

WSR 05-23-066
PERMANENT RULES
SOUTHWEST
CLEAN AIR AGENCY

[Filed November 15, 2005, 8:53 a.m., effective December 16, 2005]

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

Purpose: SWCAA 400-045 Permit Application for Nonroad Engines, the proposed changes adjust permit application fees to provide more funding in support of agency work to process the affected applications.

SWCAA 400-075 Emission Standards for Sources Emitting Hazardous Air Pollutants, the proposed changes update adoption reference dates and incorporate new federal regulations contained in 40 C.F.R. Parts 63 and 65.

SWCAA 400-099 Per Capita Fees, the proposed changes adjust the "per capita" assessment rate to provide additional funding for the agency.

SWCAA 400-100 Registration Requirements, the proposed changes adjust annual registration fees for air pollution sources to provide additional funding for the agency.

SWCAA 400-109 Air Discharge Permit Applications, the proposed changes adjust permit application fees to provide more funding in support of agency work to process the affected applications.

SWCAA 400-115 Standards of Performance for New Sources, the proposed changes update adoption reference dates and incorporate new federal regulations contained in 40 C.F.R. Part 60.

Citation of Existing Rules Affected by this Order: Amending SWCAA 400-045, [400]-075, [400]-099, [400]-100, [400]-109, and [400]-115.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 05-17-131 on August 19, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: November 3, 2005.

Robert D. Elliott
 Executive Director

AMENDATORY SECTION (Amending WSR 03-021-045 [03-21-045], filed 10/9/03, effective 11/9/03)

SWCAA 400-045 Permit Application for Nonroad Engines

[Statutory Authority: Chapter 70.94.040 RCW, 70.94.141 RCW, Original adoption WSR 03-21-045 filed 10/9/03, effective 11/9/03]

(1) **Purpose.** A nonroad engine permit application is the document used by the Agency to record and track requests to approve the installation, replacement, or other alteration of a nonroad engine.

(2) **Applicability.** The requirements of this section apply to all nonroad engines as defined in SWCAA 400-030(74) except for the following:

- (a) Nonroad engine projects with an aggregate power rating less than 200 horsepower;
- (b) Well drilling rigs;
- (c) Portable firefighting equipment;
- (d) Mobile cranes and pile drivers;
- (e) Engines used for emergency flood control; or
- (f) Engines used to power carnival or amusement rides.

(3) **Application Submittal.** A complete nonroad engine permit application shall be submitted for each new installation, replacement, or other alteration of a nonroad engine.

(4) **Application Fees.** A filing fee of ~~\$(300.00)~~ 600.00 and a review fee, as shown in Table A, shall be submitted with the applicant prior to Agency review. If ~~((other))~~ additional types of review, as identified in Table B, are required by the Agency as a result of the proposed installation, replacement or alteration, an additional review fee shall be paid as described in Table B. (Total Application Fee = Filing Fee + Application Review Fee [Table A] + Additional Review Fee [Table B]).

TABLE A
Nonroad Engine Permit Application Review Fees

<u>Equipment/Activity</u>	<u>Associated Work Hours</u>	<u>Review Fee</u>
i. Nonroad Engine (Aggregate horsepower rating):		
Less than 500	<u>10</u>	\$(400.00) <u>700.00</u>
500 or more but less than 2,000	<u>14</u>	((700.00)) <u>1,000.00</u>
2,000 or more but less than 5,000	<u>21</u>	1,500.00
5,000 or more but less than 10,000	<u>42</u>	3,000.00
10,000 or more	<u>85</u>	6,000.00
ii. Minor Change to Existing Permit Conditions:	<u>8</u>	\$(300.00) <u>600.00</u>
iii. Other (Not classified above):	\$200.00 ((A)) <u>per</u> ton of emission	
iv. Emergency Applications	Double the normal application and review fee	

TABLE B
~~(Other)~~ Additional Review Fees

	<u>Equipment/Activity</u>	<u>Associated Work Hours</u>	<u>Review Fee</u>
v.	State Environmental Policy Act (SEPA) - Lead Agency		
	<u>Minor</u>	<u>14</u>	\$1,000.00
	<u>Major</u>	<u>35</u>	<u>2,500.00</u>
vi.	Environmental Impact Statement (EIS) Review		(\$500.00)
	<u>Minor</u>	<u>11</u>	\$ <u>800.00</u>
	<u>Major</u>	<u>28</u>	<u>2,000.00</u>
vii.	Variance request	<u>11</u>	(\$500.00) <u>800.00</u>
viii.	Review of ambient impact analysis		(\$50.00) <u>70.00/hr</u>

(5) **Agency actions.** Each acceptable and complete non-road engine permit application shall result in the issuance of a nonroad engine permit or other regulatory order by the Agency in accordance with SWCAA 400-046. The requirements of SEPA (State Environmental Policy Act) shall be complied with for each application.

(6) Withdrawn or exempt applications.

(a) An applicant may withdraw an application at any time prior to issuance of a final nonroad engine permit. The applicant must provide a written and signed request to the Agency indicating their desire to withdraw the application and certification that the proposed equipment or alteration will not be installed or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, an application may be determined to be exempt from the requirements of SWCAA 400-046 and 400-100. The Agency shall provide written notification to the applicant for all applications that are determined to be exempt. Exemption status shall not take effect until confirmed in writing.

(c) For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees may be refunded upon request, provided that substantial time has not been expended by the Agency for review of the 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 (Amending WSR 03-21-045, filed 10/9/03, effective 11/9/03)

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants

[Statutory Authority: Chapter 70.94.141 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; 96-21-098 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

(1) The national emission standards for hazardous air pollutants promulgated by EPA as in effect July 1, ~~(2002)~~ 2005, as contained in 40 CFR Part 61, are adopted by reference. The term "Administrator" in 40 CFR Part 61 shall mean the Administrator of EPA and the Executive Director of the Agency.

(2) The Agency may require that emission 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, Part 63, or Part 65 in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Emission testing, monitoring, and analytical methods for sources of hazardous air pollutants shall conform with the requirements of 40 CFR Part 61, Part 63 and/or Part 65, as in effect on July 1, 2002.

(4) This section shall not apply to any "stationary 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 EPA.

(a) As of July 1, ~~(2002)~~ 2005, 40 CFR Part 63 and appendices are hereby adopted by reference. The following list is provided for informational purposes:

