIC. Eastgate, Inc. is an indirect wholly-owned subsidiary of Eastgate Group Limited. Eastgate Group Limited's administrative offices are located in London, England.

If Dukes Place Holdings, L.P. is successful in securing approval to acquire USIC, and in purchasing sufficient stock to control the company, it is contemplated USIC will purchase \$343 million in reinsurance coverage from National Indemnity Company, a property and casualty insurance company who holds a Washington Certificate of Authority.

Greenwich Street Capital Partners II, L.P. is a private investment fund. It is organized as a limited partnership under the laws of Delaware. Greenwich Street Capital Partners II, L.P. holds 92.3% of the interests of DP Holdings LLC and 1% of each of Dukes Place Holdings L.P. and Dukes Place Holding LLC. The limited partners of Greenwich Street Capital Partners II, L.P. will fund the acquisition of control of USIC.

The acquisition of a domestic Washington insurance company is controlled by Chapter 48.31B RCW. Pursuant to RCW 48.31B.015 and WAC 284-18-910, a Form "A" submission was made by the applicants. The Form "A" was deemed complete March 10, 1999. The determination that the Form "A" was complete begins the 60 day period within which the Insurance Commissioner must hold a hearing and decide whether to approve the change of control of the company.

YOU ARE HEREBY NOTIFIED that a hearing will be held commencing Friday, March 26, 1999, at 10:00 a.m. in the 2nd Floor Conference Room at 420 Golf Club Road, Lacey, Washington 98503, to consider the proposed acquisition of USIC.

The hearing will be held under the authority granted the Commissioner by Chapter 48.04 RCW and RCW 48.31B.015. RCW 48.31B.015 lists the findings which must be made before approval can be given to any proposed acquisition of control over a Washington domestic insurer.

The basic facts relied upon are those set forth in the Form "A" filed with the Commissioner. The complete Form "A" will be made part of the record of the hearing.

The Commissioner has not taken, and will not take, any position on this matter prior to entry of the hearing order.

All parties may be represented at the hearing. They may examine witnesses and fully respond and present evidence and argument on all issues involved, as required by the Administrative Procedure Act. The hearing will be governed by the Administrative Procedure Act, Chapter 34.05 RCW, and the model rules of procedure contained in Chapter 10-08

WAC. A party who fails to attend or participate in any stage of the proceeding may be held in default in accordance with Chapter 34.05 RCW.

The Commissioner will be represented by James Tompkins, Assistant Deputy Commissioner, and Ronald Pastuch, Financial Analyst.

Assistant Deputy Commissioner John B. Woodall has been designated to hear and determine this matter. His address is Office of the Insurance Commissioner, Post Office Box 40259, Olympia, Washington 98504-0259. His telephone number is (360) 407-0535.

ENTERED AT OLYMPIA, WASHINGTON, this 15th day of March, 1999.

DEBORAH SENN
Insurance Commissioner

By:

JOHN B. WOODALL
Assistant Deputy Commissioner
for Company Supervision

WSR 99-07-081
INDETERMINATE SENTENCE
REVIEW BOARD

[Filed March 18, 1999, 2:30 p.m., effective March 15, 1999]

Pursuant to our agreement entitled, "Protocol for the Publication of Non-APA Rules of the Indeterminate Sentence Review Board," enclosed is a revision to WAC 381-50-180 for publication in the Washington State Register and Washington Administrative Code.

Protocol information is as follows:

	Date of Adoption	Effective Date
381-50-180	March 15, 1999	March 15, 1999

I certify pursuant to RCW 34.05.030 that WAC 381-50-180 is exempt from the APA and is being submitted for publication pursuant to the protocol.

K. Bail
Chair

WSR 99-07-082
NOTICE OF PUBLIC MEETINGS
OFFICE OF THE GOVERNOR

(Governor's Task Force on School-to-Work Transition)

[Memorandum—March 16, 1999]

THE GOVERNOR'S TASK FORCE ON
SCHOOL-TO-WORK TRANSITION
QUARTERLY MEETING

TUESDAY, APRIL 6, 1999
2:00 - 5:00 P.M.

IN THE WORLD TRADE CENTER'S

MISC.

MAIN CONFERENCE ROOM
SEATAC AIRPORT

The main conference room is located above the Continental Airline ticketing counter on the south end of the main terminal on the Mezzanine level.

The meeting site is barrier free. People needing special accommodations, please call Gena Anderson at least ten days in advance at (360) 586-4530.

WSR 99-07-083

PROCLAMATION

OFFICE OF THE GOVERNOR

[March 18, 1999]

AMENDMENT TO STATE OF EMERGENCY

WHEREAS, the floods and slides, which began January 29, 1999, are continuing to threaten citizens and property in Washington State;

WHEREAS, floods and slides are causing extensive damage to homes, businesses, public utilities, public facilities, and infrastructure in Clallam County;

NOW, THEREFORE, I, GARY LOCKE, Governor of the state of Washington, as a result of the aforementioned situation and under Chapters 38.08, 38.52, and 43.06 RCW, do hereby amend the Proclamation of March 2, 1999, and further proclaim that a State of Emergency exists in Clallam County.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the state of Washington to be affixed at Olympia this 18th day of March, A.D., Nineteen Hundred and Ninety-Nine.

Gary Locke

Governor of Washington

BY THE GOVERNOR:

Ralph Munro

Secretary of State

WSR 99-07-091

**NOTICE OF PUBLIC MEETINGS
SKAGIT VALLEY COLLEGE**

[Memorandum—March 18, 1999]

The regular April meeting of the board of trustees will be changed from the South Whidbey Center on April 12, 1999, to 5:30 p.m. at the Mount Vernon Campus on April 12, 1999.

WSR 99-07-092

**NOTICE OF PUBLIC MEETINGS
BATES TECHNICAL COLLEGE**

[Memorandum—March 18, 1999]

Notice of Special Meeting

The board of trustees of Bates Technical College has scheduled a special meeting on April 9, 1999 (8-11 a.m.) for the purpose of going into executive session to discuss personnel issues. The special meeting will be in addition to the regularly scheduled meeting of the board on April 21, 1999.

The special meeting on April 9th will be held at Bates Technical College, 1101 South Yakima Avenue, Tacoma, WA 98405, in the Administrative Conference Room.

WSR 99-07-094

DEPARTMENT OF ECOLOGY

[Filed March 22, 1999, 2:49 p.m.]

Notice of Public Hearing

Concerning the proposed award list for flood control assistance account program grants for the 1999-2001 biennium by the Washington State Department of Ecology shorelands and environmental assistance program as mandated by WAC 173-145-010(3).

Public Hearing

Date: Thursday, April 29, 1999
Time: 9:30 a.m. to noon
Location: Department of Ecology
300 Desmond Drive
Room 1S-17
Lacey
Contacts: Tim d'Acci, (360) 407-6796
Bev Huether, (360) 407-7254

WSR 99-07-119

**POLICY STATEMENT
DEPARTMENT OF HEALTH**

[Filed March 24, 1999, 9:33 a.m.]

NOTICE OF ADOPTION OF POLICY

Title of Policy: Sewage Disposal Guidelines for Vessels, Policy and Procedure #018.

Effective Date: New March 16, 1999.

Issuing Agency/Division: Department of Health (DOH), Environmental Health Programs, Office of Shellfish Programs.

Description: The policy specifies procedures for sewage disposal that commercial shellfish operations must follow when operating a vessel in a shellfish harvesting area. The policy is intended to clarify requirements of the National Shellfish Sanitation Program Model Ordinance (VIII.02.C.) adopted by reference in WAC 246-282-005 (1)(a). The policy specifies conditions when either a marine sanitation

MISC.

device, portable toilet, or other sewage receptacle must be carried on a vessel.

47824, Olympia, WA 98504-7824, phone (360) 236-3313, Internet e-mail jad0303@doh.wa.gov.

Contact: Judy Dowell, Commercial and Recreational Section Manager, Office of Shellfish Programs, P.O. Box

WSR 99-07-129

AGENDA

DEPARTMENT OF AGRICULTURE

[Filed March 24, 1999, 10:46 a.m.]

**Washington State Department of Agriculture
Semi-Annual Rules Agenda**

Addendum #1 for Filing WSR 99-04-107, filed 2/3/99

Chapter	Subject/Contact Person	Purpose of Rule Making	Approximate CR-101 Filing Date	Approximate Adoption Date
WAC 16-142	Pull Dating Contact: Verne Hedlund, Program Manager, (360) 902-1860	Rules Review - revise pull dating on food requirements	April 1999	October 1999
New Rules	Purple Nutsedge Contact: Mary Toohey, Assistant Director, (360) 902-1907	Add purple nutsedge to list of noxious weeds	January 1999	August 1999
WAC 16-125	Farm Milk Storage Tank Standards Contact: Verne Hedlund, Program Manager, (360) 902-1860	Rules Review - Repeal outdated sections	April 1999	October 1999
WAC 16-167	Intrastate Commerce Contact: Verne Hedlund, Program Manager, (360) 902-1860	Update references to include recent changes in federal regulations.	March 1999	September 1999
WAC 16-20, WAC 16-21, WAC 16-22, and WAC 16-23	Custom slaughter plants, slaughterers, handling of carcasses, custom meat handling establishments and custom meat facilities Contact: Verne Hedlund, Program Manager, (360) 902-1860	Consolidate and update rules into one chapter.	July 1998	June 1999
WAC 16-213	Miscellaneous Agricultural Commodity Inspection Standards Contact: Robert Gore, Assistant Director, (360) 902-1827	Rules Review - Reorganize and update rules	June 1999	December 1999
WAC 16-219	Ziram Contact: Laurie Mauerman, Pesticide Management Division, (360) 902-2012	Rules Review	March 1999	N/A
WAC 16-219	Mevinphos Contact: Laurie Mauerman, Pesticide Management Division, (360) 902-2012	Rules Review	March 1999	N/A
WAC 16-228	Heptachlor Contact: Laurie Mauerman, Pesticide Management Division, (360) 902-2012	Rules Review - Repeal outdated sections	March 1999	June 1999
WAC 16-228	EDB Contact: Laurie Mauerman, Pesticide Management Division, (360) 902-2012	Rules Review - Repeal outdated sections	March 1999	June 1999
WAC 16-230	Tordon Contact: Laurie Mauerman, Pesticide Management Division, (360) 902-2012	Rules Review	March 1999	N/A
WAC 16-30	Registered Feedlots Contact: Dr. Robert Mead, Program Manager, (360) 902-1881	Rules Review - Housekeeping changes	March 1999	June 1999
WAC 16-300, 16-304, 16-313, 16-316, 16-317, 16-318, 16-319, 16-321, 16-493, 16-494, 16-495	Seed Certification Rules Contact: Graydon Robinson, Program Manager, (509) 575-2750	Rules Review - Rewrite in clear and concise format, consolidate and update rules.	May 1999	December 1999

MISC.

Chapter	Subject/Contact Person	Purpose of Rule Making	Approximate CR-101 Filing Date	Approximate Adoption Date
WAC 16-333	Caneberries: Contact: Mary Toohey, Assistant Director, (360) 902-1907	Rules Review - Housekeeping changes	April 1999	July 1999
WAC 16-403 WAC 16-461	Standards for Apples Marketed within Washington Contact: Jim Quigley, Program Manager, (360) 902-1833	Certification for quality and condition on a 12 month period	January 1999	August 1999
WAC 16-404	Standards for Summer Apples Marketed in Washington Contact: Jim Quigley, Program Manager, (360) 902-1833	Rules Review	April 1999	N/A
WAC 16-406	Standards for Apricots Contact: Jim Quigley, Program Manager, (360) 902-1833	Rules Review - Update rules	February 1999	July 1999
WAC 16-414	Cherries Contact: Jim Quigley, Program Manager, (360) 902-1833	Rules Review - Repeal outdated sections	April 1999	July 1999
WAC 16-424	Standards for Onions Contact: Jim Quigley, Program Manager, (360) 902-1833	Rules Review - Repeal rules	April 1999	July 1999
WAC 16-436	Washington Standards for Peaches Contact: Jim Quigley, Program Manager, (360) 902-1833	Rules Review - Repeal outdated sections	May 1999	August 1999
WAC 16-445	Standards for Prunes Contact: Jim Quigley, Program Manager, (360) 902-1833	Rules Review - Repeal outdated sections	April 1999	July 1999
WAC 16-448	Standards for Potatoes Contact: Jim Quigley, Program Manager, (360) 902-1833	Rules Review - Repeal outdated sections	April 1999	July 1999
WAC 16-451	Rhubarb Contact: Jim Quigley, Program Manager, (360) 902-1833	Rules Review - Repeal	March 1999	July 1999
WAC 16-458	Horticultural Inspection District Boundaries	Rules Review - Housekeeping changes	April 1999	July 1999
WAC 16-460	Tomatoes Contact: Jim Quigley, Program Manager, (360) 902-1833	Rules Review - Repealing outdated sections	April 1999	July 1999
WAC 16-752	Yellow Nutsedge Contact: Mary Toohey, Assistant Director, (360) 902-1907	Update rules	March 1999	July 1999
WAC 16-86	Control of Tuberculosis in Cervidae Contact: Dr. Robert Mead, Program Manager, (360) 902-1881	Rules Review - Repeal outdated sections	March 1999	July 1999

For more information contact Dannie McQueen, Rules Coordinator, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1809.

Dannie M. McQueen
for William E. Brookreson
Assistant Director

WSR 99-07-130

ADVISORY BOARD OF PLUMBERS

[Filed March 24, 1999, 10:48 a.m.]

RCW 18.106.110 describes the composition and duties of the Advisory Board of Plumbers, appointed by the governor. Currently, the board has one position: "Owner of a

plumbing business," which is scheduled to expire on July 7, 1999.

The Department of Labor and Industries, Plumber Certification Section, is announcing that applications are now being accepted for this position until May 28, 1999.

If you are interested in receiving an application or further information regarding this position please contact Eralee Sawtell, Office Support Supervisor, Plumber Certification Section at (360) 902-4666.

Kevin C. Morris, Chief
Contractor Compliance/
Plumber Certification

MISC.



Table of WAC Sections Affected

KEY TO TABLE

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

Symbols:

- AMD = Amendment of existing section
- A/R = Amending and recodifying a section
- DECOD = Decodification of an existing section
- NEW = New section not previously codified
- OBJECT = Notice of objection by Joint Administrative Rules Review Committee
- PREP = Preproposal comments
- RE-AD = Readoption of existing section
- RECOD = Recodification of previously codified section
- REP = Repeal of existing section
- RESCIND = Rescind of existing section
- REVIEW = Review of previously adopted rule
- SUSP = Suspending an existing section

Suffixes:

- C = Continuance of previous proposal
- E = Emergency action
- P = Proposed action
- S = Supplemental notice
- W = Withdrawal of proposed action
- XA = Expedited adoption
- XR = Expedited repeal
- No suffix means permanent action

WAC # Shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.

WSR # Shows the issue of the Washington State Register where the document may be found; the last three digits identify the document within the issue.

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
4-25-530	PREP	99-05-025	16-59-001	AMD-P	99-03-085	16-142	PREP	99-04-067
4-25-750	PREP	99-05-026	16-59-010	AMD-P	99-03-085	16-167-010	AMD-P	99-07-117
4-25-780	PREP	99-05-027	16-59-020	AMD-P	99-03-085	16-167-020	AMD-P	99-07-117
16-05-005	REP-P	99-05-022	16-59-030	AMD-P	99-03-085	16-167-030	AMD-P	99-07-117
16-05-010	AMD-P	99-05-022	16-59-060	AMD-P	99-03-085	16-167-040	AMD-P	99-07-117
16-05-015	REP-P	99-05-022	16-59-070	REP-P	99-03-085	16-167-050	AMD-P	99-07-117
16-05-020	REP-P	99-05-022	16-86	AMD-P	99-03-087	16-200-695	AMD-P	99-04-093
16-05-025	REP-P	99-05-022	16-86-005	AMD-P	99-03-087	16-200-705	AMD-P	99-04-093
16-05-030	REP-P	99-05-022	16-86-015	AMD-P	99-03-087	16-200-7061	AMD-P	99-04-093
16-05-035	REP-P	99-05-022	16-86-017	AMD-P	99-03-087	16-212	PREP	99-07-132
16-05-040	AMD-P	99-05-022	16-86-020	AMD-P	99-03-087	16-219-010	PREP	99-07-088
16-05-045	REP-P	99-05-022	16-86-030	AMD-P	99-03-087	16-219-016	PREP	99-07-086
16-19-010	NEW-P	99-07-116	16-86-040	AMD-P	99-03-087	16-219-100	PREP	99-07-111
16-19-015	NEW-P	99-07-116	16-86-055	AMD-P	99-03-087	16-219-105	PREP	99-07-111
16-19-020	NEW-P	99-07-116	16-86-060	AMD-P	99-03-087	16-228-320	REP-XR	99-04-006
16-19-030	NEW-P	99-07-116	16-86-070	AMD-P	99-03-087	16-228-320	REP	99-07-113
16-19-100	NEW-P	99-07-116	16-86-080	AMD-P	99-03-087	16-228-330	REP-XR	99-04-006
16-19-110	NEW-P	99-07-116	16-86-090	AMD-P	99-03-087	16-228-330	REP	99-07-113
16-19-120	NEW-P	99-07-116	16-86-092	AMD-P	99-03-087	16-228-340	REP-XR	99-04-007
16-19-130	NEW-P	99-07-116	16-86-093	REP-P	99-03-087	16-228-340	REP	99-07-112
16-19-140	NEW-P	99-07-116	16-86-095	AMD-P	99-03-087	16-230	PREP	99-07-087
16-19-200	NEW-P	99-07-116	16-86-100	REP-P	99-03-087	16-316-474	PREP	99-04-096
16-19-210	NEW-P	99-07-116	16-88-010	REP-XR	99-07-114	16-316-717	PREP	99-04-096
16-19-300	NEW-P	99-07-116	16-88-020	REP-XR	99-07-114	16-316-727	PREP	99-04-096
16-19-310	NEW-P	99-07-116	16-88-030	REP-XR	99-07-114	16-319-041	PREP	99-04-095
16-19-320	NEW-P	99-07-116	16-88-040	REP-XR	99-07-114	16-322	PREP	99-03-093
16-19-330	NEW-P	99-07-116	16-89-005	NEW-P	99-03-086	16-401	PREP	99-03-095
16-30	AMD-XA	99-07-115	16-89-010	NEW-P	99-03-086	16-401-019	AMD-P	99-07-126
16-30-001	REP-XA	99-07-115	16-89-015	NEW-P	99-03-086	16-401-020	AMD-P	99-07-126
16-30-010	AMD-XA	99-07-115	16-89-020	NEW-P	99-03-086	16-401-021	NEW-P	99-07-126
16-30-100	REP-XA	99-07-115	16-89-030	NEW-P	99-03-086	16-401-023	AMD-P	99-07-126
16-54-010	AMD-P	99-03-084	16-89-040	NEW-P	99-03-086	16-401-025	AMD-P	99-07-126
16-54-016	AMD-P	99-03-084	16-89-050	NEW-P	99-03-086	16-401-026	NEW-P	99-07-126
16-54-020	AMD-P	99-03-084	16-89-060	NEW-P	99-03-086	16-401-030	AMD-P	99-07-126
16-54-030	AMD-P	99-03-084	16-89-070	NEW-P	99-03-086	16-401-031	NEW-P	99-07-126
16-54-040	AMD-P	99-03-084	16-89-080	NEW-P	99-03-086	16-401-040	AMD-P	99-07-126
16-54-071	AMD-P	99-03-084	16-89-090	NEW-P	99-03-086	16-401-041	NEW-P	99-07-126
16-54-082	AMD-P	99-03-084	16-89-100	NEW-P	99-03-086	16-401-050	AMD-P	99-07-126
16-54-101	AMD-P	99-03-084	16-89-110	NEW-P	99-03-086	16-403	PREP	99-03-108
16-54-120	AMD-P	99-03-084	16-89-120	NEW-P	99-03-086	16-406-001	PREP	99-04-094
16-54-135	AMD-P	99-03-084	16-108	PREP	99-03-045	16-406-020	PREP	99-04-094
16-54-150	REP-P	99-03-084	16-108-010	AMD-P	99-07-118	16-406-030	PREP	99-04-094
16-59	AMD-P	99-03-085	16-125	PREP	99-04-066	16-406-050	PREP	99-04-094