- Subpart A National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions (ref. 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 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 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 W	National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production (ref. 40 CFR 63.520 et seq.)
<u>Subpart J</u>	<u>National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production (ref. 40 CFR 60.210 et seq.)</u>	Subpart X	National Emission Standards for Hazardous Air Pollutants for Secondary Lead Smelting Manufacturing Operations (ref. 40 CFR 63.541 et seq.)
Subpart L	National Emission Standards for Hazardous Air Pollutants for Coke Oven Operations (ref. 40 CFR 63.300 et seq.)	Subpart Y	National Emission Standards for Hazardous Air Pollutants for Marine Vessel Loading Operations (ref. 40 CFR 63.560 et seq.)
Subpart M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities - as it applies to major sources (ref. 40 CFR 63.320 et seq.)	Subpart AA	National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing Plants (ref. 40 CFR 63.600 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 BB	National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizers Production Plants (ref. 40 CFR 63.620 et seq.)
Subpart O	National Ethylene Oxide Air Emission Standards for Commercial Sterilizers (ref. 40 CFR 63.360 et seq.)	Subpart CC	National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries (ref. 40 CFR 63.640 et seq.)
Subpart Q	National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers (ref. 40 CFR 63.400 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 R	National Emission Standards for Hazardous Air Pollutants for Gasoline Distribution Operations (Stage I) (ref. 40 CFR 63.420 et seq.)	Subpart EE	National Emission Standards for Hazardous Air Pollutants for Magnetic Tape Manufacturing Operations (ref. 40 CFR 63.710 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 GG	National Emission Standards for Hazardous Air Pollutants for Aerospace Manufacturing Operations (ref. 40 CFR 63.740 et seq.)
Subpart T	National Emission Standards for Hazardous Air Pollutants for Halogenated Solvents Cleaning Operations (ref. 40 CFR 63.460 et seq.)	Subpart HH	National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production Facilities (ref. 40 CFR 63.760 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.)	<u>Subpart XX</u>	<u>National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations (ref. 40 CFR 63.1080 et seq.)</u>
Subpart KK	National Emission Standards for Hazardous Air Pollutants for the Printing and Publishing Industry (ref. 40 CFR 63.820 et seq.)	Subpart YY	National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT (ref. 40 CFR 63.1100 et seq.)
Subpart LL	National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants (ref. 40 CFR 63.840 et seq.)	Subpart CCC	National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCL Process Facilities and Hydrochloric Acid Regeneration Plants (ref. 40 CFR 63.1155 et seq.)
<u>Subpart MM</u>	<u>National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfitic, and Stand-alone Semicemical Pulp Mills (ref. 40 CFR 63.860 et seq.)</u>	Subpart DDD	National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production (ref. 40 CFR 63.1175 et seq.)
Subpart OO	National Emission Standards for Tanks - Level 1 (ref. 40 CFR 63.900 et seq.)	Subpart EEE	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (ref. 40 CFR 63.1211 et seq.)
Subpart PP	National Emission Standards for Containers (ref. 40 CFR 63.920 et seq.)	Subpart GGG	National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production (ref. 40 CFR 63.1250 et seq.)
Subpart QQ	National Emission Standards for Surface Impoundments (ref. 40 CFR 63.940 et seq.)	Subpart HHH	National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage Facilities (ref. 40 CFR 63.1270 et seq.)
Subpart RR	National Emission Standards for Individual Drain Systems (ref. 40 CFR 63.960 et seq.)	Subpart III	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production (ref. 40 CFR 63.1290 et seq.)
Subpart SS	National Emission Standards for Hazardous Air Pollutants for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (ref. 40 CFR 63.980 et seq.)	Subpart JJJ	National Emission Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins (ref. 40 CFR 63.1310 et seq.)
Subpart TT	National Emission Standards for Hazardous Air Pollutants for Equipment Leaks - Control Level 1 (ref. 40 CFR 63.1000 et seq.)	Subpart LLL	National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry (ref. 40 CFR 63.1340 et seq.)
Subpart UU	National Emission Standards for Hazardous Air Pollutants for Equipment Leaks - Control Level 2 (ref. 40 CFR 63.1019 et seq.)	Subpart MMM	National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production (ref. 40 CFR 63.1360 et seq.)
Subpart VV	National Emission Standards for Oil-Water Separators and Organic-Water Separators (ref. 40 CFR 63.1040 et seq.)		
Subpart WW	National Emission Standards for Hazardous Air Pollutants for Storage Vessels (Tanks) - Control Level 2 (ref. 40 CFR 63.1060 et seq.)		

Subpart NNN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing (ref. 40 CFR 63.1380 et seq.)	<u>Subpart EEEE</u>	<u>National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) (ref. 40 CFR 63.2330 et seq.)</u>
Subpart OOO	National Emission Standards for Hazardous Air Pollutants for Manufacture of Amino/Phenolic Resins (ref. 40 CFR 63.1400 et seq.)	<u>Subpart FFFF</u>	<u>National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing (ref. 40 CFR 63.2430 et seq.)</u>
Subpart PPP	National Emission Standards for Hazardous Air Pollutants for Polyester Polyols Production (ref. 40 CFR 63.1420 et seq.)	Subpart GGGG	National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production (ref. 40 CFR 63.2830 et seq.)
<u>Subpart QOO</u>	<u>National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting (ref. 40 CFR 63.1440 et seq.)</u>	Subpart HHHH	National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production (ref. 40 CFR 63.2980 et seq.)
Subpart RRR	National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production (ref. 40 CFR 63.1500 et seq.)	<u>Subpart IIII</u>	<u>National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks (ref. 40 CFR 63.3080 et seq.)</u>
Subpart TTT	National Emission Standards for Hazardous Air Pollutants for Primary Smelting (ref. 40 CFR 63.1541 et seq.)	<u>Subpart JJJJ</u>	<u>National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating (ref. 40 CFR 63.3280 et seq.)</u>
<u>Subpart UUU</u>	<u>National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (ref. 40 CFR 63.1560 et seq.)</u>	<u>Subpart KKKK</u>	<u>National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans (ref. 40 CFR 63.3480 et seq.)</u>
Subpart VVV	National Emission Standards for Hazardous Air Pollutants for Publicly Owned Treatment Works (ref. 40 CFR 63.1580 et seq.)	<u>Subpart MMMM</u>	<u>National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products (ref. 40 CFR 63.3880 et seq.)</u>
Subpart XXX	National Emission Standards for Hazardous Air Pollutants for Ferrous Alloys Production: Ferromanganese and Silicomanganese (ref. 40 CFR 63.1650 et seq.)	<u>Subpart NNNN</u>	<u>National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances (ref. 40 CFR 63.4080 et seq.)</u>
<u>Subpart AAAA</u>	<u>National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (ref. 40 CFR 63.1930 et seq.)</u>	<u>Subpart OOOO</u>	<u>National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles (ref. 40 CFR 63.4280 et seq.)</u>
Subpart CCCC	National Emission Standards for Hazardous Air Pollutants for Manufacturing of Nutritional Yeast (ref. 40 CFR 63.2130 et seq.)	<u>Subpart PPPP</u>	<u>National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products (ref. 40 CFR 63.4480 et seq.)</u>
<u>Subpart DDDD</u>	<u>National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products (ref. 40 CFR 63.2230 et seq.)</u>		

<u>Subpart OOOO</u>	<u>National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products (ref. 40 CFR 63.4680 et seq.)</u>	<u>Subpart CCCCC</u>	<u>National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks (ref. 40 CFR 63.7280 et seq.)</u>
<u>Subpart RRRR</u>	<u>National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture (ref. 40 CFR 63.4880 et seq.)</u>	<u>Subpart DDDDD</u>	<u>National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (ref. 40 CFR 63.7480 et seq.)</u>
<u>Subpart SSSS</u>	<u>National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil (ref. 40 CFR 63.5080 et seq.)</u>	<u>Subpart EEEEE</u>	<u>National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries (ref. 40 CFR 63.7680 et seq.)</u>
<u>Subpart TTTT</u>	<u>National Emission Standards for Hazardous Air Pollutants for Leather Tanning and Finishing Operations (ref. 40 CFR 63.5280 et seq.)</u>	<u>Subpart FFFFF</u>	<u>National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities (ref. 40 CFR 63.7780 et seq.)</u>
<u>Subpart UUUU</u>	<u>National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing (ref. 40 CFR 63.5480 et seq.)</u>	<u>Subpart GGGGG</u>	<u>National Emission Standards for Hazardous Air Pollutants: Site Remediation (ref. 40 CFR 63.7880 et seq.)</u>
<u>Subpart VVVV</u>	<u>National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing (ref. 40 CFR 63.5680 et seq.)</u>	<u>Subpart HHHHH</u>	<u>National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing (ref. 40 CFR 63.7980 et seq.)</u>
<u>Subpart WWWW</u>	<u>National Emission Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production (ref. 40 CFR 63.5780 et seq.)</u>	<u>Subpart IIIII</u>	<u>National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants (ref. 40 CFR 63.8180 et seq.)</u>
<u>Subpart XXXX</u>	<u>National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing (ref. 40 CFR 63.5980 et seq.)</u>	<u>Subpart JJJJJ</u>	<u>National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing (ref. 40 CFR 63.8380 et seq.)</u>
<u>Subpart YYYY</u>	<u>National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines (ref. 40 CFR 63.6080 et seq.)</u>	<u>Subpart KKKKK</u>	<u>National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing (ref. 40 CFR 63.8530 et seq.)</u>
<u>Subpart ZZZZ</u>	<u>National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (ref. 40 CFR 63.6580 et seq.)</u>	<u>Subpart LLLLL</u>	<u>National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.8680 et seq.)</u>
<u>Subpart AAAAA</u>	<u>National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants (ref. 40 CFR 63.7080 et seq.)</u>	<u>Subpart MMMMM</u>	<u>National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations (ref. 40 CFR 63.8780 et seq.)</u>
<u>Subpart BBBBB</u>	<u>National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing (ref. 40 CFR 63.7180 et seq.)</u>		

Subpart NNNNN National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production (ref. 40 CFR 63.8980 et seq.)