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
16-461	PREP	99-03-108	25- 12-010	REP-P	99-03-098	132H-169-060	NEW-P	99-05-018
16-462	PREP	99-03-094	25- 12-020	REP-P	99-03-098	132H-169-070	NEW-P	99-05-018
16-462	AMD-XA	99-07-127	25- 12-030	REP-P	99-03-098	132H-169-080	NEW-P	99-05-018
16-462-010	AMD-XA	99-07-127	25- 12-040	REP-P	99-03-098	132H-169-090	NEW-P	99-05-018
16-462-015	AMD-XA	99-07-127	25- 12-050	REP-P	99-03-098	132H-169-100	NEW-P	99-05-018
16-462-020	AMD-XA	99-07-127	25- 12-060	REP-P	99-03-098	132H-169-110	NEW-P	99-05-018
16-462-021	NEW-XA	99-07-127	25- 12-070	REP-P	99-03-098	132H-169-120	NEW-P	99-05-018
16-462-022	NEW-XA	99-07-127	25- 12-110	NEW-P	99-03-098	132H-169-130	NEW-P	99-05-018
16-462-025	AMD-XA	99-07-127	25- 12-120	NEW-P	99-03-098	132K- 16	PREP	99-04-028
16-462-030	AMD-XA	99-07-127	25- 12-130	NEW-P	99-03-098	132K- 16-010	REP-P	99-07-109
16-462-035	AMD-XA	99-07-127	25- 12-140	NEW-P	99-03-098	132K- 16-020	REP-P	99-07-109
16-462-045	REP-XA	99-07-127	25- 12-150	NEW-P	99-03-098	132K- 16-030	REP-P	99-07-109
16-462-050	AMD-XA	99-07-127	25- 12-160	NEW-P	99-03-098	132K- 16-040	REP-P	99-07-109
16-462-055	AMD-XA	99-07-127	25- 12-170	NEW-P	99-03-098	132K- 16-050	REP-P	99-07-109
16-462-060	REP-XA	99-07-127	25- 12-180	NEW-P	99-03-098	132K- 16-060	REP-P	99-07-109
16-470	PREP	99-03-092	50- 16-020	REP-XR	99-04-073	132K- 16-070	REP-P	99-07-109
16-470-900	PREP	99-03-096	50- 16-025	REP-XR	99-04-073	132K- 16-110	REP-P	99-07-109
16-470-900	AMD-P	99-07-125	50- 16-030	REP-XR	99-04-073	132K- 16-120	REP-P	99-07-109
16-470-905	PREP	99-03-096	50- 16-035	REP-XR	99-04-073	132K- 16-130	REP-P	99-07-109
16-470-905	AMD-P	99-07-125	50- 16-040	REP-XR	99-04-073	132K- 16-140	REP-P	99-07-109
16-470-910	PREP	99-03-096	50- 16-045	REP-XR	99-04-073	132K- 16-150	REP-P	99-07-109
16-470-910	AMD-P	99-07-125	50- 16-050	REP-XR	99-04-073	132K- 16-160	REP-P	99-07-109
16-470-911	NEW-P	99-07-125	50- 16-055	REP-XR	99-04-073	132K- 16-170	REP-P	99-07-109
16-470-915	PREP	99-03-096	50- 16-060	REP-XR	99-04-073	132K- 16-180	REP-P	99-07-109
16-470-915	AMD-P	99-07-125	50- 16-065	REP-XR	99-04-073	132K- 16-190	REP-P	99-07-109
16-470-916	NEW-P	99-07-125	50- 16-070	REP-XR	99-04-073	132K- 16-200	REP-P	99-07-109
16-470-920	PREP	99-03-096	50- 16-075	REP-XR	99-04-073	132K- 16-210	REP-P	99-07-109
16-470-920	AMD-P	99-07-125	50- 16-080	REP-XR	99-04-073	132K- 16-220	REP-P	99-07-109
16-470-921	NEW-P	99-07-125	50- 16-085	REP-XR	99-04-073	132K- 16-230	REP-P	99-07-109
16-481	PREP	99-03-090	50- 16-090	REP-XR	99-04-073	132K- 16-240	REP-P	99-07-109
16-483	PREP	99-03-091	50- 16-095	REP-XR	99-04-073	132K- 16-250	REP-P	99-07-109
16-532-020	AMD-P	99-02-063	50- 16-100	REP-XR	99-04-073	132K- 16-260	REP-P	99-07-109
16-545-010	NEW	99-02-064	50- 16-105	REP-XR	99-04-073	132K- 16-270	REP-P	99-07-109
16-545-015	NEW	99-02-064	50- 44-037	NEW-P	99-07-131	132K- 16-280	REP-P	99-07-109
16-545-020	NEW	99-02-064	50- 44-039	NEW-P	99-07-131	132K- 16-290	REP-P	99-07-109
16-545-030	NEW	99-02-064	51- 40-23110	REP-E	99-05-030	132K- 16-300	REP-P	99-07-109
16-545-040	NEW	99-02-064	67- 55-040	AMD	99-05-005	132K- 16-310	REP-P	99-07-109
16-545-041	NEW	99-02-064	67- 55-060	AMD	99-05-005	132K- 16-320	REP-P	99-07-109
16-545-050	NEW	99-02-064	67- 75-010	AMD	99-05-005	132K- 16-330	REP-P	99-07-109
16-545-080	NEW	99-02-064	67- 75-020	AMD	99-05-005	132K- 16-340	REP-P	99-07-109
16-561-010	AMD-P	99-07-108	67- 75-030	AMD	99-05-005	132K- 16-350	REP-P	99-07-109
16-561-130	NEW-P	99-07-108	67- 75-040	AMD	99-05-005	132K- 16-360	REP-P	99-07-109
16-575-015	NEW-P	99-06-070	67- 75-042	AMD	99-05-005	132K- 16-370	REP-P	99-07-109
16-604-010	REP	99-04-069	67- 75-044	AMD	99-05-005	132K- 16-380	REP-P	99-07-109
16-645-005	NEW-P	99-02-066	67- 75-050	AMD	99-05-005	132K- 16-390	REP-P	99-07-109
16-645-005	NEW	99-06-072	82- 50-021	AMD-XA	99-07-128	132K- 16-400	REP-P	99-07-109
16-645-010	NEW-P	99-02-066	131- 16-450	PREP	99-04-029	132K- 16-410	REP-P	99-07-109
16-645-010	NEW	99-06-072	131- 16-450	AMD-E	99-07-057	132K- 16-420	REP-P	99-07-109
16-662-105	AMD-P	99-04-111	132A	PREP	99-07-060	132K- 16-430	REP-P	99-07-109
16-662-105	AMD	99-07-056	132H-168-010	REP-P	99-05-018	132K- 16-440	REP-P	99-07-109
16-662-110	AMD-P	99-04-111	132H-168-020	REP-P	99-05-018	132K- 16-450	REP-P	99-07-109
16-662-110	AMD	99-07-056	132H-168-030	REP-P	99-05-018	132K- 16-460	REP-P	99-07-109
16-752	PREP	99-07-123	132H-168-040	REP-P	99-05-018	132K- 16-470	REP-P	99-07-109
16-752-115	REP-XR	99-07-124	132H-168-050	REP-P	99-05-018	132K- 16-480	REP-P	99-07-109
16-752-120	REP-XR	99-07-124	132H-168-060	REP-P	99-05-018	132K-125-010	NEW-P	99-07-109
16-752-125	REP-XR	99-07-124	132H-168-070	REP-P	99-05-018	132K-125-020	NEW-P	99-07-109
16-752-130	REP-XR	99-07-124	132H-168-080	REP-P	99-05-018	132K-125-030	NEW-P	99-07-109
16-752-135	REP-XR	99-07-124	132H-168-090	REP-P	99-05-018	132K-125-040	NEW-P	99-07-109
16-752-140	REP-XR	99-07-124	132H-168-990	REP-P	99-05-018	132K-125-050	NEW-P	99-07-109
16-752-145	REP-XR	99-07-124	132H-168-9901	REP-P	99-05-018	132K-125-060	NEW-P	99-07-109
16-752-146	REP-XR	99-07-124	132H-168-9902	REP-P	99-05-018	132K-125-070	NEW-P	99-07-109
16-752-147	REP-XR	99-07-124	132H-168-9903	REP-P	99-05-018	132K-125-080	NEW-P	99-07-109
16-752-150	REP-XR	99-07-124	132H-169-010	NEW-P	99-05-018	132K-125-090	NEW-P	99-07-109
16-752-155	REP-XR	99-07-124	132H-169-020	NEW-P	99-05-018	132K-125-100	NEW-P	99-07-109
16-752-160	REP-XR	99-07-124	132H-169-030	NEW-P	99-05-018	132K-125-110	NEW-P	99-07-109
16-752-165	REP-XR	99-07-124	132H-169-040	NEW-P	99-05-018	132K-125-120	NEW-P	99-07-109
16-752-170	REP-XR	99-07-124	132H-169-050	NEW-P	99-05-018	132K-125-130	NEW-P	99-07-109

Table

TABLE

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
132K-125-140	NEW-P	99-07-109	162-22-025	NEW-P	99-04-108	180-16-221	REP	99-07-054
132K-125-150	NEW-P	99-07-109	162-22-030	REP-P	99-04-108	180-16-222	REP-XR	99-03-001
132K-125-160	NEW-P	99-07-109	162-22-035	NEW-P	99-04-108	180-16-222	REP	99-07-054
132K-125-170	NEW-P	99-07-109	162-22-040	REP-P	99-04-108	180-16-226	REP-XR	99-03-001
132K-125-180	NEW-P	99-07-109	162-22-045	NEW-P	99-04-108	180-16-226	REP	99-07-054
132K-125-190	NEW-P	99-07-109	162-22-050	REP-P	99-04-108	180-16-231	REP-XR	99-03-001
132K-125-200	NEW-P	99-07-109	162-22-060	REP-P	99-04-108	180-16-231	REP	99-07-054
132K-125-210	NEW-P	99-07-109	162-22-065	NEW-P	99-04-108	180-16-236	REP-XR	99-03-001
132K-125-220	NEW-P	99-07-109	162-22-070	REP-P	99-04-108	180-16-236	REP	99-07-054
132K-125-230	NEW-P	99-07-109	162-22-075	NEW-P	99-04-108	180-16-238	REP-XR	99-03-001
132K-125-240	NEW-P	99-07-109	162-22-080	REP-P	99-04-108	180-16-238	REP	99-07-054
132K-125-250	NEW-P	99-07-109	162-22-090	AMD-P	99-04-108	180-16-240	REP-P	99-04-080
132K-125-260	NEW-P	99-07-109	162-22-100	AMD-P	99-04-108	180-18-055	NEW-P	99-04-082
132K-125-270	NEW-P	99-07-109	162-26-010	AMD-P	99-04-108	180-18-055	NEW-P	99-06-089
132K-125-280	NEW-P	99-07-109	162-26-020	REP-P	99-04-108	180-22-150	PREP	99-04-083
132K-125-290	NEW-P	99-07-109	162-26-030	REP-P	99-04-108	180-22-150	AMD-P	99-07-065
132K-125-300	NEW-P	99-07-109	162-26-035	REP-P	99-04-108	180-25	PREP	99-06-074
132K-125-310	NEW-P	99-07-109	162-26-040	AMD-P	99-04-108	180-26	PREP	99-06-080
132K-125-320	NEW-P	99-07-109	162-26-050	REP-P	99-04-108	180-27	PREP	99-06-079
132K-125-330	NEW-P	99-07-109	162-26-060	AMD-P	99-04-108	180-27-082	NEW-W	99-03-026
132K-125-340	NEW-P	99-07-109	162-26-070	AMD-P	99-04-108	180-27-083	NEW-W	99-03-026
132K-125-350	NEW-P	99-07-109	162-26-080	AMD-P	99-04-108	180-29	PREP	99-06-078
132K-125-360	NEW-P	99-07-109	162-26-090	REP-P	99-04-108	180-29-095	PREP	99-04-086
132K-125-370	NEW-P	99-07-109	162-26-100	AMD-P	99-04-108	180-29-095	AMD-P	99-07-067
132K-125-380	NEW-P	99-07-109	162-26-110	AMD-P	99-04-108	180-31	PREP	99-06-077
132K-125-390	NEW-P	99-07-109	162-26-120	AMD-P	99-04-108	180-32	PREP	99-06-076
132K-125-400	NEW-P	99-07-109	162-26-135	NEW-P	99-04-108	180-33	PREP	99-06-075
132K-125-410	NEW-P	99-07-109	162-26-140	AMD-P	99-04-108	180-40-215	PREP	99-04-084
132K-125-420	NEW-P	99-07-109	162-30-010	AMD-P	99-04-108	180-40-215	AMD-P	99-07-064
132K-125-430	NEW-P	99-07-109	162-30-020	AMD-P	99-04-108	180-41-035	PREP	99-04-090
132N-160	PREP	99-06-011	162-38-040	AMD-P	99-04-108	180-41-035	AMD-P	99-07-073
132P-276	PREP	99-05-041	162-38-100	AMD-P	99-04-108	180-51-050	AMD-P	99-04-081
132Q-12-010	REP-C	99-05-040	162-38-105	NEW-P	99-04-108	180-51-107	NEW-P	99-04-082
132X-10	PREP	99-06-032	162-38-110	AMD-P	99-04-108	180-51-107	NEW-P	99-06-089
132X-20	PREP	99-06-032	162-38-130	REP-P	99-04-108	180-51-110	PREP	99-04-091
132X-30	PREP	99-06-032	173-201A	PREP	99-05-060	180-51-110	AMD-P	99-07-072
132X-40	PREP	99-06-032	173-202-020	AMD-E	99-07-077	180-55-085	PREP	99-04-089
132X-50	PREP	99-06-032	173-400	PREP	99-07-093	180-55-085	AMD-P	99-07-068
132X-60	PREP	99-06-032	173-400-030	AMD-XA	99-04-097	180-56-245	PREP	99-04-092
162-16-020	REP-P	99-04-108	173-400-040	AMD-XA	99-04-097	180-56-245	AMD-P	99-07-071
162-16-030	REP-P	99-04-108	173-400-060	AMD-XA	99-04-097	180-77A	PREP	99-04-046
162-16-040	REP-P	99-04-108	173-400-070	AMD-XA	99-04-097	180-77A-028	AMD-P	99-07-049
162-16-050	REP-P	99-04-108	173-400-075	AMD-XA	99-04-097	180-77A-029	AMD-P	99-07-049
162-16-060	REP-P	99-04-108	173-400-104	AMD-XA	99-04-097	180-77A-080	NEW-P	99-07-049
162-16-070	REP-P	99-04-108	173-400-115	AMD-XA	99-04-097	180-78-155	PREP	99-04-087
162-16-080	REP-P	99-04-108	173-405	PREP	99-07-093	180-78-155	AMD-P	99-07-070
162-16-090	REP-P	99-04-108	173-410	PREP	99-07-093	180-78-207	PREP	99-04-087
162-16-100	REP-P	99-04-108	173-425	AMD-P	99-07-110	180-78-207	AMD-P	99-07-070
162-16-110	REP-P	99-04-108	173-425-010	AMD-P	99-07-110	180-78-210	PREP	99-04-087
162-16-120	REP-P	99-04-108	173-425-020	AMD-P	99-07-110	180-78-210	AMD-P	99-07-070
162-16-130	REP-P	99-04-108	173-425-030	AMD-P	99-07-110	180-79A-223	PREP	99-06-038
162-16-140	REP-P	99-04-108	173-425-040	AMD-P	99-07-110	180-79A-300	AMD	99-06-006
162-16-150	REP-P	99-04-108	173-425-050	AMD-P	99-07-110	180-79A-380	PREP	99-04-085
162-16-160	REP-P	99-04-108	173-425-060	AMD-P	99-07-110	180-79A-380	AMD-P	99-07-066
162-16-170	REP-P	99-04-108	173-425-070	AMD-P	99-07-110	180-82	PREP	99-04-109
162-16-200	NEW-P	99-04-108	173-425-080	AMD-P	99-07-110	180-82-002	NEW	99-04-008
162-16-210	NEW-P	99-04-108	173-425-090	REP-P	99-07-110	180-82-004	NEW	99-04-008
162-16-220	NEW-P	99-04-108	173-425-100	REP-P	99-07-110	180-82-105	NEW	99-04-008
162-16-230	NEW-P	99-04-108	173-425-110	REP-P	99-07-110	180-82-110	NEW	99-04-008
162-16-240	NEW-P	99-04-108	173-433	PREP	99-07-093	180-82-115	NEW	99-04-008
162-16-250	NEW-P	99-04-108	173-434	PREP	99-07-093	180-82-120	NEW	99-04-008
162-16-260	NEW-P	99-04-108	180-08-015	NEW-P	99-04-079	180-82-125	NEW	99-04-008
162-16-270	NEW-P	99-04-108	180-16-195	AMD-P	99-04-080	180-82-130	NEW	99-04-008
162-16-280	NEW-P	99-04-108	180-16-215	PREP	99-04-088	180-82-200	NEW	99-04-008
162-16-290	NEW-P	99-04-108	180-16-215	AMD-P	99-07-069	180-82-201	NEW	99-04-008
162-22-010	AMD-P	99-04-108	180-16-220	AMD-P	99-04-080	180-82-202	NEW	99-04-008
162-22-020	AMD-P	99-04-108	180-16-221	REP-XR	99-03-001	180-82-204	NEW	99-04-008