Subpart PTTTT National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands (ref. 40 CFR 63.9280 et seq.)

Subpart QQQQQ National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities (ref. 40 CFR 63.9480 et seq.)

Subpart RRRRR National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing (ref. 40 CFR 63.9580 et seq.)

Subpart SSSSS National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing (ref. 40 CFR 63.9780 et seq.)

Subpart TTTTT National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining (ref. 40 CFR 63.9880 et seq.)

Appendix A Test Methods (ref. 40 CFR 63, Appendix A)

Appendix B Sources Defined for Early Reduction Provisions (ref. 40 CFR 63, Appendix B)

Appendix C Determination of the Fraction Biodegraded in a Biological Treatment Unit (ref. 40 CFR 63, Appendix C)

Appendix D Alternative Validation procedure for EPA Waste and Wastewater Methods (ref. 40 CFR 63, Appendix D)

Appendix E Monitoring Procedures for Non-thoroughly Mixed Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions (ref. 40 CFR 63, Appendix E)

- (b) Exceptions to 40 CFR Part 63 adoption by reference.
- (i) The term "administrator" in 40 CFR Part 63 includes the Executive Director of the Agency.
- (ii) The following subparts of 40 CFR Part 63 are not adopted by reference:
 - (A) Subpart C, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List;
 - (B) Subpart E, Approval of State Programs and Delegation of Federal Authorities; and

(C) Subpart M, National Perchloroethylene Emission Standards for Dry Cleaning Facilities - as it applies to nonmajor sources.

(6) **Consolidated requirements for the synthetic organic chemical manufacturing industry.** (SOCMI) 40 CFR Part 65, as in effect on July 1, 2002, is adopted by reference.

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 WSR 01-05-055, filed 2/15/01, effective 3/18/01)

SWCAA 400-099 Per Capita Fees

[Statutory Authority: Chapter 70.94.093 RCW. Original Board adoption - 99-07-030 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01]

Each component city or town and county shall pay such proportion of the supplemental income to the Agency 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 SWCAA. 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 SWCAA. In addition, a combination of the two methods is allowable provided that such combination is shared at 50 percent each. The SWCAA 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.))~~ 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))~~ State of Washington Office of Financial Management (OFM) population estimate. The "per capita" assessment has been established at the following rates:

<u>Assessment Rate</u>	<u>Effective Date</u>
<u>\$0.30 per citizen</u>	<u>April 11, 1999</u>
<u>\$0.31 per citizen</u>	<u>January 1, 2006</u>
<u>\$0.32 per citizen</u>	<u>January 1, 2007</u>
<u>\$0.33 per citizen</u>	<u>January 1, 2008</u>

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 WSR 03-21-045, filed 10/9/03, effective 11/9/03)

SWCAA 400-100 Registration Requirements

[Statutory Authority: Chapter 70.94.141 RCW, 70.94.151 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; 99-07-032 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

The registration program is intended to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify "source" compliance with applicable air pollution requirements.

(1) **Applicability.** All "sources" or emission units shall be registered with the Agency in accordance with this section as set forth in RCW 70.94.151 except the following:

(a) Emission units or activities exempted under SWCAA 400-101; and

(b) "Stationary sources" required to apply for, or to maintain, an operating permit under Chapter 173-401 WAC.

(2) **General requirements.**

(a) The owner or operator of a "source" for which registration is required shall initially register the "source" with the Agency. A unique identification number shall be assigned to each "source" and a separate registration fee shall be provided for each 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 in SWCAA 400-101.

(b) The owner or operator of a registered "source" shall submit annual reports to the Agency. Each report shall contain information as may be required by the Agency concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. Relevant information may include air pollution requirements established by rule, regulatory order or ordinance pursuant to Chapter 70.94 RCW. The owner, operator, or their designated representative shall sign the annual report for each "source," and be responsible for the accuracy, completeness, and timely submittal of all required information.

(3) **Registration fees.** An annual registration fee shall be paid before the Control Officer may register any emission unit~~((, an annual registration fee of \$75.00 for each emission unit, plus \$39 per ton of each criteria air pollutant and VOC (combined), plus \$10 per ton of total toxic air pollutants greater than 1.0 tons, shall be paid))~~. Annual registration fees cover the period from July 1 through June 30. "Sources" or emission units that permanently shutdown prior to January 1 of the current registration period shall not be liable for registration fees. This provision does not apply to "temporary sources." Operation of equipment subject to registration without payment of applicable registration fees shall be considered a violation of this section. Annual registration fees shall be paid according to the following schedule:

<u>Emission Unit Fee</u>	<u>Pollution Emission Fee</u>	<u>Effective Date</u>
<u>\$75 per emission unit</u>	<u>\$39/ton of criteria pollutant emission,</u> <u>\$10/ton of toxic air pollutant emission</u>	<u>July 1, 1999</u>
<u>\$80 per emission unit</u>	<u>\$41/ton of criteria pollutant emission,</u> <u>\$15/ton of toxic air pollutant emission</u>	<u>January 1, 2006</u>

<u>\$85 per emission unit</u>	<u>\$43/ton of criteria pollutant emission,</u> <u>\$20/ton of toxic air pollutant emission</u>	<u>January 1, 2007</u>
<u>\$90 per emission unit</u>	<u>\$45/ton of criteria pollutant emission,</u> <u>\$25/ton of toxic air pollutant emission</u>	<u>January 1, 2008</u>

Exceptions:

(a) An annual registration fee of \$50.00 shall be charged to each gasoline transport tank.

(b) 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.

(c) "Stationary sources" subject to the Operating Permit Program, as defined in RCW 70.94.030(17), shall pay an operating permit fee in accordance with SWCAA 400-103.

(4) **Delinquent registration fees.** Annual registration fees that are unpaid after June 30 for the effective year shall be considered delinquent. Air discharge permits and Orders of Approval for "sources" with delinquent registration fees may be invalidated by the Control Officer. The Agency shall notify the owner or operator of a "source" by certified letter prior to taking action to invalidate affected air discharge permits and Orders of Approval. Notification shall be provided in such a manner as to allow the delinquency to be remedied prior to invalidation.

(5) **Reporting requirements for transfer or permanent shutdown of registered "sources."**

(a) The registered owner or operator shall report the transfer of ownership or permanent shutdown of a registered "source" to the Agency within ninety (90) days of shutdown or transfer. The report shall contain the following information:

- (i) Legal name of the registered owner or operator;
- (ii) Effective date of the shutdown or transfer;
- (iii) Comprehensive description of the affected emission units; and
- (iv) Name and telephone number of the registered owner's or operator's authorized representative.

(b) Any party that assumes ownership and/or operational control of a registered "source" shall file a written report with the Agency within ninety (90) days of completing transfer of ownership and/or assuming operational control. The report shall contain the following information:

- (i) Legal name of the company or individual involved in the transfer;
- (ii) Effective date of the transfer;
- (iii) Description of the affected emission units; and
- (iv) Name and telephone number of the owner's or operator's authorized representative.