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
180-82-210	NEW	99-04-008	196-24-095	PREP	99-02-077	220-88B-010	REP-E	99-04-053
180-82-215	NEW	99-04-008	196-24-097	PREP	99-02-078	220-88B-020	REP-E	99-04-053
180-82-300	NEW	99-04-008	196-24-098	PREP	99-02-079	220-88B-030	REP-E	99-04-053
180-82-304	NEW	99-04-008	196-24-100	PREP	99-02-072	220-88B-040	REP-E	99-04-053
180-82-308	NEW	99-04-008	196-25-040	PREP	99-02-074	220-88B-050	REP-E	99-04-053
180-82-310	NEW	99-04-008	196-26-020	PREP	99-02-070	220-110-204	AMD-XA	99-05-023
180-82-312	NEW	99-04-008	204-24-050	AMD	99-06-023	220-110-205	AMD-XA	99-05-023
180-82-314	NEW	99-04-008	204-80-020	AMD	99-02-045	220-130	AMD-P	99-05-075
180-82-315	NEW-P	99-04-110	208-464-010	REP	99-03-009	220-130-010	AMD-P	99-05-075
180-82-315	NEW	99-07-102	208-464-020	REP	99-03-009	220-130-020	AMD-P	99-05-075
180-82-316	NEW	99-04-008	208-464-030	REP	99-03-009	220-130-030	AMD-P	99-05-075
180-82-317	NEW-P	99-04-110	208-464-040	REP	99-03-009	220-130-040	AMD-P	99-05-075
180-82-317	NEW	99-07-102	208-464-050	REP	99-03-009	220-130-050	AMD-P	99-05-075
180-82-318	NEW	99-04-008	208-464-060	REP	99-03-009	220-130-060	AMD-P	99-05-075
180-82-319	NEW-P	99-04-110	208-464-070	REP	99-03-009	220-130-070	AMD-P	99-05-075
180-82-319	NEW	99-07-102	208-464-080	REP	99-03-009	220-130-080	NEW-P	99-05-075
180-82-320	NEW	99-04-008	208-464-090	REP	99-03-009	222-10-020	NEW-E	99-07-075
180-82-321	NEW-P	99-04-110	208-480-010	REP	99-03-009	222-10-040	AMD-E	99-07-075
180-82-321	NEW	99-07-102	208-480-020	REP	99-03-009	222-10-043	NEW-E	99-07-075
180-82-322	NEW	99-04-008	208-480-030	REP	99-03-009	222-12-090	AMD-E	99-07-074
180-82-324	NEW	99-04-008	208-480-040	REP	99-03-009	222-16-010	AMD-E	99-07-075
180-82-326	NEW	99-04-008	208-480-050	REP	99-03-009	222-16-030	AMD-E	99-07-074
180-82-328	NEW	99-04-008	208-480-060	REP	99-03-009	222-16-050	AMD-E	99-07-075
180-82-330	NEW	99-04-008	208-480-070	REP	99-03-009	222-16-080	AMD-E	99-07-075
180-82-331	NEW	99-06-005	220-32-05100J	NEW-E	99-04-059	222-16-088	NEW-E	99-07-075
180-82-332	NEW	99-04-008	220-32-05100J	REP-E	99-04-059	222-24-050	AMD-E	99-07-075
180-82-334	NEW	99-04-008	220-32-05100K	NEW-E	99-07-009	222-30-040	AMD-E	99-07-075
180-82-336	NEW	99-04-008	220-32-05100K	REP-E	99-07-009	230-20-058	NEW	99-03-103
180-82-339	NEW	99-04-008	220-33-01000N	NEW-E	99-05-055	232-12-001	AMD	99-03-029
180-82-342	NEW	99-04-008	220-33-01000N	REP-E	99-05-055	232-12-047	AMD-P	99-05-064
180-82-343	NEW	99-04-008	220-33-01000P	REP-E	99-06-031	232-12-054	AMD-P	99-05-064
180-82-344	NEW	99-04-008	220-33-01000P	NEW-E	99-06-031	232-12-069	REP	99-03-029
180-82-346	NEW	99-04-008	220-44-08000A	NEW-E	99-03-008	232-12-072	NEW	99-03-029
180-82-348	NEW	99-04-008	220-52-050	REP-E	99-04-053	232-12-157	AMD	99-03-029
180-82-349	NEW-P	99-04-110	220-52-07100I	REP-E	99-07-033	232-12-166	AMD	99-03-029
180-82-349	NEW	99-07-102	220-52-07100I	NEW-E	99-07-033	232-12-189	AMD	99-03-029
180-82-350	NEW	99-04-008	220-52-07300J	REP-E	99-03-054	232-12-241	REP	99-03-029
180-82-352	NEW	99-04-008	220-52-07300K	NEW-E	99-03-054	232-12-619	AMD	99-03-029
180-82-354	NEW	99-04-008	220-55-001	NEW	99-03-029	232-12-830	NEW	99-03-029
180-82-355	NEW	99-04-008	220-55-005	AMD	99-03-029	232-16-810	AMD-P	99-05-063
180-82-356	NEW	99-04-008	220-55-010	AMD	99-03-029	232-21-101	REP	99-05-024
180-82-360	NEW	99-04-008	220-55-015	AMD	99-03-029	232-28-02201	AMD-P	99-05-063
180-85-075	AMD-E	99-05-002	220-55-040	AMD	99-03-029	232-28-02203	AMD-P	99-05-063
180-85-075	PREP	99-06-039	220-55-050	AMD	99-03-029	232-28-02204	AMD-P	99-05-063
182-25-040	PREP	99-05-077	220-55-055	AMD	99-03-029	232-28-02205	AMD-P	99-05-063
182-25-085	PREP	99-05-077	220-55-055A	NEW-E	99-06-007	232-28-02240	AMD-P	99-05-063
182-25-090	PREP	99-05-077	220-55-060	AMD	99-03-029	232-28-248	AMD-P	99-05-063
182-25-100	AMD	99-07-078	220-55-065	AMD	99-03-029	232-28-264	AMD-P	99-05-063
182-25-105	AMD	99-07-078	220-55-070	AMD	99-03-029	232-28-271	AMD-P	99-05-063
182-25-110	AMD	99-07-078	220-55-075	REP	99-03-029	232-28-273	AMD-P	99-05-063
192-12-072	REP-P	99-05-068	220-55-100	AMD	99-03-029	232-28-280	AMD-P	99-05-063
192-16-051	REP-E	99-05-003	220-55-105	AMD	99-03-029	232-28-281	AMD-P	99-05-063
192-16-052	REP-E	99-05-003	220-55-110	AMD	99-03-029	232-28-61900B	REP-E	99-04-060
192-16-057	REP-E	99-05-003	220-55-115	AMD	99-03-029	232-28-61900B	NEW-E	99-04-060
192-210-005	NEW-E	99-05-003	220-55-120	AMD	99-03-029	232-28-61900C	NEW-E	99-06-020
192-210-010	NEW-E	99-05-003	220-55-125	AMD	99-03-029	232-28-61900D	REP-E	99-07-006
192-210-015	NEW-E	99-05-003	220-55-155	REP	99-03-029	232-28-61900D	NEW-E	99-07-006
192-300-050	NEW-P	99-05-068	220-56-19100G	REP-E	99-05-061	232-32-010	REP-P	99-05-076
192-320-050	NEW-P	99-05-068	220-56-19100G	NEW-E	99-05-061	232-32-020	REP-P	99-05-076
194-22	PREP	99-07-005	220-56-27000E	NEW-E	99-07-007	232-32-030	REP-P	99-05-076
196-23	PREP	99-07-135	220-56-28500S	REP-E	99-07-006	232-32-040	REP-P	99-05-076
196-23	PREP	99-07-136	220-56-28500S	NEW-E	99-07-006	232-32-050	REP-P	99-05-076
196-24-058	PREP	99-07-134	220-56-35000V	REP-E	99-07-008	232-32-060	REP-P	99-05-076
196-24-060	PREP	99-02-073	220-56-35000W	NEW-E	99-07-008	232-32-070	REP-P	99-05-076
196-24-085	PREP	99-02-071	220-56-38000P	REP-E	99-07-008	236-47-001	REP	99-06-001
196-24-090	PREP	99-02-075	220-56-38000Q	NEW-E	99-07-008	236-47-002	REP	99-06-001
196-24-092	PREP	99-02-076	220-57-16000R	NEW-E	99-07-006	236-47-003	REP	99-06-001

Table

TABLE

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
236-47-004	REP	99-06-001	246-25-175	RECOD	99-04-049	246-290-640	AMD	99-07-021
236-47-005	REP	99-06-001	246-25-180	RECOD	99-04-049	246-290-650	AMD	99-07-021
236-47-006	REP	99-06-001	246-100-042	AMD-XA	99-06-091	246-290-652	AMD	99-07-021
236-47-007	REP	99-06-001	246-205-990	AMD-P	99-07-120	246-290-654	AMD	99-07-021
236-47-008	REP	99-06-001	246-221-265	AMD	99-05-013	246-290-660	AMD	99-07-021
236-47-009	REP	99-06-001	246-221-280	AMD	99-05-012	246-290-662	AMD	99-07-021
236-47-010	REP	99-06-001	246-222-030	AMD	99-05-012	246-290-664	AMD	99-07-021
236-47-011	REP	99-06-001	246-243-040	AMD	99-05-012	246-290-666	AMD	99-07-021
236-47-012	REP	99-06-001	246-243-090	AMD	99-05-012	246-290-668	AMD	99-07-021
236-47-013	REP	99-06-001	246-254-070	AMD-P	99-07-120	246-290-670	AMD	99-07-021
236-47-014	REP	99-06-001	246-254-080	AMD-P	99-07-120	246-290-672	AMD	99-07-021
236-47-015	REP	99-06-001	246-254-090	AMD-P	99-07-120	246-290-674	AMD	99-07-021
236-47-016	REP	99-06-001	246-254-100	AMD-P	99-07-120	246-290-676	AMD	99-07-021
236-47-017	REP	99-06-001	246-282-990	AMD-P	99-07-120	246-290-678	AMD	99-07-021
245-02-010	DECOD	99-04-049	246-290-001	AMD	99-07-021	246-290-686	AMD	99-07-021
245-02-020	DECOD	99-04-049	246-290-002	NEW	99-07-021	246-290-690	AMD	99-07-021
245-02-025	DECOD	99-04-049	246-290-010	AMD	99-07-021	246-290-691	NEW	99-07-021
245-02-030	DECOD	99-04-049	246-290-020	AMD	99-07-021	246-290-692	AMD	99-07-021
245-02-035	DECOD	99-04-049	246-290-025	AMD	99-07-021	246-290-694	AMD	99-07-021
245-02-040	DECOD	99-04-049	246-290-030	AMD	99-07-021	246-290-696	AMD	99-07-021
245-02-045	DECOD	99-04-049	246-290-035	NEW	99-07-021	246-290-990	AMD-P	99-07-120
245-02-050	DECOD	99-04-049	246-290-040	AMD	99-07-021	246-292-160	AMD-P	99-07-120
245-02-100	DECOD	99-04-049	246-290-050	AMD	99-07-021	246-310-990	PREP	99-05-011
245-02-110	DECOD	99-04-049	246-290-060	AMD	99-07-021	246-316-990	PREP-W	99-04-048
245-02-115	DECOD	99-04-049	246-290-100	AMD	99-07-021	246-318-010	REP	99-04-052
245-02-120	DECOD	99-04-049	246-290-105	NEW	99-07-021	246-318-013	REP	99-04-052
245-02-125	DECOD	99-04-049	246-290-110	AMD	99-07-021	246-318-015	REP	99-04-052
245-02-130	DECOD	99-04-049	246-290-115	REP	99-07-021	246-318-017	REP	99-04-052
245-02-131	DECOD	99-04-049	246-290-120	AMD	99-07-021	246-318-020	REP	99-04-052
245-02-135	DECOD	99-04-049	246-290-125	NEW	99-07-021	246-318-025	REP	99-04-052
245-02-140	DECOD	99-04-049	246-290-130	AMD	99-07-021	246-318-030	REP	99-04-052
245-02-145	DECOD	99-04-049	246-290-132	NEW	99-07-021	246-318-033	REP	99-04-052
245-02-150	DECOD	99-04-049	246-290-135	AMD	99-07-021	246-318-035	REP	99-04-052
245-02-155	DECOD	99-04-049	246-290-140	AMD	99-07-021	246-318-040	REP	99-04-052
245-02-160	DECOD	99-04-049	246-290-200	AMD	99-07-021	246-318-042	REP	99-04-052
245-02-165	DECOD	99-04-049	246-290-220	AMD	99-07-021	246-318-150	REP	99-04-052
245-02-170	DECOD	99-04-049	246-290-221	NEW	99-07-021	246-318-155	REP	99-04-052
245-02-175	DECOD	99-04-049	246-290-222	NEW	99-07-021	246-318-160	REP	99-04-052
245-02-180	DECOD	99-04-049	246-290-230	AMD	99-07-021	246-318-170	REP	99-04-052
246-05-001	REP	99-03-062	246-290-235	NEW	99-07-021	246-318-180	REP	99-04-052
246-05-010	REP	99-03-062	246-290-240	REP	99-07-021	246-318-190	REP	99-04-052
246-05-020	REP	99-03-063	246-290-250	AMD	99-07-021	246-318-200	REP	99-04-052
246-05-030	REP	99-03-062	246-290-300	AMD	99-07-021	246-318-210	REP	99-04-052
246-25	PREP	99-04-050	246-290-310	AMD	99-07-021	246-318-220	REP	99-04-052
246-25-010	RECOD	99-04-049	246-290-320	AMD	99-07-021	246-318-230	REP	99-04-052
246-25-020	RECOD	99-04-049	246-290-330	REP	99-07-021	246-318-240	REP	99-04-052
246-25-025	RECOD	99-04-049	246-290-410	REP	99-07-021	246-318-250	REP	99-04-052
246-25-030	RECOD	99-04-049	246-290-415	NEW	99-07-021	246-318-260	REP	99-04-052
246-25-035	RECOD	99-04-049	246-290-416	NEW	99-07-021	246-318-270	REP	99-04-052
246-25-040	RECOD	99-04-049	246-290-420	AMD	99-07-021	246-318-280	REP	99-04-052
246-25-045	RECOD	99-04-049	246-290-430	REP	99-07-021	246-318-290	REP	99-04-052
246-25-050	RECOD	99-04-049	246-290-440	REP	99-07-021	246-318-300	REP	99-04-052
246-25-100	RECOD	99-04-049	246-290-451	NEW	99-07-021	246-318-310	REP	99-04-052
246-25-110	RECOD	99-04-049	246-290-455	NEW	99-07-021	246-318-320	REP	99-04-052
246-25-115	RECOD	99-04-049	246-290-460	AMD	99-07-021	246-318-330	REP	99-04-052
246-25-120	RECOD	99-04-049	246-290-470	AMD	99-07-021	246-318-350	REP	99-04-052
246-25-125	RECOD	99-04-049	246-290-480	AMD	99-07-021	246-318-370	REP	99-04-052
246-25-130	RECOD	99-04-049	246-290-490	AMD	99-07-021	246-318-380	REP	99-04-052
246-25-131	RECOD	99-04-049	246-290-495	NEW	99-07-021	246-318-390	REP	99-04-052
246-25-135	RECOD	99-04-049	246-290-601	AMD	99-07-021	246-318-400	REP	99-04-052
246-25-140	RECOD	99-04-049	246-290-610	REP	99-07-021	246-318-420	REP	99-04-052
246-25-145	RECOD	99-04-049	246-290-620	AMD	99-07-021	246-318-440	REP	99-04-052
246-25-150	RECOD	99-04-049	246-290-630	AMD	99-07-021	246-318-450	REP	99-04-052
246-25-155	RECOD	99-04-049	246-290-632	AMD	99-07-021	246-318-500	REP	99-04-052
246-25-160	RECOD	99-04-049	246-290-634	AMD	99-07-021	246-318-510	REP	99-04-052
246-25-165	RECOD	99-04-049	246-290-636	AMD	99-07-021	246-318-520	REP	99-04-052
246-25-170	RECOD	99-04-049	246-290-638	AMD	99-07-021	246-318-530	REP	99-04-052