(c) In the case of a permanent shutdown, process and air 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).

(6) 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) Agency 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 Agency personnel who present appropriate credentials and request entry for the purpose of inspection.

(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 Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 03-21-045, filed 10/9/03, effective 11/9/03)

SWCAA 400-109 Air Discharge Permit Applications

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.152 RCW. Original Board adoption 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

(1) **Purpose.** An air discharge permit application is the document used by the Agency to record and track requests from individual "stationary sources," registered and non-registered, for the purpose of obtaining information regarding proposed changes or activities at a "stationary source." Confidential information shall be identified as set forth in SWCAA 400-270.

(2) Applicability.

(a) An air discharge permit application shall be submitted for all new installations, modifications, changes, and alterations to process and emission control equipment consistent with the definition of "new source." The application must be submitted and an air discharge permit must be issued or written confirmation of exempt status must be received before the proposed installations, modifications, changes, or alterations may begin actual construction. Activities that typically require the submission of a permit application include, but are not limited to, the following:

- (i) New construction or installation;
- (ii) Change of existing air discharge permit conditions or terms (including Title V opt-out requests - SWCAA 400-091);
- (iii) Review of existing or installed equipment operating without prior approval;
- (iv) Modification, alteration or replacement of existing process or control equipment;
- (v) Relocation of existing equipment;

(vi) Review of existing equipment with an expired or lapsed approval or registration;

(vii) Review of case-by-case RACT, BACT, MACT or other similar determination.

(b) Submittal of an air discharge permit application shall not automatically impose review requirements pursuant to SWCAA 400-110.

(c) "Stationary sources" subject to the PSD program (WAC 173-400-141) shall submit a PSD application to Ecology for air pollutants subject to PSD permitting, and submit a permit application to SWCAA for air pollutants that are not subject to PSD permitting.

(d) The owner or operator of any "new source" that meets the exemption criteria specified in SWCAA 400-101 may provide written notification to SWCAA in lieu of a permit application. The Agency will review each notification, and provide written confirmation of exempt status to the owner or operator of the affected "new source" within 30 days of receiving a complete notification. To be considered complete, written notification shall, at a minimum, contain the following information:

- (i) Name and location of "stationary source";
- (ii) Description of primary processes at the "stationary source";
- (iii) Description of emission units at the "stationary source"; and
- (iv) Estimated air contaminant emissions from "stationary source" operations.

Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" shall not begin prior to that time. No further action is required from "stationary sources" deemed to be exempt. However, if the Agency determines that the "new source" does not meet the exemption criteria specified in SWCAA 400-101, an air discharge permit application shall be submitted pursuant to this section.

(3) **Fees.** Before the Agency may review a permit application, the applicant shall submit all applicable fees as detailed in the following paragraphs. [Total Application Fee = Filing Fee + Legal Notice Fee (if applicable) + Permit Application Review Fee/Table A + Additional Review Fee/Table B (if applicable) + Major NSR Review Fee/Table C (if applicable)]

Filing Fee

A filing fee of ((\$300.00 and a review fee, as identified in Table A)) \$500.00 shall be submitted ((by the applicant. If offsetting emission reductions or other types of review identified in Table B must be performed by the Agency as a result of the proposed installation, alteration, or modification, an additional review fee shall be paid as described in Table B. (Total Fee = Filing Fee + Review Fee [Table A] + Additional Review Fee [Table B])) for each application.

Legal Notice Fee

An applicant who submits an Air Discharge Permit application that requires a Legal Notice to the general public through publication in the newspaper has the option of either paying a flat fee of \$160.00 at the time of submittal or being invoiced later. If the applicant chooses to be invoiced later, the total fee will be the actual cost of publication plus a

\$100.00 fee to compensate for the staff time required to prepare, mail and invoice for the public notice.

Permit Application Review Fee

A permit application review fee shall be paid for each permit application. The applicable permit application review fee for each permit application shall be determined from Table A based on the primary emission unit or activity of the proposed new, modified or altered "stationary source." Permit application review fees based on emissions are to utilize actual or proposed allowable emissions, after controls, as supported by test data or emission factors, not potential to emit. ((Other)) Permit application review fees ((as noted in the fee tables are)) based on equipment capacity or size are to utilize the design capacities of affected equipment. ((Where a "stationary source" may fall under multiple categories in Table A, only one fee per application shall apply. In these cases, the fee determination shall be based on the primary emission unit or activity of the new, modified or altered "stationary source.")) If the staff time required to review a permit application exceeds the number of work hours associated with the applicable review fee specified in Table A, the applicant will be invoiced for each additional work hour at the rate of \$70.00 per hour.

Additional/Major NSR Review Fees

If additional types of review as identified in Tables B and C must be performed by the Agency as a result of the proposed installation, alteration or modification, the applicant shall pay the applicable review fee as specified in those Tables. The review fees identified in Tables B and C are cumulative.

**TABLE A
Permit Application Review Fees**

	<u>Equipment/Activity</u>	<u>Associated Work Hours</u>	<u>Review Fee</u>
i.	Fuel burning equipment (Million Btu/hr heat input @ design capacity):		
	Less than 5	<u>8</u>	\$ ((300.00)) <u>600.00</u>
	5 or more but less than 10	<u>10</u>	((400.00)) <u>700.00</u>
	10 or more but less than 30	<u>12</u>	((550.00)) <u>850.00</u>
	30 or more but less than 50	<u>14</u>	((700.00)) <u>1,000.00</u>
	50 or more but less than 100	<u>17</u>	1,200.00
	100 or more but less than 250	<u>35</u>	2,500.00
	250 or more but less than 500	<u>57</u>	4,000.00
	500 or more	<u>85</u>	6,000.00
	Change in fuel type	One half of the applicable fee listed above	
ii.	Discharge from control equipment or from uncontrolled process equipment (Actual Cubic Feet per Minute - ACFM):		
	Less than 50	<u>8</u>	\$ ((300.00)) <u>600.00</u>
	50 or more but less than 5,000	<u>10</u>	((400.00)) <u>700.00</u>

	<u>Equipment/Activity</u>	<u>Associated Work Hours</u>	<u>Review Fee</u>
	5,000 or more but less than 20,000	<u>11</u>	((500.00)) <u>800.00</u>
	20,000 or more but less than 50,000	<u>12</u>	((600.00)) <u>900.00</u>
	50,000 or more but less than 100,000	<u>13</u>	((700.00)) <u>950.00</u>
	100,000 or more but less than 250,000	<u>14</u>	1,000.00
	250,000 or more but less than 500,000	<u>28</u>	2,000.00
	500,000 or more	<u>57</u>	4,000.00
iii.	Refuse burning equipment (Incinerators) (Tons/day capacity):		
	Less than 0.5	<u>10</u>	\$ ((400.00)) <u>700.00</u>
	0.5 or more but less than 5	<u>11</u>	((500.00)) <u>800.00</u>
	5 or more but less than 12	<u>14</u>	1,000.00
	12 or more but less than 50	<u>42</u>	3,000.00
	50 or more	<u>85</u>	6,000.00
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	<u>8</u>	\$ ((300.00)) <u>600.00</u>
	10,000 or more but less than 40,000	<u>14</u>	((700.00)) <u>1,000.00</u>
	40,000 or more but less than 100,000	<u>21</u>	((1,000.00)) <u>1,500.00</u>
	100,000 or more	<u>28</u>	2,000.00
v.	Gasoline dispensing facilities:		
	Stage I	<u>8</u>	\$ ((300.00)) <u>600.00</u>
	Stage II	<u>10</u>	((400.00)) <u>700.00</u>
	Stages I & II, combined	<u>11</u>	((500.00)) <u>800.00</u>
	Toxics review for gasoline facility	<u>21</u>	1,500.00
	Stage II removal	<u>8</u>	((300.00)) <u>600.00</u>
vi.	Other:	\$200.00 ((/)) per ton of emission	((of emission))
	(Not classified in Subsection i., ii., iii., iv. or v. above)		
vii.	Toxic air contaminants	(((\$200.00 up to one ton and \$100.00 for each additional ton))	<u>\$200.00 per ton of emission</u>
viii.	Complex stationary source or modification:	<u>85</u>	\$6,000.00
ix.	Synthetic minor application (including, but not limited to: Title V, HAP):	<u>35</u>	((Not to exceed \$5,000.00)) <u>\$2,500.00</u>
x.	Particulate matter and fugitive emissions from rock crushing, material transfer and ship loading (Emissions - tons per year):		