TABLE

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
246-828-340	REP	99-07-019	260- 44-110	AMD	99-05-049	292-100-150	AMD	99-06-073
246-830-990	AMD-P	99-02-057	260- 44-120	AMD-P	99-02-082	292-100-160	AMD	99-06-073
246-834-050	NEW	99-03-064	260- 44-120	AMD	99-05-049	292-100-170	AMD	99-06-073
246-834-060	AMD	99-03-064	260- 48-600	AMD-P	99-02-081	292-100-180	AMD	99-06-073
246-834-070	AMD	99-03-064	260- 48-600	AMD	99-06-026	292-100-190	AMD	99-06-073
246-834-080	AMD	99-03-064	260- 48-620	AMD-P	99-02-081	292-100-200	AMD	99-06-073
246-834-990	PREP	99-06-090	260- 48-620	AMD	99-06-026	292-100-210	NEW	99-06-073
246-840-020	AMD-P	99-06-092	260- 48-700	NEW-P	99-02-081	296- 17	PREP	99-05-051
246-840-125	PREP	99-03-066	260- 48-700	NEW	99-06-026	296- 17	PREP	99-07-099
246-840-740	NEW	99-04-051	260- 48-710	NEW-P	99-02-081	296- 17	PREP	99-07-100
246-843-060	REP	99-03-069	260- 48-710	NEW	99-06-026	296- 17-900	AMD-E	99-04-106
246-843-200	REP	99-03-068	260- 48-720	NEW-P	99-02-081	296- 20-135	AMD-P	99-05-079
246-843-220	REP	99-03-067	260- 48-720	NEW	99-06-026	296- 23-220	AMD-P	99-05-079
246-843-225	REP	99-03-067	260- 48-910	NEW-P	99-02-081	296- 23-230	AMD-P	99-05-079
246-845-990	AMD-P	99-02-057	260- 48-910	NEW	99-06-026	296- 24	PREP	99-02-083
246-847-990	AMD-P	99-02-057	260- 52-070	AMD	99-05-047	296- 24	PREP	99-04-057
246-849-990	AMD-P	99-02-057	260- 75	PREP	99-03-014	296- 24-58503	AMD	99-05-080
246-850-060	NEW-P	99-03-083	275- 27-020	AMD	99-04-071	296- 24-58505	AMD	99-05-080
246-850-060	NEW	99-07-122	275- 27-180	NEW	99-04-071	296- 27	PREP	99-02-083
246-851-990	AMD-P	99-02-057	275- 27-185	NEW	99-04-071	296- 28	PREP	99-02-083
246-915-990	AMD-P	99-02-057	275- 27-190	NEW	99-04-071	296- 30-020	AMD	99-07-004
246-918-115	NEW-P	99-07-121	275- 27-191	NEW	99-04-071	296- 30-025	REP	99-07-004
246-918-116	NEW-P	99-07-121	275- 27-192	NEW	99-04-071	296- 30-060	AMD	99-07-004
246-918-990	AMD-P	99-06-093	275- 27-193	NEW	99-04-071	296- 30-081	AMD	99-07-004
246-919-630	NEW-P	99-07-121	275- 27-194	NEW	99-04-071	296- 30-900	AMD	99-07-004
246-919-640	NEW-P	99-07-121	275- 27-195	NEW	99-04-071	296- 31-040	AMD	99-07-004
246-924-990	AMD-P	99-02-057	275- 27-196	NEW	99-04-071	296- 31-071	AMD	99-07-004
246-926-990	AMD-P	99-02-057	275- 27-197	NEW	99-04-071	296- 31-072	AMD	99-07-004
246-928-990	AMD-P	99-02-057	275- 27-198	NEW	99-04-071	296- 31-073	AMD	99-07-004
246-930-499	REP	99-07-018	275- 27-199	NEW	99-04-071	296- 31-075	AMD	99-07-004
246-930-990	AMD-P	99-02-057	275- 27-200	NEW	99-04-071	296- 31-080	AMD	99-07-004
246-935-140	REP-XR	99-02-080	275- 27-202	NEW	99-04-071	296- 31-085	NEW	99-07-004
250- 61-060	AMD	99-06-022	275- 27-204	NEW	99-04-071	296- 31-100	REP	99-07-004
250- 61-090	AMD	99-06-021	275- 27-211	NEW	99-04-071	296- 32	PREP	99-02-083
251- 01-014	NEW-P	99-02-054	275- 27-212	NEW	99-04-071	296- 32	PREP	99-04-057
251- 01-014	NEW	99-05-042	275- 27-213	NEW	99-04-071	296- 36	PREP	99-02-083
251- 01-015	AMD-P	99-02-054	275- 30-010	AMD	99-03-077	296- 36	PREP	99-06-040
251- 01-015	AMD	99-05-042	275- 30-030	AMD	99-03-077	296- 37	PREP	99-02-083
251- 01-040	AMD-P	99-02-054	275- 30-040	AMD	99-03-077	296- 45	PREP	99-02-083
251- 01-040	AMD	99-05-042	275- 30-050	REP	99-03-077	296- 45-015	AMD-XA	99-04-078
251- 01-190	AMD-P	99-02-054	275- 30-060	AMD	99-03-077	296- 45-045	AMD-XA	99-04-078
251- 01-190	AMD	99-05-042	275- 30-070	AMD	99-03-077	296- 45-17550	AMD-XA	99-04-078
251- 01-330	REP-P	99-02-054	275- 30-080	REP	99-03-077	296- 45-215	AMD-XA	99-04-078
251- 01-330	REP	99-05-042	284- 43	AMD-C	99-03-037	296- 45-325	AMD-XA	99-04-078
251- 01-400	AMD-P	99-02-054	284- 43	AMD-C	99-03-038	296- 45-455	AMD-XA	99-04-078
251- 01-400	AMD	99-05-042	284- 43-130	AMD-P	99-03-006	296- 45-901	AMD-XA	99-04-078
251- 01-420	REP-P	99-02-054	284- 43-130	AMD-P	99-03-007	296- 46-090	AMD	99-05-052
251- 01-420	REP	99-05-042	284- 43-810	NEW-P	99-03-006	296- 46-23040	AMD	99-05-052
251- 01-440	AMD-P	99-02-054	284- 43-810	NEW-P	99-03-007	296- 46-370	AMD	99-05-052
251- 01-440	AMD	99-05-042	292-100-005	NEW	99-06-073	296- 46-495	AMD	99-05-052
251- 17-090	AMD-P	99-02-054	292-100-006	NEW	99-06-073	296- 46-50002	AMD	99-05-052
251- 17-090	AMD	99-05-042	292-100-007	NEW	99-06-073	296- 46-930	AMD	99-05-052
251- 23-010	AMD-P	99-02-054	292-100-010	AMD	99-06-073	296- 46-940	AMD	99-05-052
251- 23-010	AMD	99-05-042	292-100-020	AMD	99-06-073	296- 46-950	AMD	99-05-052
251- 23-030	AMD-P	99-02-054	292-100-030	AMD	99-06-073	296- 50	PREP	99-02-083
251- 23-030	AMD	99-05-042	292-100-040	AMD	99-06-073	296- 50	PREP	99-06-040
251- 23-040	AMD-P	99-02-054	292-100-050	AMD	99-06-073	296- 52	PREP	99-02-083
251- 23-040	AMD	99-05-042	292-100-060	AMD	99-06-073	296- 52	PREP	99-04-057
251- 23-050	AMD-P	99-02-054	292-100-070	AMD	99-06-073	296- 54	PREP	99-02-083
251- 23-050	AMD	99-05-042	292-100-080	AMD	99-06-073	296- 56	PREP	99-02-083
251- 23-060	AMD-P	99-02-054	292-100-090	AMD	99-06-073	296- 59	PREP	99-02-083
251- 23-060	AMD	99-05-042	292-100-100	AMD	99-06-073	296- 59	PREP	99-06-040
251- 24-030	AMD-P	99-02-054	292-100-105	NEW	99-06-073	296- 62	PREP	99-02-083
251- 24-030	AMD	99-05-042	292-100-110	AMD	99-06-073	296- 62	PREP	99-04-057
251- 24-040	AMD-W	99-05-058	292-100-120	AMD	99-06-073	296- 62	PREP	99-07-014
260- 24-560	AMD	99-05-048	292-100-130	AMD	99-06-073	296- 62-130	AMD	99-07-063
260- 44-110	AMD-P	99-02-082	292-100-140	AMD	99-06-073	296- 62-300	AMD	99-07-097

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
296-62-30001	NEW	99-07-097	296-62-31015	NEW	99-07-097	296-62-41084	NEW	99-07-097
296-62-30003	NEW	99-07-097	296-62-31020	NEW	99-07-097	296-62-41085	NEW	99-07-097
296-62-3010	AMD	99-07-097	296-62-3110	AMD	99-07-097	296-62-41086	NEW	99-07-097
296-62-30105	NEW	99-07-097	296-62-31105	NEW	99-07-097	296-63	PREP	99-02-083
296-62-30110	NEW	99-07-097	296-62-31110	NEW	99-07-097	296-65	PREP	99-02-083
296-62-30115	NEW	99-07-097	296-62-3112	REP	99-07-097	296-67	PREP	99-02-083
296-62-30120	NEW	99-07-097	296-62-3120	AMD	99-07-097	296-78	PREP	99-02-083
296-62-30125	NEW	99-07-097	296-62-3130	AMD	99-07-097	296-78	PREP	99-06-040
296-62-30130	NEW	99-07-097	296-62-31305	NEW	99-07-097	296-79	PREP	99-02-083
296-62-30135	NEW	99-07-097	296-62-31310	NEW	99-07-097	296-79-010	AMD-P	99-06-071
296-62-30140	NEW	99-07-097	296-62-31315	NEW	99-07-097	296-79-011	NEW-P	99-06-071
296-62-30145	NEW	99-07-097	296-62-31320	NEW	99-07-097	296-79-020	AMD-P	99-06-071
296-62-3020	AMD	99-07-097	296-62-31325	NEW	99-07-097	296-79-030	AMD-P	99-06-071
296-62-30205	NEW	99-07-097	296-62-31330	NEW	99-07-097	296-79-040	AMD-P	99-06-071
296-62-30210	NEW	99-07-097	296-62-31335	NEW	99-07-097	296-79-050	AMD-P	99-06-071
296-62-30215	NEW	99-07-097	296-62-3138	AMD	99-07-097	296-79-060	REP-P	99-06-071
296-62-30220	NEW	99-07-097	296-62-3140	AMD	99-07-097	296-79-070	AMD-P	99-06-071
296-62-30225	NEW	99-07-097	296-62-31405	NEW	99-07-097	296-79-080	AMD-P	99-06-071
296-62-30230	NEW	99-07-097	296-62-31410	NEW	99-07-097	296-79-090	AMD-P	99-06-071
296-62-30235	NEW	99-07-097	296-62-31415	NEW	99-07-097	296-79-100	AMD-P	99-06-071
296-62-3030	AMD	99-07-097	296-62-31420	NEW	99-07-097	296-79-110	AMD-P	99-06-071
296-62-30305	NEW	99-07-097	296-62-31425	NEW	99-07-097	296-79-120	AMD-P	99-06-071
296-62-30310	NEW	99-07-097	296-62-31430	NEW	99-07-097	296-79-130	AMD-P	99-06-071
296-62-30315	NEW	99-07-097	296-62-31435	NEW	99-07-097	296-79-140	AMD-P	99-06-071
296-62-3040	AMD	99-07-097	296-62-31440	NEW	99-07-097	296-79-150	AMD-P	99-06-071
296-62-30405	NEW	99-07-097	296-62-31445	NEW	99-07-097	296-79-160	AMD-P	99-06-071
296-62-30410	NEW	99-07-097	296-62-31450	NEW	99-07-097	296-79-170	AMD-P	99-06-071
296-62-30415	NEW	99-07-097	296-62-31455	NEW	99-07-097	296-79-180	AMD-P	99-06-071
296-62-30420	NEW	99-07-097	296-62-31460	NEW	99-07-097	296-79-190	AMD-P	99-06-071
296-62-30425	NEW	99-07-097	296-62-31465	NEW	99-07-097	296-79-200	AMD-P	99-06-071
296-62-30430	NEW	99-07-097	296-62-31470	NEW	99-07-097	296-79-210	AMD-P	99-06-071
296-62-30435	NEW	99-07-097	296-62-3152	AMD	99-07-097	296-79-220	AMD-P	99-06-071
296-62-30440	NEW	99-07-097	296-62-3160	AMD	99-07-097	296-79-230	AMD-P	99-06-071
296-62-30445	NEW	99-07-097	296-62-3180	AMD	99-07-097	296-79-240	AMD-P	99-06-071
296-62-30450	NEW	99-07-097	296-62-3190	AMD	99-07-097	296-79-250	AMD-P	99-06-071
296-62-30455	NEW	99-07-097	296-62-3195	AMD	99-07-097	296-79-255	REP-P	99-06-071
296-62-30460	NEW	99-07-097	296-62-410	NEW	99-07-097	296-79-260	AMD-P	99-06-071
296-62-30465	NEW	99-07-097	296-62-41001	NEW	99-07-097	296-79-270	AMD-P	99-06-071
296-62-3050	AMD	99-07-097	296-62-41003	NEW	99-07-097	296-79-27001	REP-P	99-06-071
296-62-30505	NEW	99-07-097	296-62-41010	NEW	99-07-097	296-79-27003	AMD-P	99-06-071
296-62-30510	NEW	99-07-097	296-62-41011	NEW	99-07-097	296-79-27005	AMD-P	99-06-071
296-62-30515	NEW	99-07-097	296-62-41013	NEW	99-07-097	296-79-27007	AMD-P	99-06-071
296-62-30520	NEW	99-07-097	296-62-41015	NEW	99-07-097	296-79-27009	AMD-P	99-06-071
296-62-30525	NEW	99-07-097	296-62-41017	NEW	99-07-097	296-79-27011	AMD-P	99-06-071
296-62-30530	NEW	99-07-097	296-62-41019	NEW	99-07-097	296-79-27013	AMD-P	99-06-071
296-62-30535	NEW	99-07-097	296-62-41020	NEW	99-07-097	296-79-27015	AMD-P	99-06-071
296-62-3060	AMD	99-07-097	296-62-41021	NEW	99-07-097	296-79-280	AMD-P	99-06-071
296-62-30605	NEW	99-07-097	296-62-41023	NEW	99-07-097	296-79-290	AMD-P	99-06-071
296-62-30610	NEW	99-07-097	296-62-41025	NEW	99-07-097	296-79-29001	AMD-P	99-06-071
296-62-30615	NEW	99-07-097	296-62-41030	NEW	99-07-097	296-79-29003	AMD-P	99-06-071
296-62-3070	AMD	99-07-097	296-62-41031	NEW	99-07-097	296-79-29005	AMD-P	99-06-071
296-62-30705	NEW	99-07-097	296-62-41033	NEW	99-07-097	296-79-29007	AMD-P	99-06-071
296-62-30710	NEW	99-07-097	296-62-41035	NEW	99-07-097	296-79-29009	AMD-P	99-06-071
296-62-30715	NEW	99-07-097	296-62-41040	NEW	99-07-097	296-79-29011	AMD-P	99-06-071
296-62-3080	AMD	99-07-097	296-62-41041	NEW	99-07-097	296-79-29013	AMD-P	99-06-071
296-62-3090	AMD	99-07-097	296-62-41042	NEW	99-07-097	296-79-29015	AMD-P	99-06-071
296-62-30905	NEW	99-07-097	296-62-41043	NEW	99-07-097	296-79-29017	AMD-P	99-06-071
296-62-30910	NEW	99-07-097	296-62-41044	NEW	99-07-097	296-79-29019	REP-P	99-06-071
296-62-30915	NEW	99-07-097	296-62-41045	NEW	99-07-097	296-79-29021	AMD-P	99-06-071
296-62-30920	NEW	99-07-097	296-62-41046	NEW	99-07-097	296-79-29023	AMD-P	99-06-071
296-62-30925	NEW	99-07-097	296-62-41047	NEW	99-07-097	296-79-29025	REP-P	99-06-071
296-62-30930	NEW	99-07-097	296-62-41060	NEW	99-07-097	296-79-29027	AMD-P	99-06-071
296-62-30935	NEW	99-07-097	296-62-41061	NEW	99-07-097	296-79-29029	AMD-P	99-06-071
296-62-30940	NEW	99-07-097	296-62-41063	NEW	99-07-097	296-79-29031	AMD-P	99-06-071
296-62-3100	AMD	99-07-097	296-62-41080	NEW	99-07-097	296-79-29033	AMD-P	99-06-071
296-62-31005	NEW	99-07-097	296-62-41081	NEW	99-07-097	296-79-29035	AMD-P	99-06-071
296-62-31010	NEW	99-07-097	296-62-41082	NEW	99-07-097	296-79-29037	AMD-P	99-06-071

TABLE

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
296-79-300	AMD-P	99-06-071	296-305-02003	AMD	99-05-080	308-96A-085	PREP	99-03-003
296-79-310	AMD-P	99-06-071	296-305-02007	AMD	99-05-080	308-96A-090	PREP	99-03-003
296-79-31001	AMD-P	99-06-071	296-305-02013	AMD	99-05-080	308-96A-097	PREP	99-03-003
296-79-31003	AMD-P	99-06-071	296-305-02015	AMD	99-05-080	308-96A-099	NEW	99-06-029
296-79-31005	REP-P	99-06-071	296-305-04001	AMD	99-05-080	308-96A-100	REP	99-06-029
296-79-31007	REP-P	99-06-071	296-305-04501	AMD	99-05-080	308-96A-101	NEW	99-06-029
296-79-31009	AMD-P	99-06-071	296-305-04503	AMD	99-05-080	308-96A-105	REP	99-06-029
296-79-31011	REP-P	99-06-071	296-305-05001	AMD	99-05-080	308-96A-106	REP	99-06-029
296-79-31013	REP-P	99-06-071	296-305-05007	AMD	99-05-080	308-96A-110	AMD	99-06-029
296-79-320	AMD-P	99-06-071	296-305-05009	AMD	99-05-080	308-96A-120	REP	99-06-029
296-99	PREP	99-02-083	296-305-06005	AMD	99-05-080	308-96A-135	AMD	99-06-029
296-104-001	PREP	99-05-021	296-305-06007	AMD	99-05-080	308-96A-136	AMD	99-06-029
296-104-002	PREP	99-05-021	296-307	PREP	99-02-083	308-96A-145	AMD	99-06-029
296-104-010	PREP	99-05-021	296-350	PREP	99-02-083	308-104-109	NEW-P	99-02-052
296-104-015	PREP	99-05-021	296-400A-045	AMD-XA	99-03-109	308-104-109	NEW	99-05-032
296-104-017	PREP	99-05-021	296-400A-045	AMD	99-07-101	308-124	AMD	99-03-042
296-104-018	PREP	99-05-021	296-401A-100	AMD	99-05-052	308-124-001	REP	99-03-042
296-104-020	PREP	99-05-021	296-401A-140	AMD	99-05-052	308-124-005	REP	99-03-042
296-104-025	PREP	99-05-021	296-401A-530	AMD	99-05-052	308-124-007	AMD	99-03-042
296-104-030	PREP	99-05-021	308-10-045	AMD-XA	99-05-004	308-124-021	AMD	99-03-042
296-104-035	PREP	99-05-021	308-12-320	AMD-P	99-05-050	308-124A-200	AMD	99-03-042
296-104-040	PREP	99-05-021	308-12-326	AMD-P	99-05-050	308-124A-460	AMD	99-03-042
296-104-045	PREP	99-05-021	308-56A-060	AMD-P	99-04-037	308-124B-140	AMD	99-03-042
296-104-050	PREP	99-05-021	308-56A-065	AMD-P	99-04-037	308-124B-145	NEW	99-03-042
296-104-055	PREP	99-05-021	308-56A-070	AMD-P	99-04-037	308-124B-150	AMD	99-03-042
296-104-060	PREP	99-05-021	308-56A-075	AMD-P	99-04-037	308-124C-010	AMD	99-03-042
296-104-065	PREP	99-05-021	308-56A-140	AMD-P	99-07-016	308-124D-061	AMD	99-03-042
296-104-100	PREP	99-05-021	308-56A-145	REP-P	99-07-016	308-124D-070	NEW	99-03-042
296-104-102	PREP	99-05-021	308-56A-160	AMD-P	99-07-016	308-124D-080	NEW	99-03-042
296-104-105	PREP	99-05-021	308-56A-200	AMD-P	99-07-016	308-124F-010	REP	99-03-042
296-104-107	PREP	99-05-021	308-56A-205	REP-P	99-07-016	308-124F-020	REP	99-03-042
296-104-110	PREP	99-05-021	308-56A-215	AMD-P	99-07-016	308-124F-030	REP	99-03-042
296-104-115	PREP	99-05-021	308-56A-250	AMD-P	99-04-038	308-125-120	AMD	99-04-075
296-104-125	PREP	99-05-021	308-56A-255	REP-P	99-04-038	308-125-200	AMD	99-04-074
296-104-130	PREP	99-05-021	308-56A-265	AMD-P	99-04-038	308-330-300	AMD	99-04-070
296-104-135	PREP	99-05-021	308-56A-270	AMD-P	99-04-038	308-330-307	AMD	99-04-070
296-104-140	PREP	99-05-021	308-56A-275	AMD-P	99-04-038	308-330-425	AMD	99-04-070
296-104-145	PREP	99-05-021	308-56A-280	REP-P	99-04-038	308-400-030	AMD	99-06-003
296-104-150	PREP	99-05-021	308-56A-285	REP-P	99-04-038	308-400-050	REP	99-06-003
296-104-151	PREP	99-05-021	308-56A-335	AMD	99-06-037	308-400-053	AMD	99-06-003
296-104-155	PREP	99-05-021	308-56A-340	REP	99-06-037	308-400-054	REP	99-06-003
296-104-160	PREP	99-05-021	308-56A-345	REP	99-06-037	308-400-058	AMD	99-06-003
296-104-165	PREP	99-05-021	308-56A-350	REP	99-06-037	308-400-059	AMD	99-06-003
296-104-170	PREP	99-05-021	308-56A-355	AMD	99-06-037	308-400-062	AMD	99-06-003
296-104-285	REP-P	99-04-036	308-56A-360	REP	99-06-037	308-400-070	REP	99-06-003
296-104-502	PREP	99-05-021	308-56A-365	REP	99-06-037	308-400-095	AMD	99-06-003
296-104-700	AMD-P	99-04-036	308-56A-420	AMD	99-02-049	308-400-120	AMD	99-06-003
296-115	PREP	99-02-083	308-57	PREP	99-07-080	308-410-050	REP	99-06-003
296-150C	PREP	99-05-078	308-66-190	AMD	99-02-049	308-410-070	AMD	99-06-003
296-150F	PREP	99-05-078	308-66-190	AMD-W	99-05-059	314-10-040	AMD	99-03-031
296-150M	PREP	99-05-078	308-93-250	AMD	99-03-002	314-12-170	AMD	99-03-032
296-150P	PREP	99-05-078	308-93-270	AMD	99-03-002	314-12-210	NEW-S	99-06-097
296-150R	PREP	99-05-078	308-93-280	AMD	99-03-002	314-12-215	NEW-S	99-06-097
296-155	PREP	99-02-083	308-93-410	REP	99-03-002	314-12-220	NEW-S	99-06-097
296-155	PREP	99-04-057	308-93-520	AMD	99-07-041	314-12-225	NEW-S	99-06-097
296-155	PREP	99-06-040	308-93-530	AMD	99-07-041	314-12-300	NEW	99-03-032
296-155	PREP	99-07-015	308-93-540	AMD	99-07-041	314-12-310	NEW	99-03-032
296-301	PREP	99-04-057	308-93-550	REP	99-07-041	314-12-320	NEW	99-03-032
296-301	PREP	99-06-040	308-93-560	REP	99-07-041	314-12-330	NEW	99-03-032
296-302	PREP	99-02-083	308-93-570	REP	99-07-041	314-12-340	NEW	99-03-032
296-303	PREP	99-02-083	308-93-580	REP	99-07-041	314-14-160	AMD	99-03-033
296-304	PREP	99-02-083	308-93-590	REP	99-07-041	314-14-165	NEW	99-03-033
296-305	PREP	99-02-083	308-93-600	REP	99-07-041	314-14-170	NEW	99-03-033
296-305-01003	AMD	99-05-080	308-93-620	REP	99-03-002	314-16-160	PREP	99-04-002
296-305-01005	AMD	99-05-080	308-96A	PREP	99-07-040	314-16-180	PREP	99-04-113
296-305-01509	AMD	99-05-080	308-96A	PREP-W	99-07-079	314-16-260	NEW-S	99-07-085
296-305-02001	AMD	99-05-080	308-96A-080	PREP	99-03-003	314-16-265	NEW-S	99-07-085