<u>Equipment/Activity</u>	<u>Associated Work Hours</u>	<u>Review Fee</u>
Less than or equal to 10	<u>8</u>	\$ ((300.00)) <u>600.00</u>
More than 10 but less than or equal to 50	<u>14</u>	((700.00)) <u>1,000.00</u>
More than 50 but less than or equal to 100	<u>21</u>	((1,000.00)) <u>1,500.00</u>
More than 100 but less than 250	<u>35</u>	<u>2,500.00</u>
250 or greater	<u>85</u>	<u>6,000.00</u>
xi. Minor modifications to existing permit conditions:	<u>8</u>	\$ ((300.00)) <u>600.00</u>
xii. Temporary, substitute, or emergency Sources		((500.00))
	<u>Small</u> <u>11</u>	\$ <u>800.00</u>
	<u>Large</u> <u>21</u>	<u>1,500.00</u>
xiii. Dry cleaner:	<u>8</u>	\$ ((300.00)) <u>600.00</u>
xiv. Diesel engine generators/pumps (Aggregate horsepower rating):		
Less than 100	<u>8</u>	\$ ((300.00)) <u>600.00</u>
100 or more but less than 500	<u>10</u>	((400.00)) <u>700.00</u>
500 or more but less than 2,000	<u>14</u>	((700.00)) <u>1,000.00</u>
2,000 or more but less than 5,000	<u>21</u>	<u>1,500.00</u>
5,000 or more but less than 10,000	<u>42</u>	<u>3,000.00</u>
10,000 or more	<u>85</u>	<u>6,000.00</u>
xv. Crematory/small incinerators/small flares:	<u>10</u>	\$ ((400.00)) <u>700.00</u>
xvi. Gluing/flow coating operations without active ventilation:	<u>11</u>	\$ ((500.00)) <u>800.00</u>
xvii. Soil remediation:	<u>11</u>	\$ ((500.00)) <u>800.00</u>
xviii. Composting Facilities (Average material throughput - tons per day):		
Less than 50	<u>8</u>	\$ ((300.00)) <u>600.00</u>
50 or more but less than 100	<u>14</u>	((700.00)) <u>1,000.00</u>
100 or more but less than 200	<u>21</u>	((1,200.00)) <u>1,500.00</u>
200 or more but less than 500	<u>42</u>	<u>3,000.00</u>
500 or more	<u>85</u>	<u>6,000.00</u>
xix. Coffee roasters:	<u>10</u>	\$ ((400.00)) <u>700.00</u>
xx. Emergency Application:	Double normal application and review fee	

TABLE B
~~((Other))~~ Additional Review Fees

<u>Equipment/Activity</u>	<u>Associated Work Hours</u>	<u>Review Fee</u>
xxi. Emission offset analysis or bubble:	<u>10</u>	\$ ((400.00)) <u>700.00</u>
xxii. Emission reduction credit (ERC) application: (Deposit or withdrawal)	<u>10</u>	\$ ((400.00)) <u>700.00</u>
xxiii. State environmental policy act (SEPA) - lead agency:		
	<u>Minor</u> <u>14</u>	\$ <u>1,000.00</u>
	<u>Major</u> <u>35</u>	<u>2,500.00</u>
xxiv. Environmental impact statement (EIS) review:		((500.00))
	<u>Minor</u> <u>11</u>	\$ <u>800.00</u>
	<u>Major</u> <u>28</u>	<u>2,000.00</u>
xxv. RACT/BACT/MACT/BART/LAER determination:		\$ <u>70.00/hr</u>
xxvi. Variance request:	<u>11</u>	\$ ((500.00)) <u>800.00</u>
xxvii. Review of ambient impact analysis:		\$ <u>70.00/hr</u>
xxviii. Review of projects under RCW 70.105D.090:		\$ <u>70.00/hr</u>
xxix. Review of Ecology agreed orders and consent orders pursuant to RCW 70.105D.090(1):		\$ <u>70.00/hr</u>

TABLE C
Major NSR Review Fees

<u>Equipment/Activity</u>	<u>Associated Work Hours</u>	<u>Review Fee</u>
xxx. Plantwide applicability limitations:	<u>142</u>	\$ <u>10,000.00</u> ((+\$70/hr for excess cost to Agency))
xxxi. Clean unit/pollution control project designations:	<u>71</u>	\$ <u>5,000.00</u> ((+\$70/hr for excess cost to Agency))

(4) **Agency actions.** Each complete air discharge permit application shall result in the issuance of an air discharge permit or other applicable order or confirmation of exempt status by the Agency. The requirements of SEPA (State Environmental Policy Act) shall be complied with for each air discharge permit application. Demonstration of completion of an environmental checklist as provided in WAC 197-11 shall be submitted with each air discharge permit application. If a SEPA determination has been issued for the proposed activity by another permitting agency, the applicant need only submit a copy of that agency's SEPA determination. Issuance of regulatory orders for all air discharge permit applications shall be consistent with the requirements of SWCAA 400-110.

(5) **Withdrawn or exempt applications.**

(a) An air discharge permit application may be withdrawn by the applicant at any time prior to issuance of a reg-

ulatory order. The applicant must provide a written and signed request to the Agency indicating their desire to withdraw the application, and certification that the proposed equipment or modification will not be installed, constructed, or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, a permit application may be determined to be exempt from the requirements of SWCAA 400-100 and 400-110 if it meets the exemption criteria provided in SWCAA 400-101. The Agency shall provide written notification to the applicant for all applications that are determined to be exempt. Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" shall not begin prior to that time.

(c) 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 Agency for review of the 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.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Southwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 03-21-045, filed 10/9/03, effective 11/9/03)

SWCAA 400-115 Standards of Performance for New Sources

[Statutory Authority: Chapter 70.94.141 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; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-028 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

(1) **Adoption by reference.** The standards of performance for "new sources" presented in 40 CFR Part 60 and appendices as in effect on July 1, (~~2002~~) 2005 are adopted by reference. The term "Administrator" in 40 CFR Part 60 shall mean the Administrator of EPA and the Control Officer of the Agency. Exceptions to this adoption by reference are listed in subsection (2).

The following list of affected subparts is provided for informational purposes:

- Subpart A General provisions (ref. 40 CFR 60.1 et seq.)
- Subpart D Fossil fuel-fired steam generators for which construction is 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.)