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
314-16-270	NEW-S	99-07-085	356-26-010	AMD-P	99-02-053	388-310-1800	AMD-P	99-05-071
314-16-275	NEW-S	99-07-085	356-26-010	AMD	99-05-043	388-310-1900	AMD-P	99-05-071
314-20	PREP	99-04-112	356-26-060	AMD-P	99-02-053	388-320	PREP	99-07-104
314-37-030	NEW	99-04-114	356-26-060	AMD	99-05-043	388-320-350	REP-P	99-03-076
314-68-010	AMD-P	99-05-014	356-26-070	AMD-P	99-02-053	388-320-350	REP	99-06-044
314-68-020	AMD-P	99-05-014	356-26-070	AMD	99-05-043	388-320-360	REP-P	99-03-076
314-68-030	AMD-P	99-05-014	356-26-110	AMD	99-03-044	388-320-360	REP	99-06-044
314-68-040	AMD-P	99-05-014	356-30-010	AMD-P	99-02-053	388-320-370	REP-P	99-03-076
314-68-050	AMD-P	99-05-014	356-30-010	AMD	99-05-043	388-320-370	REP	99-06-044
315-04	PREP	99-04-076	365-18-010	NEW-S	99-04-072	388-320-375	NEW-P	99-03-076
315-04-190	PREP	99-04-003	365-18-020	NEW-S	99-04-072	388-320-375	NEW	99-06-044
315-06-075	NEW	99-04-077	365-18-030	NEW-S	99-04-072	388-330-010	PREP	99-07-039
315-06-085	NEW	99-04-077	365-18-040	NEW-S	99-04-072	388-330-020	PREP	99-07-039
315-33A-060	AMD-P	99-04-012	365-18-050	NEW-S	99-04-072	388-330-030	PREP	99-07-039
315-33A-060	AMD-W	99-05-036	365-18-060	NEW-S	99-04-072	388-330-035	PREP	99-07-039
315-34-060	AMD-P	99-04-012	365-18-070	NEW-S	99-04-072	388-330-040	PREP	99-07-039
315-34-060	AMD-W	99-05-036	365-18-080	NEW-S	99-04-072	388-330-050	PREP	99-07-039
317-100-010	REP	99-07-076	365-18-090	NEW-S	99-04-072	388-330-060	PREP	99-07-039
317-100-020	REP	99-07-076	365-18-100	NEW-S	99-04-072	388-400	PREP	99-07-105
317-100-030	REP	99-07-076	365-18-110	NEW-S	99-04-072	388-400-0020	AMD-P	99-04-102
317-100-040	REP	99-07-076	365-18-120	NEW-S	99-04-072	388-418-0025	AMD-P	99-07-137
317-100-050	REP	99-07-076	365-140	PREP	99-06-025	388-434-0005	PREP	99-04-054
317-100-060	REP	99-07-076	381-50-180	AMD	99-07-081	388-444-0035	AMD	99-07-024
317-100-070	REP	99-07-076	388-15-177	PREP	99-05-070	388-444-0040	AMD	99-07-024
317-100-080	REP	99-07-076	388-15-196	AMD	99-03-041	388-444-0045	AMD	99-07-024
317-100-090	REP	99-07-076	388-15-19600	AMD	99-03-041	388-444-0075	AMD	99-07-024
326-02-034	PREP	99-05-083	388-15-19610	AMD	99-03-041	388-448-0001	PREP	99-04-055
326-30-041	PREP	99-05-082	388-15-19620	AMD	99-03-041	388-450-0050	PREP	99-03-040
332-30-170	NEW	99-07-034	388-15-19630	AMD	99-03-041	388-450-0050	AMD-P	99-06-098
352-12	AMD	99-04-117	388-15-19640	AMD	99-03-041	388-450-0106	PREP	99-03-040
352-12-005	AMD	99-04-117	388-15-19650	AMD	99-03-041	388-450-0116	PREP	99-03-040
352-12-010	AMD	99-04-117	388-15-19660	AMD	99-03-041	388-450-0195	AMD-E	99-05-046
352-12-020	AMD	99-04-117	388-15-19670	AMD	99-03-041	388-450-0195	AMD-P	99-06-088
352-12-030	AMD	99-04-117	388-15-19680	AMD	99-03-041	388-470-0005	PREP	99-03-040
352-12-040	AMD	99-04-117	388-86-0022	PREP	99-05-044	388-470-0010	PREP	99-03-040
352-12-050	AMD	99-04-117	388-86-047	REP-P	99-05-073	388-470-0012	NEW-P	99-06-099
352-32	PREP	99-06-042	388-86-059	PREP	99-06-043	388-470-0015	PREP	99-03-040
352-32-070	PREP	99-06-042	388-86-073	PREP	99-03-075	388-470-0020	PREP	99-03-040
352-32-075	PREP	99-06-042	388-86-200	PREP	99-06-043	388-470-0025	PREP	99-03-040
352-32-25001	AMD-P	99-04-118	388-87-0005	PREP	99-05-044	388-470-0050	PREP	99-03-040
352-32-25002	REP-P	99-04-118	388-87-0007	PREP	99-05-044	388-470-0070	PREP	99-03-040
356-05-012	NEW-P	99-02-053	388-87-0008	PREP	99-05-044	388-478-0015	AMD	99-04-056
356-05-012	NEW	99-05-043	388-87-0010	PREP	99-05-044	388-478-0055	AMD	99-04-103
356-05-013	AMD-P	99-02-053	388-87-0011	PREP	99-05-044	388-478-0055	PREP	99-05-045
356-05-013	AMD	99-05-043	388-87-0020	PREP	99-05-044	388-478-0060	AMD	99-05-074
356-05-207	AMD-P	99-02-053	388-87-0025	PREP	99-05-044	388-478-0075	PREP	99-07-103
356-05-207	AMD	99-05-043	388-87-0105	PREP	99-05-044	388-478-0085	PREP	99-07-103
356-05-327	REP-P	99-02-053	388-87-0250	PREP	99-05-044	388-484-0005	AMD-P	99-04-102
356-05-327	REP	99-05-043	388-87-079	PREP	99-06-043	388-501-0130	PREP	99-05-044
356-05-447	AMD-P	99-02-053	388-310-0100	AMD-P	99-05-072	388-501-0175	PREP	99-05-044
356-05-447	AMD	99-05-043	388-310-0200	AMD-P	99-05-072	388-502-0220	PREP	99-06-085
356-09-010	AMD-P	99-02-053	388-310-0300	AMD-P	99-05-071	388-502-0250	PREP	99-05-044
356-09-010	AMD	99-05-043	388-310-0400	AMD-P	99-05-071	388-505-0540	PREP	99-05-044
356-09-030	AMD-P	99-02-053	388-310-0500	AMD-P	99-05-071	388-505-0595	PREP	99-05-044
356-09-030	AMD	99-05-043	388-310-0600	AMD-P	99-05-071	388-511-1130	PREP	99-05-044
356-09-040	AMD-P	99-02-053	388-310-0700	AMD-P	99-05-071	388-513-1305	AMD	99-06-045
356-09-040	AMD	99-05-043	388-310-0800	AMD-P	99-05-071	388-513-1315	AMD	99-06-045
356-09-050	AMD-P	99-02-053	388-310-0900	AMD-P	99-05-071	388-513-1320	AMD	99-06-045
356-09-050	AMD	99-05-043	388-310-1000	AMD-P	99-05-071	388-513-1330	AMD	99-06-045
356-22-010	AMD-P	99-02-053	388-310-1050	AMD-P	99-05-071	388-513-1350	AMD	99-06-045
356-22-010	AMD	99-05-043	388-310-1100	AMD-P	99-05-071	388-513-1360	AMD	99-06-045
356-22-040	AMD-P	99-02-053	388-310-1200	AMD-P	99-05-071	388-513-1365	AMD	99-06-045
356-22-040	AMD	99-05-043	388-310-1300	AMD-P	99-05-072	388-513-1380	AMD-P	99-06-100
356-22-090	AMD-P	99-02-053	388-310-1400	AMD-P	99-05-071	388-513-1395	AMD	99-06-045
356-22-090	AMD	99-05-043	388-310-1500	AMD-P	99-05-071	388-515-1510	AMD	99-06-045
356-22-180	AMD-P	99-02-053	388-310-1600	AMD-P	99-05-071	388-515-1530	AMD	99-06-045
356-22-180	AMD	99-05-043	388-310-1700	AMD-P	99-05-071	388-526-2610	PREP	99-05-044

Table

TABLE

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	
388-527	AMD-P	99-07-025	388-550-5200	PREP	99-06-083	434-260-050	AMD-P	99-07-043	
388-527-2700	NEW-P	99-07-025	388-550-5250	PREP	99-06-083	434-260-060	AMD-P	99-07-043	
388-527-2730	AMD-P	99-07-025	388-550-5300	PREP	99-06-083	434-260-070	REP-P	99-07-043	
388-527-2733	NEW-P	99-07-025	388-550-5350	PREP	99-06-083	434-260-080	AMD-P	99-07-043	
388-527-2735	REP-P	99-07-025	388-550-5400	PREP	99-06-083	434-260-110	AMD-P	99-07-043	
388-527-2737	NEW-P	99-07-025	388-550-5600	PREP	99-06-085	434-260-120	AMD-P	99-07-043	
388-527-2740	AMD-P	99-07-025	388-550-6000	AMD	99-06-046	434-260-130	AMD-P	99-07-043	
388-527-2742	AMD-P	99-07-025	388-550-6000	PREP	99-06-086	434-260-140	AMD-P	99-07-043	
388-527-2750	AMD-P	99-07-025	388-551-1000	NEW-P	99-05-073	434-260-145	NEW-P	99-07-043	
388-527-2752	REP-P	99-07-025	388-551-1010	NEW-P	99-05-073	434-260-150	AMD-P	99-07-043	
388-527-2753	REP-P	99-07-025	388-551-1200	NEW-P	99-05-073	434-260-160	AMD-P	99-07-043	
388-527-2754	AMD-P	99-07-025	388-551-1210	NEW-P	99-05-073	434-260-170	AMD-P	99-07-043	
388-527-2790	AMD-P	99-07-025	388-551-1300	NEW-P	99-05-073	434-260-180	REP-P	99-07-043	
388-527-2795	NEW-P	99-07-025	388-551-1310	NEW-P	99-05-073	434-260-190	AMD-P	99-07-043	
388-530-1800	PREP	99-05-044	388-551-1315	NEW-P	99-05-073	434-260-200	AMD-P	99-07-043	
388-530-2050	PREP	99-05-044	388-551-1320	NEW-P	99-05-073	434-260-210	REP-P	99-07-043	
388-533	PREP	99-06-043	388-551-1330	NEW-P	99-05-073	434-260-215	REP-P	99-07-043	
388-535-1000	REP	99-07-023	388-551-1340	NEW-P	99-05-073	434-260-220	AMD-P	99-07-043	
388-535-1010	NEW	99-07-023	388-551-1350	NEW-P	99-05-073	434-260-225	NEW-P	99-07-043	
388-535-1050	AMD	99-07-023	388-551-1360	NEW-P	99-05-073	434-260-230	REP-P	99-07-043	
388-535-1060	NEW	99-07-023	388-551-1400	NEW-P	99-05-073	434-260-235	NEW-P	99-07-043	
388-535-1080	NEW	99-07-023	388-551-1410	NEW-P	99-05-073	434-260-240	AMD-P	99-07-043	
388-535-1100	AMD	99-07-023	388-551-1410	NEW-P	99-05-073	434-260-240	AMD-P	99-07-043	
388-535-1100	AMD	99-07-023	388-551-1500	NEW-P	99-05-073	434-260-250	REP-P	99-07-043	
388-535-1150	AMD	99-07-023	388-551-1510	NEW-P	99-05-073	434-260-260	AMD-P	99-07-043	
388-535-1200	AMD	99-07-023	388-551-1520	NEW-P	99-05-073	434-260-270	REP-P	99-07-043	
388-535-1220	NEW	99-07-023	388-551-1530	NEW-P	99-05-073	434-260-280	REP-P	99-07-043	
388-535-1230	NEW	99-07-023	390-12-255	PREP	99-06-050	434-260-290	REP-P	99-07-043	
388-535-1240	NEW	99-07-023	390-14-015	PREP	99-06-051	434-260-300	AMD-P	99-07-043	
388-535-1250	AMD	99-07-023	390-14-020	PREP	99-06-052	434-260-305	NEW-P	99-07-043	
388-535-1260	NEW	99-07-023	390-14-025	PREP	99-06-053	434-260-310	AMD-P	99-07-043	
388-535-1300	AMD	99-07-023	390-14-030	PREP	99-06-054	434-260-320	AMD-P	99-07-043	
388-535-1350	AMD	99-07-023	390-14-035	PREP	99-06-055	434-260-330	AMD-P	99-07-043	
388-535-1400	AMD	99-07-023	390-14-040	PREP	99-06-056	434-260-340	AMD-P	99-07-043	
388-535-1450	AMD	99-07-023	390-14-045	PREP	99-06-057	434-260-350	AMD-P	99-07-043	
388-535-1500	AMD	99-07-023	390-14-055	PREP	99-06-058	434-261-005	AMD-P	99-05-054	
388-535-1550	AMD	99-07-023	390-14-100	PREP	99-06-059	434-261-080	AMD-P	99-05-054	
388-540-001	PREP	99-05-044	390-14-105	PREP	99-06-060	434-324-105	REP-P	99-05-054	
388-540-010	PREP	99-05-044	390-14-110	PREP	99-06-061	434-334-055	AMD-P	99-05-034	
388-540-020	PREP	99-05-044	390-17-030	PREP	99-06-062	434-334-063	NEW-P	99-05-034	
388-540-040	PREP	99-05-044	390-18-020	PREP	99-06-063	434-334-065	AMD-P	99-05-034	
388-540-050	PREP	99-05-044	390-18-050	PREP	99-06-064	434-334-070	AMD-P	99-05-034	
388-550-1050	AMD	99-06-046	390-20-014	PREP	99-06-065	434-334-075	AMD-P	99-05-034	
388-550-1050	PREP	99-06-087	390-20-015	PREP	99-06-066	434-334-080	AMD-P	99-05-034	
388-550-1200	AMD	99-06-046	390-20-023	PREP	99-06-067	434-334-080	AMD-P	DECOD-P	99-05-034
388-550-2431	NEW	99-06-046	390-20-100	PREP	99-06-068	434-334-082	NEW-P	99-05-034	
388-550-2800	AMD	99-06-046	390-20-115	PREP	99-06-069	434-334-085	AMD-P	99-05-034	
388-550-2800	PREP	99-06-084	391-08	PREP	99-04-013	434-334-090	AMD-P	99-05-034	
388-550-2900	AMD	99-06-046	391-55	PREP	99-04-013	434-334-095	AMD-P	99-05-034	
388-550-2900	PREP	99-06-084	391-65	PREP	99-04-013	434-334-100	AMD-P	99-05-034	
388-550-3000	AMD	99-06-046	392-172	PREP	99-06-049	434-334-105	AMD-P	99-05-034	
388-550-3100	AMD	99-06-046	399-30-032	NEW-P	99-05-062	434-334-110	AMD-P	99-05-034	
388-550-3450	PREP	99-06-084	399-30-033	NEW-P	99-05-062	434-334-115	REP-P	99-05-034	
388-550-3500	AMD	99-06-046	399-30-034	NEW-P	99-05-062	434-334-120	RECOD-P	99-05-034	
388-550-3500	PREP	99-06-084	419-14-135	NEW-P	99-07-131	434-334-125	NEW-P	99-05-034	
388-550-3700	AMD	99-06-046	419-14-140	NEW-P	99-07-131	434-334-130	NEW-P	99-05-034	
388-550-3900	PREP	99-06-084	434-55-060	AMD-XA	99-05-038	434-334-135	NEW-P	99-05-034	
388-550-4100	PREP	99-06-084	434-55-065	AMD-XA	99-05-038	434-334-140	NEW-P	99-05-034	
388-550-4500	AMD	99-06-046	434-130-090	AMD-XA	99-05-039	434-334-145	NEW-P	99-05-034	
388-550-4500	PREP	99-06-084	434-180-215	AMD	99-02-047	434-334-150	NEW-P	99-05-034	
388-550-4700	AMD	99-06-046	434-180-265	AMD	99-02-048	434-334-155	NEW-P	99-05-034	
388-550-4800	AMD	99-06-046	434-180-360	AMD	99-02-047	434-334-160	NEW-P	99-05-034	
388-550-4900	PREP	99-06-083	434-240-205	AMD-P	99-05-054	434-334-165	NEW-P	99-05-034	
388-550-5000	PREP	99-06-083	434-260	AMD-P	99-07-043	434-334-170	NEW-P	99-05-034	
388-550-5100	PREP	99-06-083	434-260-010	AMD-P	99-07-043	434-334-175	NEW-P	99-05-034	
388-550-5110	PREP	99-06-083	434-260-020	AMD-P	99-07-043	440-25	PREP	99-06-082	
388-550-5120	PREP	99-06-083	434-260-030	AMD-P	99-07-043	446-16-070	AMD-P	99-03-080	
388-550-5150	PREP	99-06-083	434-260-040	AMD-P	99-07-043	446-16-070	AMD	99-07-051	

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
446-16-080	AMD-P	99-03-080	460-28A-015	AMD	99-03-053	480-09-010	AMD	99-05-031
446-16-080	AMD	99-07-051	468-06-040	AMD-XA	99-02-065	480-09-012	AMD	99-05-031
446-16-100	AMD-P	99-03-080	468-06-040	AMD	99-07-013	480-09-100	AMD	99-05-031
446-16-100	AMD	99-07-051	468-12	PREP	99-04-042	480-09-101	NEW	99-05-031
446-16-110	AMD-P	99-03-080	468-38-110	AMD-P	99-05-006	480-09-115	AMD	99-05-031
446-16-110	AMD	99-07-051	468-38-150	REP-XR	99-04-058	480-09-120	AMD	99-05-031
446-20-600	AMD-P	99-03-081	468-38-150	REP	99-07-098	480-09-125	AMD	99-05-031
446-20-600	AMD	99-07-050	468-38-170	REP-XR	99-04-058	480-09-130	AMD	99-05-031
448-13-030	AMD	99-06-048	468-38-170	REP	99-07-098	480-09-135	AMD	99-05-031
448-13-040	AMD	99-06-048	468-38-210	REP-XR	99-04-058	480-09-140	AMD	99-05-031
448-13-050	AMD	99-06-048	468-38-210	REP	99-07-098	480-09-150	AMD	99-05-031
448-13-065	AMD	99-06-048	468-51-010	AMD	99-06-034	480-09-200	AMD	99-05-031
448-13-070	AMD	99-06-048	468-51-020	AMD	99-06-034	480-09-210	AMD	99-05-031
448-13-080	AMD	99-06-048	468-51-030	AMD	99-06-034	480-09-220	AMD	99-05-031
448-13-140	AMD	99-06-048	468-51-040	AMD	99-06-034	480-09-230	AMD	99-05-031
448-13-170	AMD	99-06-048	468-51-060	AMD	99-06-034	480-09-340	AMD	99-05-031
448-13-180	AMD	99-06-048	468-51-070	AMD	99-06-034	480-09-390	AMD	99-05-031
448-13-210	AMD	99-06-048	468-51-080	AMD	99-06-034	480-09-400	AMD	99-05-031
448-15-010	NEW	99-06-047	468-51-090	AMD	99-06-034	480-09-410	AMD	99-05-031
448-15-020	NEW	99-06-047	468-51-100	AMD	99-06-034	480-09-420	AMD	99-05-031
448-15-030	NEW	99-06-047	468-51-105	NEW	99-06-034	480-09-425	AMD	99-05-031
448-15-040	NEW	99-06-047	468-51-110	AMD	99-06-034	480-09-426	AMD	99-05-031
448-15-050	NEW	99-06-047	468-51-120	AMD	99-06-034	480-09-430	AMD	99-05-031
448-15-060	NEW	99-06-047	468-51-130	AMD	99-06-034	480-09-440	AMD	99-05-031
458-08	PREP	99-05-069	468-51-140	AMD	99-06-034	480-09-460	AMD	99-05-031
458-12-040	PREP	99-05-069	468-51-150	AMD	99-06-034	480-09-465	AMD	99-05-031
458-12-300	PREP	99-05-069	468-52-020	AMD	99-06-035	480-09-466	AMD	99-05-031
458-12-301	PREP	99-05-069	468-52-030	AMD	99-06-035	480-09-467	AMD	99-05-031
458-12-305	PREP	99-05-069	468-52-040	AMD	99-06-035	480-09-470	AMD	99-05-031
458-12-315	REP-XR	99-04-017	468-52-050	AMD	99-06-035	480-09-475	AMD	99-05-031
458-12-320	REP-XR	99-04-017	468-52-060	AMD	99-06-035	480-09-500	AMD	99-05-031
458-12-326	PREP	99-05-069	468-52-070	AMD	99-06-035	480-09-510	AMD	99-05-031
458-12-327	PREP	99-05-069	468-300-010	AMD-P	99-05-035	480-09-600	AMD	99-05-031
458-12-330	PREP	99-05-069	468-300-020	AMD-P	99-05-035	480-09-610	AMD	99-05-031
458-12-335	PREP	99-05-069	468-300-040	AMD-P	99-05-035	480-09-620	AMD	99-05-031
458-12-336	PREP	99-05-069	468-300-220	AMD-P	99-05-035	480-09-700	AMD	99-05-031
458-12-337	PREP	99-05-069	468-300-700	AMD	99-07-059	480-09-705	AMD	99-05-031
458-12-338	PREP	99-05-069	468-310-010	AMD	99-03-025	480-09-710	AMD	99-05-031
458-12-339	PREP	99-05-069	468-310-020	AMD	99-03-025	480-09-720	AMD	99-05-031
458-16-320	AMD-XA	99-07-090	468-310-050	AMD	99-03-025	480-09-730	AMD	99-05-031
458-16A-010	AMD	99-04-016	468-310-060	AMD	99-03-025	480-09-735	AMD	99-05-031
458-20-119	AMD-XA	99-06-027	468-310-100	AMD	99-03-025	480-09-736	AMD	99-05-031
458-20-131	AMD-P	99-05-017	468-500-001	AMD-XA	99-06-004	480-09-740	AMD	99-05-031
458-20-157	REP-XR	99-04-019	474-10-010	NEW	99-03-004	480-09-745	AMD	99-05-031
458-20-167	AMD	99-03-005	474-10-020	NEW	99-03-004	480-09-750	AMD	99-05-031
458-20-206	REP-XR	99-04-019	474-10-030	NEW	99-03-004	480-09-751	AMD	99-05-031
458-20-216	AMD-P	99-04-014	474-10-040	NEW	99-03-004	480-09-760	AMD	99-05-031
458-20-222	AMD-P	99-04-015	474-10-050	NEW	99-03-004	480-09-770	AMD	99-05-031
458-20-225	REP-XR	99-04-019	474-10-060	NEW	99-03-004	480-09-780	AMD	99-05-031
458-20-226	AMD-XA	99-04-021	474-10-070	NEW	99-03-004	480-09-800	AMD	99-05-031
458-20-231	AMD	99-02-055	474-10-080	NEW	99-03-004	480-09-810	AMD	99-05-031
458-20-238	AMD-XA	99-04-020	474-10-090	NEW	99-03-004	480-09-815	AMD	99-05-031
458-20-261	NEW-P	99-04-022	474-10-100	NEW	99-03-004	480-09-820	AMD	99-05-031
458-20-263	AMD-XA	99-06-028	478-210-010	REP	99-06-033	480-09-830	REP	99-05-031
458-40-660	PREP	99-06-036	478-210-020	REP	99-06-033	480-92-011	AMD	99-05-016
458-50-010	REP-XR	99-04-031	479-16-020	AMD-P	99-03-089	480-92-016	NEW	99-05-016
458-50-050	REP-XR	99-04-031	479-16-040	AMD-P	99-03-089	480-92-021	AMD	99-05-016
458-57	PREP	99-07-133	479-16-098	AMD-P	99-03-089	480-92-031	AMD	99-05-016
458-57-575	NEW	99-03-010	479-20-007	AMD-P	99-03-089	480-92-041	NEW	99-05-016
458-65-020	REP-XR	99-04-018	479-20-020	AMD-P	99-03-089	480-92-050	AMD	99-05-016
458-65-030	REP-XR	99-04-018	479-20-025	AMD-P	99-03-089	480-92-060	AMD	99-05-016
458-65-040	REP-XR	99-04-018	479-20-037	AMD-P	99-03-089	480-92-070	AMD	99-05-016
460-21B-060	AMD-XA	99-07-012	479-510-410	AMD-P	99-03-088	480-92-080	AMD	99-05-016
460-22B-090	AMD-XA	99-07-012	479-510-420	AMD-P	99-03-088	480-92-090	AMD	99-05-016
460-24A-110	NEW	99-03-050	479-510-450	NEW-P	99-03-088	480-92-100	AMD	99-05-016
460-24A-145	NEW	99-03-052	479-510-460	NEW-P	99-03-088	480-92-110	AMD	99-05-016
460-24A-220	AMD	99-03-051	480-09-005	NEW	99-05-031	480-110-011	REP-W	99-07-053

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
516-15-050	AMD-E	99-03-012						
516-15-050	AMD	99-07-089						

TABLE

Subject/Agency Index

(Citation in bold type refer to material in this issue)

ACCOUNTANCY, BOARD OF

Certificates and licenses
 continuing education
 foreign reciprocity
 renewal and fee cycle revised
 Confidential information
 Fees
 Hearings
 Meetings

PREP 99-05-027
 PREP 99-05-027
 PREP 99-05-025
 PREP 99-05-026
 PERM 99-02-008
 PERM 99-02-009
 PERM 99-02-008
 PREP 99-01-005
 MISC 99-02-007

AGRICULTURE, DEPARTMENT OF

Alfalfa seed commission
 meetings
 Animal health
 brucellosis vaccine
 importation
 scrapie control
 Asparagus commission
 meetings
 Barley commission
 meetings
 Beef commission
 meetings
 Blueberry commission
 meetings
 Brands
 permanent renewal
 Bulb commission
 meetings
 Cattle
 brands
 feedlots
 brucellosis vaccinates
 Chemicals
 picloran
 Cranberry commission
 meetings
 Eggs and egg products
 Farmed salmon commission
 meetings
 Fertilizers
 application rates for commercial fertilizers
 metals analysis methods
 Field pea and chick pea
 standards
 Food safety
 pull date labeling
 raw fruit juice product labeling
 Fruits and vegetables
 apple standards
 apricot standards amended
 grapevines
 registration and certification
 inspections
 raw fruit juice product labeling
 Fryer commission
 meetings
 Grain
 inspection fee schedule
 Hop commission
 meetings
 membership qualifications
 Hops
 bales and tares
 Integrated pest management, interagency
 coordinating committee meetings
 Livestock
 brands
 identification program
 Meat
 custom slaughter and facilities
 Milk and milk products

MISC 99-01-037
 PROP 99-03-084
 PROP 99-03-087
 PROP 99-03-084
 PROP 99-03-086
 MISC 99-01-109
 MISC 99-02-010
 MISC 99-02-042
 MISC 99-04-009
 MISC 99-07-047
 PREP 99-07-084
 MISC 99-01-017
 PREP 99-07-084
 EXAD 99-07-115
 PREP 99-07-087
 MISC 99-04-010
 PREP 99-03-045
 PROP 99-07-118
 MISC 99-05-008
 PROP 99-01-048
 PERM 99-02-035
 PROP 99-04-093
 PROP 99-01-048
 PERM 99-02-035
 PREP 99-04-096
 PREP 99-04-067
 PROP 99-07-117
 PREP 99-03-108
 PREP 99-04-094
 PREP 99-03-094
 EXAD 99-07-127
 PREP 99-03-108
 PROP 99-07-117
 MISC 99-01-123
 PREP 99-07-132
 MISC 99-02-006
 PROP 99-02-063
 PROP 99-02-066
 PERM 99-06-072
 MISC 99-07-017
 PREP 99-07-084
 PERM 99-04-069
 PROP 99-07-116
 PREP 99-04-066

Mint
 rootstock certification
 Mint commission
 meetings
 Noxious weed control board
 meetings
 noxious weed grant program
 noxious weed list
 yellow nutsedge
 Nurseries
 inspection fees
 Pesticides
 ethyl parathion
 ethylene dibromide (EDB) tolerances
 heptachlor treated grain seed
 phosdrin
 protection of pollinating insects
 ziram
 Plant pests
 detection, testing and inspection fees
 grape phylloxera
 Potato commission
 meetings
 Poultry
 importation
 Quarantine
 apple maggot
 grape virus
 yellow nutsedge
 Red raspberry commission
 grades and packs, standards
 meetings
 Rules agenda
 Seeds
 certification fees
 Strawberry commission
 meetings
 Technical assistance
 lists of organizations
 Tuberculosis in cervidae
 Turfgrass seed commission
 creation
 Weights and measures
 national standards adopted
 Wheat commission
 meetings
 Wine commission
 assessments
 rates increased
 meetings

PREP 99-03-093
 MISC 99-01-036
 MISC 99-04-035
 EXRE 99-07-124
 PREP 99-07-123
 PREP 99-03-095
 PROP 99-07-126
 PREP 99-07-111
 EXRE 99-04-007
 PERM 99-07-112
 EXRE 99-04-006
 PERM 99-07-113
 PREP 99-07-086
 PREP 99-02-021
 PREP 99-07-088
 PREP 99-03-096
 PROP 99-07-125
 PREP 99-03-090
 MISC 99-02-013
 PROP 99-03-085
 PREP 99-03-092
 PREP 99-03-091
 PREP 99-07-123
 PREP 99-01-180
 PROP 99-07-108
 MISC 99-01-176
 MISC 99-04-107
 MISC 99-07-129
 PREP 99-04-095
 PREP 99-04-096
 MISC 99-01-072
 PROP 99-05-022
 EXRE 99-07-114
 PERM 99-02-064
 PROP 99-04-111
 PERM 99-07-056
 MISC 99-06-009
 PREP 99-02-062
 PROP 99-06-070
 MISC 99-01-046
 MISC 99-01-074

AIR POLLUTION

(See **ECOLOGY, DEPARTMENT OF**; individual air pollution control authorities)

ARCHITECTS

(See **LICENSING, DEPARTMENT OF**)

ASIAN PACIFIC AMERICAN AFFAIRS, COMMISSION ON

Meetings MISC 99-01-018

ATTORNEY GENERAL'S OFFICE

Notice of request for opinion MISC 99-01-152
 MISC 99-02-003

Opinions

city council member compensation (1999, No. 1) MISC 99-06-012
 county meetings, authority to ban video or sound recordings (1998, No. 15) MISC 99-01-107
 military leave for public employees (1999, No. 2) MISC 99-06-013
 public utility districts, authority (1998, No. 14) MISC 99-01-106

Subject/Agency Index

(Citation in bold type refer to material in this issue)

BASIC HEALTH PLAN (See HEALTH CARE AUTHORITY)			Historic registers		
			application process	PROP	99-03-098
BATES TECHNICAL COLLEGE			Long-term care ombudsman program	PROP	99-04-072
Meetings	MISC	99-07-092	Public works board		
			financial assistance, standards	PROP	99-05-062
BELLEVUE COMMUNITY COLLEGE			meetings	MISC	99-01-091
Meetings	MISC	99-01-042		MISC	99-06-018
Public records, access	PROP	99-05-018		MISC	99-06-019
BELLINGHAM TECHNICAL COLLEGE			COMMUNITY AND TECHNICAL COLLEGES, STATE BOARD FOR		
Meetings	MISC	99-01-002	Exceptional faculty awards trust fund	PREP	99-04-029
	MISC	99-01-108	Meetings	EMER	99-07-057
	MISC	99-02-068		MISC	99-01-045
	MISC	99-05-007		MISC	99-04-098
	MISC	99-07-002	CONVENTION AND TRADE CENTER		
BENTON COUNTY CLEAN AIR AUTHORITY			Meetings	MISC	99-01-044
Meetings	MISC	99-07-046		MISC	99-03-019
BLIND, DEPARTMENT OF SERVICES FOR THE				MISC	99-06-010
Client services, eligibility	PROP	99-01-022		MISC	99-07-044
	PERM	99-05-005	CORRECTIONS, DEPARTMENT OF		
BOILER RULES, BOARD OF			Facilities		
(See LABOR AND INDUSTRIES, DEPARTMENT OF)			site selection process	PREP	99-07-096
			Meetings	MISC	99-06-008
BUILDING CODE COUNCIL			COUNTY ROAD ADMINISTRATION BOARD		
Building code			Meetings	MISC	99-01-006
allowable shear tables	EMER	99-05-030		MISC	99-04-040
CAPITOL CAMPUS			Practice and procedure	PERM	99-01-020
(See GENERAL ADMINISTRATION, DEPARTMENT OF)				PERM	99-01-021
CASCADIA COMMUNITY COLLEGE			Rules coordinator	MISC	99-01-019
Meetings	MISC	99-01-047	Rural arterial program	MISC	99-01-021
	MISC	99-03-071	CRIME VICTIMS COMPENSATION		
CENTRALIA COLLEGE			(See LABOR AND INDUSTRIES, DEPARTMENT OF)		
Meetings	MISC	99-01-071	CRIMINAL JUSTICE TRAINING COMMISSION		
CHILD SUPPORT			Meetings	MISC	99-03-013
(See SOCIAL AND HEALTH SERVICES, DEPARTMENT OF)			EASTERN WASHINGTON UNIVERSITY		
CHILDREN'S SERVICES			Meetings	MISC	99-03-035
(See SOCIAL AND HEALTH SERVICES, DEPARTMENT OF)				MISC	99-03-072
CLARK COLLEGE				MISC	99-04-023
Administration practices revised	PREP	99-06-011		MISC	99-06-015
Meetings	MISC	99-01-128	Rules coordinator	MISC	99-01-125
CLARKSTON, PORT OF			ECOLOGY, DEPARTMENT OF		
Meetings	MISC	99-01-081	Accepted industry standards for cargo and		
CODE REVISER'S OFFICE			passenger vessel inspections	MISC	99-06-002
Quarterly reports			Air pollution		
98-19 - 98-24 See issue 99-02			national emission and performance for new		
COLLEGES AND UNIVERSITIES			sources standards	EXAD	99-04-097
(See HIGHER EDUCATION COORDINATING BOARD ; names			federal compliance	PREP	99-07-093
of individual institutions)			wood fired boilers		
COLUMBIA BASIN COLLEGE			Burning		
Meetings	MISC	99-01-056	open, outdoor	PROP	99-07-110
COLUMBIA RIVER GORGE COMMISSION			Flood control assistance account program grants		
Urban area boundary revisions and proposed plan			public hearing on proposed award list	MISC	99-07-094
amendments	PROP	99-05-057	Forest practices to protect salmonids	EMER	99-07-077
			Forest practices to protect water quality	PROP	99-02-016
COMBINED FUND DRIVE			Marine safety		
(See PERSONNEL, DEPARTMENT OF)			State Environmental Policy Act (SEPA)		
COMMODITY COMMISSIONS			compliance	EXRE	99-01-087
(See AGRICULTURE, DEPARTMENT OF)				PERM	99-07-076
COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT,			Municipal stormwater general permits	MISC	99-03-078
DEPARTMENT OF				MISC	99-03-079
Building permit fee	PERM	99-01-089	Radioactive waste		
Community economic revitalization board			commercial low level disposal-site use permit	MISC	99-04-034
meetings	MISC	99-04-041	low level disposal	MISC	99-04-034
Electric local curtailment	PREP	99-07-005	Rules agenda	MISC	99-04-047
Emergency food assistance program	PREP	99-06-025	Vessels		
			inspection standards	MISC	99-04-115
			Water		
			surface water quality standards	PREP	99-05-060
			wastewater discharge		
			fresh fruit packing industry NPDES permit	MISC	99-04-063
			Water rights		
			changes or transfers	MISC	99-04-032
			exempt ground water withdrawals	MISC	99-04-033
			Wetland mitigation banks	PREP	99-03-097