- 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 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 Dc Small industrial-commercial-institutional steam generating units (ref. 40 CFR 60.40c et seq.)
- Subpart E Incinerators (ref. 40 CFR 60.50 et seq.)
- Subpart Ea Municipal waste combustors for which construction commenced after December 20, 1989 and on or before September 20, 1994 (ref. 40 CFR 60.50a et seq.)
- Subpart Eb Large Municipal waste combustors for which construction is commenced after September 20, 1994 or for which Modification of reconstruction is commenced after June 19, 1996 (ref. 40 CFR 60.50b et seq.)
- Subpart Ec Hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996 (ref. 40 CFR 60.50c et seq.)
- Subpart F Portland cement plants (ref. 40 CFR 60.60 et seq.)
- Subpart G Nitric acid plants (ref. 40 CFR 60.70 et seq.)
- Subpart H Sulfuric acid plants (ref. 40 CFR 60.80 et seq.)
- Subpart I Hotmix asphalt facilities (ref. 40 CFR 60.90 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 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 Ka	Storage vessels for petroleum liquids for which construction, reconstruction or modification commenced after May 18, 1978, and prior to July 23, 1984 (ref. 40 CFR 60.110a et seq.)	Subpart AAa	Steel plants: Electric arc furnaces and argon-oxygen decarburization vessels (ref. 40 CFR 60.270a 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 BB	Kraft pulp mills (ref. 40 CFR 60.280 et seq.)
Subpart L	Secondary lead smelters (ref. 40 CFR 60.120 et seq.)	Subpart CC	Glass manufacturing plants (ref. 40 CFR 60.290 et seq.)
Subpart M	Brass and bronze ingot production plants (ref. 40 CFR 60.130 et seq.)	Subpart DD	Grain elevators (ref. 40 CFR 60.300 et seq.)
Subpart N	Iron and steel plants (ref. 40 CFR 60.140 et seq.)	Subpart EE	Industrial surface coating: metal furniture (ref. 40 CFR 60.310 et seq.)
Subpart Na	Secondary emissions from basic oxygen process steel making facilities (ref. 40 CFR 60.140 et seq.)	Subpart GG	Stationary gas turbines (ref. 40 CFR 60.330 et seq.)
Subpart O	Sewage treatment plants (ref. 40 CFR 60.150 et seq.)	Subpart HH	Lime manufacturing plants (ref. 40 CFR 60.340 et seq.)
Subpart P	Primary copper smelters (ref. 40 CFR 60.160 et seq.)	Subpart KK	Lead-acid battery plants (ref. 40 CFR 60.370 et seq.)
Subpart Q	Primary zinc smelters (ref. 40 CFR 60.170 et seq.)	Subpart LL	Metallic mineral processing plants (ref. 40 CFR 60.380 et seq.)
Subpart R	Primary lead smelters (ref. 40 CFR 60.180 et seq.)	Subpart MM	Automobile and light duty truck surface coating operations (ref. 40 CFR 60.390 et seq.)
Subpart S	Primary aluminum reduction plants (ref. 40 CFR 60.190 et seq.)	Subpart NN	Phosphate rock plants (ref. 40 CFR 60.400 et seq.)
Subpart T	Phosphate fertilizer industry: Wet process phosphoric acid plants (ref. 40 CFR 60.200 et seq.)	Subpart PP	Ammonium sulfate manufacture (ref. 40 CFR 60.420 et seq.)
Subpart U	Phosphate fertilizer industry: Superphosphoric acid plants (ref. 40 CFR 60.210 et seq.)	Subpart QQ	Publication rotogravure printing (ref. 40 CFR 60.430 et seq.)
Subpart V	Phosphate fertilizer industry: Diammonium phosphate plants (ref. 40 CFR 60.220 et seq.)	Subpart RR	Pressure sensitive tape and label surface coating operations (ref. 40 CFR 60.440 et seq.)
Subpart W	Phosphate fertilizer industry: Triple superphosphate plants (ref. 40 CFR 60.230 et seq.)	Subpart SS	Industrial surface coating: Large appliances (ref. 40 CFR 60.450 et seq.)
Subpart X	Phosphate fertilizer industry: Granular triple superphosphate storage facilities (ref. 40 CFR 60.240 et seq.)	Subpart TT	Industrial surface coating: Metal coils (ref. 40 CFR 60.460 et seq.)
Subpart Y	Coal preparation plants (ref. 40 CFR 60.250 et seq.)	Subpart UU	Asphalt processing and asphalt roofing manufacture (ref. 40 CFR 60.470 et seq.)
Subpart Z	Ferroalloy production facilities (ref. 40 CFR 60.260 et seq.)	Subpart VV	Synthetic Organic Chemical Manufacturing Industry equipment leaks (VOC) (ref. 40 CFR 60.480 et seq.)
Subpart AA	Steel plants: Electric arc furnaces (ref. 40 CFR 60.270 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 AAAA	Small municipal waste combustion units constructed after August 30, 1999, or modified or reconstructed after June 6, 2001 (ref. 40 CFR 60.1000 et seq.) (See SWCAA 400-050(5) for rules regulating small municipal waste combustion units constructed on or before August 30, 1999)
Subpart GGG	Petroleum refineries - compressors and fugitive emission sources (ref. 40 CFR 60.590 et seq.)	Subpart CCCC	Commercial and industrial solid waste incinerators constructed after November 30, 1999; or modified or reconstructed on or after June 1, 2001 (ref. 40 CFR 60.2000 et seq.) (See SWCAA 400-050(4) for rules regulating commercial and industrial solid waste incinerators constructed on or before November 30, 1999)
Subpart HHH	Synthetic fiber production facilities (ref. 40 CFR 60.600 et seq.)	Subpart HHHH	<u>Emission Guidelines and Compliance Times for Coal-fired Electric Steam Generating Units (ref. 40 CFR 60.4101 et seq.)</u>
Subpart III	VOC emissions from Synthetic Organic Chemical Manufacturing Industry air oxidation unit processes (ref. 40 CFR 60.610 et seq.)	Appendix A	Test methods (ref. 40 CFR 60, Appendix A)
Subpart JJJ	Petroleum dry cleaners (ref. 40 CFR 60.620 et seq.)	Appendix B	Performance specifications (ref. 40 CFR 60, Appendix B)
Subpart KKK	Equipment leaks of VOC from onshore natural gas processing plants (ref. 40 CFR 60.630 et seq.)	Appendix C	Determination of emission rate change (ref. 40 CFR 60, Appendix C)
Subpart LLL	Onshore natural gas processing; SO2 emissions (ref. 40 CFR 60.640 et seq.)	Appendix D	Required emission inventory information (ref. 40 CFR 60, Appendix D)
Subpart NNN	VOC emissions from Synthetic Organic Chemical Manufacturing Industry distillation operations (ref. 40 CFR 60.660 et seq.)	Appendix E	Quality assurance procedures (ref. 40 CFR 60, Appendix E)
Subpart OOO	Nonmetallic mineral processing plants (ref. 40 CFR 60.670 et seq.)	Appendix F	Removable label and owner's manual (ref. 40 CFR 60, Appendix F)
Subpart PPP	Wool fiberglass insulation manufacturing plants (ref. 40 CFR 60.680 et seq.)	Appendix G	
Subpart QQQ	VOC emissions from petroleum refinery waste water emissions (ref. 40 CFR 60.690 et seq.)	Appendix H	
Subpart RRR	Volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes (ref. 40 CFR 60.700 et seq.)	Appendix I	
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 UUU	Calciners and dryers in mineral industries (ref. 40 CFR 60.730 et seq.)		
Subpart VVV	Polymeric coating of supporting substrates facilities (ref. 40 CFR 60.740 et seq.)		
Subpart WWW	Municipal solid waste landfills constructed, reconstructed or modified on or after May 30, 1991 (See SWCAA 400-070(8) for rules regulating MSW landfills constructed or modified before May 30, 1991) (ref. 40 CFR 60.750 et seq.)		

Note: Pursuant to RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC) under WAC 463-39-115.

(2) **Exceptions.** The following sections and subparts of 40 CFR 60 are not adopted by reference:

- (a) 40 CFR 60.5 Determination of construction or modification
- (b) 40 CFR 60.6 Review of plans
- (c) Subpart B Adoption and Submittal of State Plans for Designated Facilities (ref. 40 CFR 60.20 et seq.)
- ~~((e))~~ (d) Subpart C Emission guidelines and compliance times (ref. 40 CFR 60.30 et seq.)