Subject/Agency Index
(Citation in bold type refer to material in this issue)

ECONOMIC DEVELOPMENT FINANCE AUTHORITY

Meetings MISC 99-01-041

EDMONDS COMMUNITY COLLEGE

Meetings MISC 99-01-009
MISC 99-02-043
MISC 99-02-051
MISC 99-03-015
MISC 99-04-064
MISC 99-06-094
MISC 99-07-045

EDUCATION, STATE BOARD OF

Appeal procedures. PERM 99-01-172

Certification
compliance and requirements PREP 99-04-087
PROP 99-07-070

endorsements
biology, chemistry, earth science, physics,
mathematics PROP 99-04-110
PERM 99-07-102

early childhood education PERM 99-06-005

technology PREP 99-04-109

school nurse PREP 99-06-038

school occupational therapist PREP 99-06-038

school physical therapist PREP 99-06-038

school speech-language pathologist or audiologist PREP 99-06-038

standards PERM 99-01-174

Construction documents

compliance with public works provisions PREP 99-04-086
PROP 99-07-067

Continuing education requirements EMER 99-05-002
PREP 99-06-039

Early childhood special education

subject area endorsement PROP 99-01-171
PERM 99-06-005

Educational service districts

criteria for organization PREP 99-04-083
PROP 99-07-065

Elementary and secondary standards PREP 99-04-089
PROP 99-07-068

Emergency exit drills PREP 99-04-090
PROP 99-07-073

Equivalency credit PREP 99-04-091
PROP 99-07-072

Funding of schools

state support PERM 99-04-008
PROP 99-04-080
PREP 99-04-089

Health services

High schools

adult completion course work credit defined PROP 99-04-081

graduation requirements

waiver option PROP 99-04-082
PROP 99-06-089

Marketing education PERM 99-01-173

Minimum length of school year PREP 99-04-088
PROP 99-07-069

Physical education PREP 99-04-085
PROP 99-07-066

Practice and procedure PROP 99-04-079

School plant facilities

state assistance PROP 99-03-026

basic state support PREP 99-06-079

educational specifications and site selection PREP 99-06-080

interdistrict cooperation in financing school

plant construction PREP 99-06-077

interdistrict transportation cooperatives PREP 99-06-076

modernization PREP 99-06-075

preliminary provisions PREP 99-06-074

procedural regulations PREP 99-06-078

School staff assignments PREP 99-03-001
PERM 99-07-054

Specialized services PREP 99-04-092
PROP 99-07-071

Students rights PREP 99-04-084
PROP 99-07-064

Transportation

state assistance PROP 99-01-157

Vocational education

certification requirements PERM 99-06-006

Vocational-technical teacher education programs PREP 99-04-046
PROP 99-07-049

ELECTIONS

(See SECRETARY OF STATE)

EMPLOYMENT SECURITY DEPARTMENT

Academic year EMER 99-05-003

Educational employees EMER 99-05-003

Employers

predecessor and successor employers PROP 99-05-068

Reasonable assurance EMER 99-05-003

Rules agenda MISC 99-04-061

Unemployment benefits

application process PROP 99-01-161

voluntary quit PREP 99-01-160

ENGINEERS

(See LICENSING, DEPARTMENT OF)

EXECUTIVE ETHICS BOARD

Administrative procedures

investigations PERM 99-06-073

FERTILIZERS

(See AGRICULTURE, DEPARTMENT OF)

FINANCIAL INSTITUTIONS, DEPARTMENT OF

Banks, division of

fees increased PREP 99-02-033

EMER 99-02-034

PROP 99-07-131

EXRE 99-04-073

Consumer Finance Act

Credit unions

member business loans PERM 99-03-009

Meetings MISC 99-04-099

Rules agenda MISC 99-04-011

Securities division

advertising and promotional material PERM 99-03-053

dishonest or unethical business practices EXAD 99-01-155

fair practice rules changed to conduct rules EXAD 99-07-012

investment advisers

agency cross transactions PERM 99-03-050

disclosures PERM 99-03-052

guidelines MISC 99-04-039

unethical practices PERM 99-03-051

Trust companies

investments PERM 99-01-119

FINANCIAL MANAGEMENT, OFFICE OF

Meetings

Official pay dates for 1999-2000 MISC 99-03-034
EXAD 99-07-128

FISH AND WILDLIFE, DEPARTMENT OF

Aquaculture

food fish/game fish lines PREP 99-03-107

Fish and wildlife commission

meetings MISC 99-02-046

Fishing, commercial

bottomfish

coastal EMER 99-02-017

crab fishery

areas and seasons EMER 99-01-102

EMER 99-02-004

EMER 99-03-008

otter trawl logbook

salmon

Columbia River above Bonneville EMER 99-04-059

EMER 99-07-009

Columbia River below Bonneville EMER 99-01-146

EMER 99-05-055

EMER 99-06-031

sea cucumbers

areas and seasons EMER 99-07-033

sea urchins

areas and seasons EMER 99-01-010

EMER 99-01-079

EMER 99-01-101

EMER 99-01-153

EMER 99-02-027

EMER 99-03-054

shrimp fishery

coastal waters PERM 99-01-154

EMER 99-04-053

smelt

areas and seasons PERM 99-02-001

Subject/Agency Index

(Citation in bold type refer to material in this issue)

LPN					
education supervision	MISC	99-02-060			
standing orders and protocols	MISC	99-02-060			
surgical technologist	MISC	99-02-059			
Medical quality assurance commission					
sexual misconduct	PROP	99-07-121			
standing orders and protocols	MISC	99-02-061			
Midwives					
examinations	PERM	99-03-064			
retired active status	PREP	99-06-090			
Nursing care quality assurance commission					
home health aids					
simple trach care	MISC	99-02-058			
impaired practical nurse program, license surcharge	PERM	99-01-099			
licenses					
authorization to practice	PROP	99-06-092			
qualifications	EXRE	99-01-092			
	EXAD	99-01-098			
occlusive dressings	MISC	99-05-010			
retired/active status	PREP	99-03-066			
sexual misconduct	PERM	99-04-051			
vagal nerve stimulator magnet	MISC	99-05-009			
voluntary monitoring	MISC	99-03-058			
Nursing home administrators, board of					
complaints and hearing procedures	PERM	99-03-067			
program manager	PERM	99-03-069			
suitability and character	PERM	99-03-068			
Orthotist and prosthetists					
examinations of candidates	PROP	99-03-083			
	PERM	99-07-122			
Osteopathic medicine and surgery					
standing orders and protocols	MISC	99-02-061			
Pharmacy, board of					
standing orders and protocols	MISC	99-02-061			
Physician assistants					
substance abuse monitoring surcharge	PROP	99-06-093			
Podiatric medical board					
clinical rotation	MISC	99-03-060			
Radiation protection					
dosimetry reporting	PROP	99-01-094			
	PERM	99-05-013			
	PROP	99-01-095			
	PERM	99-05-012			
industrial radiography equipment					
Sex offender treatment provider program					
certification	EXRE	99-01-093			
	PERM	99-07-018			
Shellfish programs					
sewage disposal for commercial operation while operating a vessel	MISC	99-07-119			
Temporary worker housing					
building codes	PERM	99-03-065			
cherry harvest	PREP	99-03-082			
Veterinary, board of governors					
disciplinary reinstatement	MISC	99-02-080			
Water					
drinking water standards	PERM	99-07-021			
HEALTH CARE AUTHORITY					
Basic health plan					
appeals	PERM	99-07-078			
under-reported inform	PREP	99-05-077			
Meetings	MISC	99-03-018			
Public employees benefits board					
meetings	MISC	99-07-036			
Rules agenda	MISC	99-06-101			
HEARING AND SPEECH, BOARD OF					
(See HEALTH, DEPARTMENT OF)					
HIGHER EDUCATION COORDINATING BOARD					
Administrative requirements	EXAD	99-01-039			
	PERM	99-06-021			
Exemptions from authorization	EXAD	99-01-040			
	PERM	99-06-022			
Meetings	MISC	99-01-116			
HIGHLINE COMMUNITY COLLEGE					
Meetings	MISC	99-01-110			
HISPANIC AFFAIRS, COMMISSION ON					
Meetings	MISC	99-04-001			
HORSE RACING COMMISSION					
Horses					
identification	PERM	99-05-048			
Parimutuel rules	PROP	99-02-081			
	PERM	99-06-026			
	PERM	99-05-047			
Race	PREP	99-03-014			
Satellite locations	PROP	99-02-082			
Weights and equipment	PERM	99-05-049			
HUMAN RIGHTS COMMISSION					
Disability discrimination	PROP	99-04-108			
Meetings	MISC	99-01-129			
HUNTING					
(See FISH AND WILDLIFE, DEPARTMENT OF)					
INDETERMINATE SENTENCE REVIEW BOARD					
Hearing record preservation	MISC	99-07-081			
INDUSTRIAL INSURANCE APPEALS, BOARD OF					
Rules coordinator	MISC	99-04-043			
INFORMATION SERVICES, DEPARTMENT OF					
Meetings	MISC	99-03-024			
INSURANCE COMMISSIONER'S OFFICE					
Address	MISC	99-03-036			
Fraternal benefit societies					
risk-based surplus	PERM	99-01-142			
Health care services insurance					
mental health benefits	PROP	99-03-007			
	PROP	99-03-037			
	PROP	99-03-006			
	PROP	99-03-038			
pharmacy benefits	MISC	99-07-058			
Unigard security insurance company					
INTEREST RATES					
(See inside front cover)					
INVESTMENT BOARD, STATE					
Meetings	MISC	99-01-141			
JAIL INDUSTRIES BOARD					
Meetings	MISC	99-03-022			
Rules agenda	MISC	99-03-021			
LABOR AND INDUSTRIES, DEPARTMENT OF					
Accident prevention programs	EXAD	99-01-147			
Boiler rules, board of					
clear rule writing	PREP	99-05-021			
fees	PROP	99-04-036			
Crime victims compensation					
rules review	PROP	99-01-179			
	PERM	99-07-004			
	PREP	99-02-083			
	PREP	99-05-078			
Electronic signatures					
Factory assembled structures					
First-aid requirements	PREP	99-06-040			
Industrial Safety and Health Act (WISHA)					
abatement verification	PERM	99-02-019			
Plumbers					
advisory board					
position open	MISC	99-07-130			
fees	EXAD	99-03-109			
	PERM	99-07-101			
Policy and interpretive statements	MISC	99-01-024			
Rules agenda	MISC	99-04-116			
Safety and health standards					
construction advisory commission					
safety standards for construction work	PREP	99-07-015			
electrical equipment	PERM	99-05-052			
electrical workers	EXAD	99-04-078			
emergency washing facilities	PERM	99-07-063			
federal OSHA standards	PREP	99-07-014			
fire fighters	PERM	99-05-080			
hazardous waste operations and emergency responses	EXAD	99-01-149			
	PERM	99-07-097			

Subject/Agency Index

(Citation in bold type refer to material in this issue)

longshore, stevedore, and related waterfront operations	PERM	99-02-023	Real estate commission		
longshore and marine terminals	PERM	99-02-024	brokers and salesmen		
mines, pits, and quarries	PERM	99-01-023	rules review	PERM	99-03-042
minors			Rules agenda	MISC	99-03-027
nonagricultural employment	PERM	99-02-041	Uniform commercial code filing office		
occupational health standards review	PREP	99-04-057	fees	PERM	99-06-003
policy and interpretive statements	MISC	99-02-069	Vessels		
pulp, paper, and paperboard mills and converters	PROP	99-06-071	registration and certificate of title	PERM	99-01-134
review of standards	PREP	99-04-057		PROP	99-02-012
State funded nursing homes				PERM	99-03-002
zero-lift environment discount	EMER	99-04-106		PERM	99-07-041
Temporary worker building code			LIQUOR CONTROL BOARD		
factory built structures	PREP	99-01-178	Added activities on licensed premises	PREP	99-04-113
Workers' compensation			Alcoholic beverages brought into state for		
accident fund			personal use	PROP	99-05-014
dividend distribution	EMER	99-02-022	Credit card or debit card use	PERM	99-04-114
classification plan			Electronic funds transfer	PREP	99-04-002
premium rates	PREP	99-07-100	Licenses		
reporting and collection of premiums	PREP	99-07-099	penalty guidelines	PERM	99-03-032
health care reimbursement rates	PREP	99-01-177		PERM	99-03-033
	PROP	99-05-079	retail	PROP	99-06-097
retrospective rating	PREP	99-05-051	Malt beverages		
LAKE WASHINGTON TECHNICAL COLLEGE			tax reporting and filing	PREP	99-04-112
Meetings	MISC	99-01-004	Sports, entertainment facilities		
	MISC	99-07-037	alcohol service	PROP	99-07-085
LAND SURVEYORS			Tobacco products		
(See LICENSING, DEPARTMENT OF)			sale or handling by employees under age eighteen	PERM	99-03-031
LICENSING, DEPARTMENT OF			LOTTERY COMMISSION		
Architects, board of registration for			Lotto		
licenses			drawing dates	PROP	99-04-012
renewal	PREP	99-01-001		PROP	99-05-036
Engineers and land surveyors, board of	PROP	99-05-050	On-line games		
registration for professional			ticket sales	PERM	99-04-077
branch offices	PREP	99-02-075	Policy summaries	MISC	99-06-014
corporations and limited liability companies	PREP	99-02-074	Quinto		
documents	PREP	99-02-079	drawing dates	PROP	99-04-012
fees and charges	PREP	99-02-070	Retailer compensation	PREP	99-04-003
meetings and officers	PREP	99-02-072	Retailer licensing	PERM	99-01-038
	MISC	99-03-017		PREP	99-04-076
offer to practice	PREP	99-02-076	LOWER COLUMBIA COLLEGE		
providing direct supervision	PREP	99-07-135	Rules coordinator	MISC	99-01-007
renewals	PREP	99-02-073	MARINE SAFETY		
retired status certificate of registration	PREP	99-07-134	(See ECOLOGY, DEPARTMENT OF)		
seals	PREP	99-02-077	MEDICAL CARE		
seals/stamp usage	PREP	99-02-078	(See HEALTH, DEPARTMENT OF)		
signature			MILITARY DEPARTMENT		
electronic signature definition	PREP	99-07-136	911 enhanced funding	PREP	99-06-024
temporary permits	PREP	99-02-071	MINORITY AND WOMEN'S BUSINESS ENTERPRISES, OFFICE OF		
Model traffic ordinance	PROP	99-01-143	Annual goals	PREP	99-05-082
	PERM	99-04-070	Political subdivision fees	PREP	99-05-083
Motor vehicle excise tax credit	PREP	99-07-040	MODEL TRAFFIC ORDINANCE		
	PREP	99-07-079	(See LICENSING, DEPARTMENT OF)		
	PREP	99-07-080	MOTOR VEHICLES		
Motor vehicles			(See LICENSING, DEPARTMENT OF; TRANSPORTATION, DEPARTMENT OF; WASHINGTON STATE PATROL; UTILITIES AND TRANSPORTATION COMMISSION)		
certificate of title	PERM	99-01-014	NATURAL RESOURCES, DEPARTMENT OF		
	PROP	99-01-140	Aquatic lands exchange	PERM	99-07-034
	PERM	99-02-049	Meetings	MISC	99-02-028
	PROP	99-04-037	NURSING CARE		
	PROP	99-04-038	(See HEALTH, DEPARTMENT OF)		
	PERM	99-06-037	OLYMPIC COLLEGE		
	PROP	99-07-016	Meetings	MISC	99-01-025
dealers and manufacturers				MISC	99-04-044
rules review	PROP	99-05-059	OSTEOPATHY		
drivers' licenses			(See HEALTH, DEPARTMENT OF)		
extension	PROP	99-02-052			
licenses	PERM	99-05-032			
	PERM	99-01-133			
	PROP	99-01-139			
	PREP	99-03-003			
	PERM	99-06-029			
	PERM	99-01-104			
Practice and procedure					
Public records disclosure					
copying fees	EXAD	99-05-004			
Real estate appraisers					
fees	PERM	99-04-075			
uniform standards of practice	PROP	99-01-158			
	PERM	99-04-074			

Subject/Agency Index

(Citation in bold type refer to material in this issue)

OUTDOOR RECREATION, INTERAGENCY COMMITTEE FOR

Meetings MISC 99-03-047
Off-road vehicle funds MISC 99-03-048
EXAD 99-01-148

PARKS AND RECREATION COMMISSION

Marine facilities
moorage and use PROP 99-01-120
PERM 99-04-117
Meetings MISC 99-01-135
Public use of park areas PROP 99-04-118
Trails
bicycle and equestrian use PREP 99-06-042

PENINSULA COLLEGE

WAC revisions PREP 99-07-060

PERSONNEL, DEPARTMENT OF

Affirmative action
governor's affirmative action policy committee
meetings MISC 99-01-085
Initiative 200 compliance EMER 99-01-050
EMER 99-01-051
PROP 99-02-053
PROP 99-02-054
PERM 99-05-042
PERM 99-05-043
Certifications
actions required PERM 99-03-044
Combined fund drive PREP 99-05-081
Housekeeping changes and rules clarification PROP 99-05-058
Meetings MISC 99-01-049
Probationary period PERM 99-01-052

PERSONNEL RESOURCES BOARD

(See PERSONNEL, DEPARTMENT OF)

PESTICIDES

(See AGRICULTURE, DEPARTMENT OF)

PIERCE COLLEGE

Meetings MISC 99-01-122
Student rights and responsibilities/code of conduct PREP 99-04-028
PROP 99-07-109

PILOTAGE COMMISSIONERS, BOARD OF

New pilots, limitations PROP 99-01-117

PROPERTY TAX

(See REVENUE, DEPARTMENT OF)

PROSPECTING

(See FISH AND WILDLIFE, DEPARTMENT OF)

PUBLIC ASSISTANCE

(See SOCIAL AND HEALTH SERVICES, DEPARTMENT OF)