- (((d))) (e) Subpart Cb Emissions guidelines and compliance times for large municipal waste combustors that are constructed on or before September 20, 1994 (ref. 40 CFR 60.b et seq.)
- (((e))) (f) Subpart Cc Emission guidelines and compliance times for municipal solid waste landfills (ref. 40 CFR 60.30c et seq.)
- (((f))) (g) Subpart Cd Emissions guidelines and compliance times for sulfuric acid production units (ref. 40 CFR 60.30d et seq.)
- (((g))) (h) Subpart Ce Emission guidelines and compliance times for hospital/medical/infectious waste incinerators (ref. 40 CFR 60.30e et seq.)
- (((h))) (i) Subpart BBBB Emission guidelines and compliance times for small municipal waste combustion units constructed on or before August 30, 1999 (ref. 40 CFR 60.1500 et seq.)
Note: These sources are regulated under SWCAA 400-050(4)
- (((i))) (j) Subpart DDDD Emissions guidelines and compliance times for commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999 (ref. 40 CFR 60.2500 et seq.)
Note: These sources are regulated under SWCAA 400-050(4)

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 Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 05-23-112
 PERMANENT RULES
 COLUMBIA BASIN COLLEGE**

[Filed November 18, 2005, 10:49 a.m., effective December 19, 2005]

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

Purpose: Purpose of the proposed changes is to bring clarity to existing rules, update titles and clarify definitions, and designate authority to the vice-president for administration.

Citation of Existing Rules Affected by this Order: Amending WAC 132S-50-010 through 132S-50-280, college facilities.

Statutory Authority for Adoption: RCW 28B.50.140(7).
 Adopted under notice filed as WSR 05-17-037 on August 8, 2005.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 21, Repealed 0.

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

Date Adopted: November 14, 2005.

Lee R. Thornton
 President

AMENDATORY SECTION (Amending Order 82-1, filed 10/11/82)

WAC 132S-50-010 Purpose. Columbia Basin College exists as a facility which must provide for the needs of a community as expressed in the geographical boundaries of Benton and Franklin counties. Beyond its initial charge of education and training of people, there rests an additional responsibility to provide maximum use of its physical facilities for institutional and community use. It shall be the policy of Columbia Basin College to offer its physical facilities for group use on a priority basis as follows:

- (1) Instructional activities:
- (2) Student activities:
- (3) Community activities.

Each group must abide by rules and regulations of use which shall be determined by the administration. Instructional and student groups must make an application in advance of the intended date of use to avoid scheduling conflicts. Community groups must make application for facility use and (~~must~~) should make such application at least thirty days prior to the intended date of use.

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 Order 82-1, filed 10/11/82)

WAC 132S-50-020 Regulations regarding use of college facilities. The specific use of school facilities shall be governed by the regulations consistent with the intent of the policy. Primary consideration shall be given at all times to activities specifically related to the college's mission, and no

arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching, research or public service programs. These regulations shall be as follows:

(1) Requests for facility use must be submitted by means of a facility use form to the business office of Columbia Basin College.

(2) A ~~((paid))~~ Columbia Basin College employee must be assigned to the building during the scheduled time the facility is to be used.

(3) The administration reserves the right to deny or cancel any application for use when such use, or meeting, may in any way be prejudicial to the best interest of the school or for which satisfactory sponsorship is not provided. Review of such action may be carried to the Board of Trustees. The college may deny or cancel use of its facilities to any individual, group or organization if the requested use would:

(1) interfere or conflict with the college's instructional, student services, or support programs,

(2) interfere with the free flow of pedestrian or vehicular traffic on campus;

(3) involve illegal activity;

(4) create a hazard or result in damage to college facilities; or

(5) create undue stress on college resources.

(4) Applications for college facility use which may be considered a major policy decision not fully covered by this existing policy statement may be referred directly to the administration for disposition. Any individual or group granted permission to use college facilities shall agree in advance to abide by all college rules and regulations. The college reserves the right to deny use of college facilities to any individual or group whose past conduct indicates a likelihood that college rules and regulations will not be obeyed. The college may also deny use to a requesting individual or organization which has used the facilities in the past and has damaged college property, left college buildings and grounds in excessive disorder, or failed to cooperate with college staff regarding use of the facilities.

(5) Rental charges shall be levied per twenty-four hour setting on the following basis:

AMENDATORY SECTION (Amending Order 82-1, filed 10/11/82)

- (a) Instructional use - Wherein facility is used for instructionally related activities, either by the college or by another post secondary institution NO CHARGE
- (b) Student use - Where the use has been scheduled through the student activities office and is primarily for an activity that directs itself toward the benefit of Columbia Basin College ASB card holders NO CHARGE
- (c) Community activities - All other uses which are noninstructional and nonstudent sponsored:

Category I - Use which results in a community benefit and is usually arranged for by a nonprofit civic organization Charge to be determined by the ~~((Business Office))~~ vice president of administration to cover expenses.

Category II - Use by non profit community groups (~~for a private or profit return~~) The schedule for such rentals shall be as follows:

(1)	((Little)) Theater	\$125	<u>Plus additional set up fees</u>
(2)	((Little)) Theater (special equipment)	\$150	<u>Plus additional set up fees</u>
(3)	Gym	<u>\$100-500</u>	<u>Plus additional set up fees</u>
(4)	<u>Soccer Fields/ Baseball Fields</u>	<u>\$300-500</u>	<u>Plus additional set up fees</u>
(5)	((Lounge))	(\$75)	
(5)	Lecture Room	\$30	<u>Plus additional set up fees</u>
(6)	Classroom	\$15	<u>Plus additional set up fees</u>
(7)	<u>Conference Room</u>	<u>\$30-300/day</u>	<u>Plus additional set up fees</u>
(8)	<u>HUB</u>	<u>\$75</u>	<u>Plus additional set up fees</u>
(9)	<u>Byron Gjerde Multipurpose Ctr</u>	<u>TBD by ASCBC</u>	
(10)	<u>Byron Gjerde Atrium Area</u>	<u>TBD by ASCBC</u>	

The base rate for facilities will be adjusted periodically only as allowed by law. The college reserves the right to make pricing changes without prior written notice, except that such price changes shall not apply to facility use agreements already approved in writing by the administration.

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 Order 82-1, filed 10/11/82)

WAC 132S-50-024 Commercial activities. The primary mission of institutions of higher education is the creation and dissemination of knowledge. Institutions of higher education must be mindful that in providing goods and services for fees, they may be competing with local private businesses. To promote the mission of Columbia Basin College, it is often necessary to engage in commercial activities that provide goods and services that meet special needs of students, faculty, staff and members of the public who participate in college activities and events. The college shall comply with chapter 28B.63 RCW, which establishes standards

for colleges to follow in conducting commercial activities. (RCW 28B.63.010)

Columbia Basin College may engage in the providing of goods, services, or facilities for a fee only when such are directly and substantially related to the education mission of the college. Fees charged for goods, services, and facilities shall reflect their full direct and indirect costs, including overhead, and shall take into account the price of such items in the private marketplace.

In general, the facilities of the college shall not be rented to or used by, private or commercial organizations or associations, nor shall the facilities be rented to persons or organizations conducting programs for private gain. Columbia Basin College facilities will not be used for commercial solicitation, advertising, or promotional activities except when such activities clearly serve educational objectives, including but not limited to, display of books of interest to the academic or career oriented community or the display or demonstration of technical or research equipment, extracurricular programs, including food services, athletic and recreational programs, and performing arts programs, and when such commercial activities are related to educational objectives and are conducted under the sponsorship or at the request of, a college department or of the ((~~dean of student services~~)) vice president of administration or ((~~his~~)) designee; 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.

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

Reviser's note: 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 Order 82-1, filed 10/11/82)

WAC 132S-50-025 Commercial activities defined.

For the purposes of this chapter, the term "commercial activities" does not include handbills, leaflets, or newspapers distributed free of charge by any Columbia Basin College student or students or by members of recognized Columbia Basin College student organizations or by Columbia Basin College ((~~college~~)) personnel that are distributed in a manner that does not unreasonably interfere with the ingress and egress of persons or the free flow of vehicular or pedestrian traffic, nor does it include commercial items sold through the college bookstore or any other facility at the direction of the ((~~business manager~~)) vice president of administration.