PUBLIC DISCLOSURE COMMISSION

Agency rules
uniform procedure and format for public PROP 99-06-050
Commercial advertisers
public inspection of records PREP 99-06-064
Contributions to candidates, elected officials,
political committees or public office fund
lobbyist making contributions on behalf of
employer PREP 99-06-067
Elected public officials
annual list PREP 99-06-059
name not on list, impact PREP 99-06-061
responsibility for developing PREP 99-06-060
Freedom of communication
employer interference PREP 99-06-068
Legislature
form for report of legislative activity by
legislators and staff PREP 99-06-069
Lobbyist registration
last calendar quarter of biennial period PREP 99-06-065
termination PREP 99-06-066
Political advertising
political party identification PREP 99-06-063
Public records
copying charges for records on CDs and diskettes PREP 99-06-054

hours for inspection and copying
index PREP 99-06-052
officer PREP 99-06-057
public inspection
exemptions PREP 99-06-055
requests PREP 99-06-053
forms PREP 99-06-058
review of denials PREP 99-06-056
Rules agenda MISC 99-01-150
Sample ballots PREP 99-06-062

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Interest arbitration and grievance rules PREP 99-04-013
Meetings MISC 99-02-011
Rules agenda MISC 99-01-086

PUBLIC INSTRUCTION, SUPERINTENDENT OF

Special education services PREP 99-06-049

PUBLIC WORKS BOARD

(See COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT,
DEPARTMENT OF)

PUGET SOUND AIR POLLUTION CONTROL AGENCY

Dust control PROP 99-04-104
PERM 99-07-061
Meetings MISC 99-01-003
Odor control PROP 99-04-104
Outdoor burning
military training PROP 99-04-104
Source review requirements PROP 99-04-105
PERM 99-07-062

RADIATION PROTECTION

(See HEALTH, DEPARTMENT OF)

REAL ESTATE APPRAISERS

(See LICENSING, DEPARTMENT OF)

RETIREMENT SYSTEMS, DEPARTMENT OF

Meetings MISC 99-02-029
Teacher's retirement system (TRS) plan 1 PREP 99-07-026

REVENUE, DEPARTMENT OF

Abandoned property EXRE 99-04-018
Business and occupation tax
sales of meals EXAD 99-06-027
successor to person quitting business PROP 99-04-014
veterinarians PROP 99-04-015
Estate taxes
rule revisions PREP 99-07-133
waiver or cancellation of penalty PERM 99-03-010
Excise tax
domestic violence victims
housing for low-income homeless, tax exemption EXAD 99-07-090
educational institutions PERM 99-03-005
fuel oil, oil products, other extracted products EXRE 99-04-019
internal distribution tax PERM 99-02-055
landscape and horticultural services EXAD 99-04-021
pattern makers EXRE 99-04-019
poultry and hatching egg producers EXRE 99-04-019
ride sharing exemptions and credits PROP 99-04-022
stumpage value tables PREP 99-06-036
Intercounty utilities and transportation companies EXRE 99-04-031
Property tax
agricultural land valuation PERM 99-01-067
forest land valuation PERM 99-02-030
homes for aging EMER 99-02-031
inflation rate PERM 99-01-068
nonprofit homes for the aging PERM 99-04-016
refunds, rate of interest PERM 99-01-066
revaluation PREP 99-05-069
timber and forest products EXRE 99-04-017
Rules agenda MISC 99-01-175
Sales of meals EXAD 99-06-027
Sales tax
games of chance PROP 99-05-017
landfill gas, wind, and solar energy electric
generating facilities EXAD 99-06-028
watercraft to nonresidents EXAD 99-04-020
Timber excise tax
stumpage values PERM 99-02-032

Subject/Agency Index

(Citation in **bold type** refer to material in this issue)

Use tax			stepparent liability	MISC	99-01-031
advertising materials printed outside state	PREP	99-01-090	Children's administration		
fuel oil, oil products, other extracted products	EXRE	99-04-019	child care facilities		
landfill gas, wind, and solar energy electric			licensing requirements	PREP	99-07-039
generating facilities	EXAD	99-06-028	child care payment rate	PREP	99-05-070
watercraft to nonresidents	EXAD	99-04-020	foster homes		
			payment rates	PREP	99-01-114
RULES COORDINATORS			safety requirements	PERM	99-01-059
(See Issue 99-01 for a complete list of rules			Indian child welfare	PREP	99-01-166
coordinators designated as of 12/24/98)			Developmental disabilities, division of		
County road administration board	MISC	99-01-019	family support opportunity		
Eastern Washington University	MISC	99-01-125	pilot program	PERM	99-04-071
Industrial insurance appeals, board of	MISC	99-04-043	Economic services administration		
Insurance commissioner, office of	MISC	99-03-036	assistance programs, division of		
Lower Columbia College	MISC	99-01-007	errors and omissions corrected	PREP	99-07-105
Veterans affairs, department of	MISC	99-01-130	eligibility	PREP	99-02-014
Washington state library	MISC	99-05-019	emergency assistance	PREP	99-01-113
Western Washington University	MISC	99-02-067	general assistance-unemployable	PREP	99-04-055
			need standards	PREP	99-01-029
				PERM	99-04-056
SAFETY STANDARDS			payment of grants	PERM	99-02-039
(See LABOR AND INDUSTRIES, DEPARTMENT OF)			resource	PREP	99-03-040
				PREP	99-06-098
SALES TAX				PROP	99-06-099
(See REVENUE, DEPARTMENT OF)			SSI program		
			standards of assistance	PROP	99-01-027
				EMER	99-01-028
SCHOOLS				PERM	99-04-103
(See EDUCATION, STATE BOARD OF)			SSI supplemental security income		
			payment standard	PREP	99-05-045
SEATTLE COMMUNITY COLLEGES			Food assistance program		
Meetings	MISC	99-01-061	eligibility	PROP	99-01-111
				EMER	99-01-112
SECRETARY OF STATE			noncitizens, eligibility	PERM	99-05-074
Elections			utility allowances	PERM	99-01-069
absentee ballots	PREP	99-07-042		EMER	99-05-046
mailing methods	PREP	99-01-064	General assistance		
ballots	PROP	99-05-033	pregnant woman	PROP	99-04-102
county procedures, review	PROP	99-05-054	Juvenile rehabilitation administration		
	PROP	99-07-043	parole revocation	PERM	99-03-077
inactive voters, cancellation notice	PREP	99-01-064	Management services administration		
	PROP	99-05-053	declaratory orders	PROP	99-03-076
logic and accuracy tests	PROP	99-05-034		PERM	99-06-044
officials, certification	PREP	99-01-065	public disclosure	PREP	99-07-104
Electronic Authentication Act			Medical assistance administration		
implementation	PERM	99-02-047	ambulance services	PROP	99-07-137
	PERM	99-02-048	clear writing principles	PREP	99-05-044
Limited liability companies			community spouse needs and family needs		
fees	EXAD	99-05-039	allowances	EMER	99-01-168
Limited partnerships				PROP	99-06-100
fees	EXAD	99-05-038	dental services	PROP	99-01-169
				PERM	99-07-023
SECURITIES			eligibility	PROP	99-02-015
(See FINANCIAL INSTITUTIONS, DEPARTMENT OF)			estate recovery	PROP	99-07-025
			federal property levels	PREP	99-07-103
SEX OFFENDER TREATMENT PROVIDER PROGRAM			hospital services	PROP	99-01-170
(See HEALTH, DEPARTMENT OF)				PROP	99-05-073
			definitions	PERM	99-06-045
SHORELINE COMMUNITY COLLEGE			outpatient payment	PERM	99-06-046
Meetings	MISC	99-01-126	rates	PREP	99-06-086
	MISC	99-07-001	appeals	PREP	99-06-084
			infusion, parenteral, and enteral therapies	PREP	99-06-085
SKAGIT VALLEY COLLEGE			managed care	PREP	99-03-104
Meetings	MISC	99-02-044	maternity-related services	PREP	99-01-167
	MISC	99-07-091	home birth provider	PREP	99-06-043
			medically needy, eligibility	EMER	99-01-162
SOCIAL AND HEALTH SERVICES, DEPARTMENT OF			occupational therapy	PREP	99-01-163
Aging and adult services administration			payment method	PREP	99-03-075
adult family homes			prescription drug program billing instruction	PREP	99-06-083
secure environments	PREP	99-03-105	Rules agenda	MISC	99-04-025
in-home care providers			Temporary assistance for needy families (TANF)	MISC	99-04-026
contract qualifications	PERM	99-03-041	community jobs wage subsidy program		
private duty nursing services	PREP	99-01-165	five year limit	EMER	99-02-038
Alcohol and substance abuse, division of			Vocational rehabilitation services	PROP	99-04-102
chemical dependency services			WorkFirst	PREP	99-06-081
county administration	PREP	99-06-082	participation requirements		
Child protective services				PROP	99-01-115
investigations, notification and appeal process	PREP	99-01-164		PROP	99-05-071
Child support, division of					
"most wanted" internet site	PERM	99-01-057			
	MISC	99-03-039			
noncompliance penalties	MISC	99-01-030			
prehearing procedures	MISC	99-07-038			

Subject/Agency Index

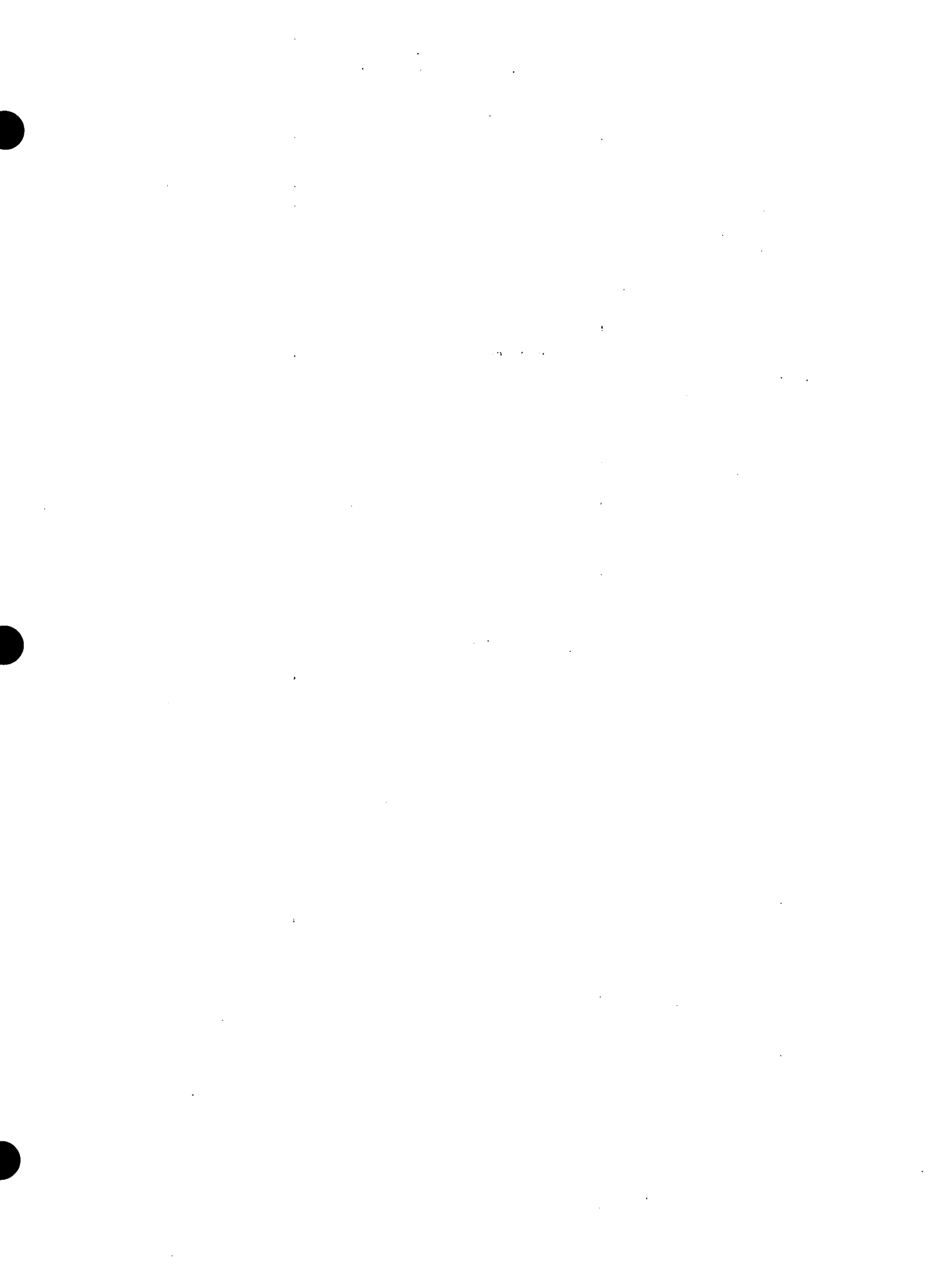
(Citation in bold type refer to material in this issue)

	PROP 99-05-072	TRANSPORTATION IMPROVEMENT BOARD	
	PERM 99-07-024	Meetings	MISC 99-03-023
SOUTH PUGET SOUND COMMUNITY COLLEGE		Rules update	MISC 99-07-011
General provisions	PREP 99-06-032	Transportation Equity Act, implementation	PROP 99-03-089
Meetings	MISC 99-01-073		PROP 99-03-088
SOUTHWEST AIR POLLUTION CONTROL AUTHORITY		TREASURER, OFFICE OF THE STATE	
sources	PERM 99-07-027	Securities	
	PERM 99-07-028	collateral for payment	PERM 99-03-004
	PERM 99-07-029		
	PERM 99-07-030	TRUST COMPANIES	
	PERM 99-07-032	(See FINANCIAL INSTITUTIONS, DEPARTMENT OF)	
SPOKANE, COMMUNITY COLLEGES OF		UNEMPLOYMENT COMPENSATION	
Appointing authority, delegation	PROP 99-01-132	(See EMPLOYMENT SECURITY DEPARTMENT)	
	PROP 99-05-040		
Meetings	MISC 99-04-024	UNIVERSITY OF WASHINGTON	
SPOKANE COUNTY AIR POLLUTION CONTROL AUTHORITY		Meetings	MISC 99-01-080
Burning restrictions	PROP 99-01-063		MISC 99-04-062
	PERM 99-03-046	Rules agenda	MISC 99-03-016
Roads, particulate matter control	PERM 99-03-030	Student records disclosure	PREP 99-01-075
		Thomas Burke Museum	EXRE 99-01-131
			PERM 99-06-033
SPOKANE INTERCOLLEGIATE RESEARCH AND TECHNOLOGY INSTITUTE		USURY RATES	
Meetings	MISC 99-03-020	(See inside front cover)	
SUPREME COURT, STATE		UTILITIES AND TRANSPORTATION COMMISSION	
Attorney fees and expenses	MISC 99-01-015	Low-level radioactive waste disposal rates	PERM 99-05-016
Capital cases		Motor carriers	
filing of briefs	MISC 99-05-029	household goods	PERM 99-01-077
stay of execution	MISC 99-07-010	Pipeline safety	PERM 99-02-036
House counsel	MISC 99-05-028		PERM 99-02-037
Judicial information system committee membership	MISC 99-01-016	Practice and procedure	PERM 99-05-031
Motions, determination	MISC 99-01-015	Property transfers	PROP 99-03-074
TACOMA COMMUNITY COLLEGE		Securities, liens, affiliated interests, refunding of notes, and leases	PROP 99-03-073
Meetings	MISC 99-01-008	Telecommunications	
TAX APPEALS, BOARD OF		customer proprietary network information	PERM 99-05-015
Meetings	MISC 99-01-060	registration	PROP 99-07-107
TAXATION		Telephones	PROP 99-07-106
(See REVENUE, DEPARTMENT OF)		pay phone and operator services providers, level of service	PREP 99-02-020
THE EVERGREEN STATE COLLEGE		subscriber rates, calling areas	PERM 99-01-076
Disciplinary records of student	PREP 99-05-056	Water companies	
Shoplifting policy	PREP 99-05-065	investor owned companies	PROP 99-07-053
TOXICOLOGIST, STATE		VETERANS AFFAIRS, DEPARTMENT OF	
Breath alcohol screening test administration	PROP 99-01-011	Rules coordinator	MISC 99-01-130
	PROP 99-01-012	WALLA WALLA COMMUNITY COLLEGE	
	PERM 99-06-047	Meetings	MISC 99-01-034
	PERM 99-06-048		MISC 99-01-062
TRAFFIC SAFETY COMMISSION			MISC 99-03-070
Meetings	MISC 99-01-035		MISC 99-06-016
TRANSPORTATION, DEPARTMENT OF		WASHINGTON STATE LIBRARY	
Central and field organization chain of command	EXAD 99-02-065	Library commission meetings	MISC 99-01-078
	PERM 99-07-013		MISC 99-04-100
City/county project coordination	PERM 99-01-121	Rules coordinator	MISC 99-07-022
Escort vehicle requirements	EXRE 99-04-058		MISC 99-05-019
	PERM 99-07-098	WASHINGTON STATE PATROL	
Ferries		Background checks	PROP 99-03-080
contractor prequalification	PERM 99-03-025		PROP 99-03-081
fare schedule	PROP 99-05-035	Fire protection policy board meetings	PERM 99-07-050
preferential loading	PERM 99-07-059		PERM 99-07-051
Highway access management		Motor vehicles	
access control	PERM 99-06-035	flashing lamps	PERM 99-02-045
permits	PERM 99-06-034	ignition interlock breath alcohol devices	PERM 99-01-156
Oversize and overweight permits		tire chain use	EXAD 99-01-084
escort vehicles	PROP 99-05-006		PERM 99-06-023
Rules agenda	MISC 99-01-053	WESTERN WASHINGTON UNIVERSITY	
State Environmental Policy Act review and update	PREP 99-04-042	Bicycle traffic and parking	PROP 99-03-011
Transportation building address	EXAD 99-06-004		EMER 99-03-012
		Rules coordinator	PERM 99-07-089
			MISC 99-02-067

Subject/Agency Index

(Citation in **bold type** refer to material in this issue)

Skateboards and in-line skates	PROP 99-03-011
	EMER 99-03-012
WHATCOM COMMUNITY COLLEGE	
Meetings	MISC 99-01-127
WILDLIFE	
(See FISH AND WILDLIFE, DEPARTMENT OF)	
WORKERS' COMPENSATION	
(See LABOR AND INDUSTRIES, DEPARTMENT OF)	
WORKFIRST	
(See SOCIAL AND HEALTH SERVICES, DEPARTMENT OF)	
WORKFORCE TRAINING AND EDUCATION COORDINATING BOARD	
Meetings	MISC 99-04-101
	MISC 99-06-095
YAKIMA REGIONAL CLEAN AIR AUTHORITY	
Compliance and enforcement	PROP 99-01-033
Permits	PROP 99-01-033
	PROP 99-06-017
Public hearings	PROP 99-03-049
	PROP 99-06-017
YAKIMA VALLEY COMMUNITY COLLEGE	
Meetings	MISC 99-07-048
Public records	PREP 99-05-041







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