[AMENDATORY SECTION (Amending Order 82-1, filed 10/11/82)]

WAC 132S-50-026 Penalties for violations of commercial activities regulations. Nonstudent persons violating the provisions of this chapter may be referred to civil authorities for appropriate prosecutions, including violations of the law of criminal trespass.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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 Order 82-1, filed 10/11/82)

WAC 132S-50-027 Distribution of materials. ((~~+~~)) Handbills, leaflets, newspapers and similar related matter may be sold or distributed free of charge by any student or students or by members of recognized student organizations or by college employees on or in college facilities at locations specifically designated by the director of activities; provided such distribution or sale does not interfere with the ingress and egress of persons, or interfere with the free flow of vehicle or pedestrian traffic.

(2) Such handbills, leaflets, newspapers and related matter must bear identification as to the publishing agency and distributing organization or individual.

(3) All nonstudents shall be required to register with the director of activities prior to the distribution of any handbill, leaflet, newspaper or related matter. Nonstudents shall not be allowed to sell handbills, leaflets, newspapers or related matter.

(4) Permission for the posting or display of handbills, leaflets, newspapers, posters and similar related matter on college facilities must be granted by the dean of students or in such dean's absence by the director of student activities. Permission for such posting or display will be given only if such material is:

(a) Written and presented in good taste;

(b) Designed to attract attention rather than incite emotion; and

(c) Consistent and factual in content.)

(1) The college reserves the right to control and regulate the distribution of materials which might interfere with the college's educational mission.

(2) Permission for the posting, display or distribution of handbills, leaflets, newspapers, posters and similar related matter on college facilities must be obtained from the vice president of administration or designee. Permission for such posting or display will be given only if such material meets the following criteria:

(a) Must not be commercial, obscene or unlawful in nature;

(b) Must not interfere with the ingress and egress of persons, or interfere with the free flow of vehicle or pedestrian traffic, or the orderly administration of college affairs, or cause an interruption of classes.

(c) Each of such handbills, leaflets, newspapers and related matter must bear identification as to the publishing agency and distributing organization or individual, as well as the date when posted materials will be removed from the property.

(3) Students/college employees

Handbills, leaflets, newspapers and similar related matter may be sold or distributed free of charge by any Columbia Basin College student or students or by members of recognized Columbia Basin College student organizations or by Columbia Basin College employees on or in Columbia Basin

College facilities at locations specifically designated by the director of student programs; provided such distribution or sale meets the criteria listed above (1a-c).

(4) Non students Persons and organizations not connected with the college may not distribute handbills, leaflets, newspapers and similar materials.

(5) Any distribution of materials as authorized by the office of the vice president for administration and regulated by established guidelines shall not be construed as support or approval by the college community or the board of trustees.

NEW SECTION

WAC 132S-50-028 General policies limiting use (1)

College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office except for student-sponsored activities. Rules, regulations, policies, procedures and practices regarding the use of college facilities shall not discriminate or promote discrimination among political parties, groups or candidates solely on the basis of their particular political viewpoint.

(2) Activities of commercial or political nature will not be approved if they involve the use of promotional signs or posters on buildings, trees, walls, or bulletin boards, or the distribution of samples or brochures outside rooms or facilities to which access may be granted.

(3) No person may solicit contributions on college property for political uses, except where this limitation conflicts with federal law concerning interference with the mail.

(4) Religious groups shall not, under any circumstances, use the college facilities as a permanent meeting place. Use shall be intermittent only, so as not to imply College endorsement.

(5) College facilities are available to all recognized CBC student groups and CBC faculty or staff organizations, subject to these general policies, except as provided in WAC 132S-50-029(1), and to the rules and regulations of the college governing student, faculty and staff affairs.

(6) The college reserves the right to prohibit the use of college facilities by groups which restrict membership or participation in a manner inconsistent with the college's commitment to nondiscrimination as set forth in its written policies and commitments.

NEW SECTION

WAC 132S-50-029 Liability for damage The lessee of college facilities, including agreement signatories and individual organization leaders, shall be liable for any damage to college property occurring or having apparently occurred during the time the facility was being used by the organization. The lessee also agrees to hold harmless and indemnify Columbia Basin College, its agents, employees, officers, trustees, students and/or attorneys for any claim made against the college as a result of the lessee's use of college facilities. The college reserves the right to require using organizations to purchase insurance, naming the college as the insured, and may specify the amount of that insurance.

AMENDATORY SECTION (Amending Order 82-1, filed 10/11/82)

WAC 132S-50-040 Traffic and parking—Definitions. The words used in this chapter shall have the meaning given in this section, unless the context clearly indicates otherwise.

(1) "Board" shall mean the Board of Trustees of Community College District No. 19, State of Washington.

(2) "Campus" shall mean any or all real property owned, operated, or maintained by Community College District No. 19, State of Washington.

(3) "College" shall mean Columbia Basin College.

(4) "Faculty members" shall mean any employee of Community College District No. 19 who is certified to teach in a community college in the State of Washington.

(5) "Campus patrolman" shall mean an employee of the college, or a law enforcement student, who is responsible to the ~~((dean of student services))~~ vice president of administration for campus security.

(6) "Staff" shall mean the classified employees of Washington State Community College District No. 19.

(7) "Vehicle" shall mean an automobile, truck, motor driven cycle, scooter, or any vehicle empowered by a motor.

(8) "Visitors" shall mean any person or persons, excluding students as defined above, who come upon the campus as guests, and any person or persons who lawfully visit the campus for the purposes which are in keeping with the college's role as an institution of higher learning in the State of Washington.

(9) "Permanent permits" shall mean permits which are valid for a school term and shall be obtained from the ~~((cashier's))~~ plant operations office at the fee set by the Board of Trustees.

(10) "School term" shall mean, unless otherwise designated, the time period commencing with the fall quarter of a community college teaching year and extending through the immediately subsequent winter and spring quarters. It shall not include, however, summer school sessions.

(11) "Temporary permits" shall mean permits which are valid for a specific period of time designated on the permit.

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 Order 82-1, filed 10/11/82)

WAC 132S-50-060 Special traffic and parking regulations and restrictions authorized. Upon special occasions causing additional heavy traffic, during emergencies, or during construction of campus facilities, the ~~((dean of student services or his appointed designee))~~ vice president of administration or designee is authorized to impose additional traffic and parking regulations or modify the existing rules and regulations for the achievement of the general objectives provided in WAC 132S-50-050.

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

AMENDATORY SECTION (Amending Order 82-1, filed 10/11/82)

WAC 132S-50-070 Traffic and parking—Enforcement. (1) Enforcement of the parking rules and regulations will begin the first day of the first week of full classes of the fall quarter and will continue until the end of spring quarter. These rules and regulations will not be enforced during summer quarter, Saturdays, Sundays, and official college holidays.

(2) The ~~((dean of student services, or his designee))~~ vice president of administration or designee, shall be responsible for the enforcement of the rules and regulations contained in this chapter. The ~~((dean of student services))~~ vice president of administration is hereby authorized to delegate this responsibility to the campus patrolman or other designated subordinates.

AMENDATORY SECTION (Amending Order 82-1, filed 10/11/82)

WAC 132S-50-075 Fines, penalties and issuance of traffic tickets. Fines will be levied for parking violations that occur on CBC campus. A schedule shall be published in the CBC Student Handbook and on the parking citation form, and a copy of the fine schedule shall be available in the security office. Upon the violations of any of the rules and regulations contained in this chapter, the ~~((dean of student services, his designee))~~ vice president of administration, or designee or subordinates, may issue a summons or traffic ticket setting forth the date, the approximate time, permit number, license information, infraction, officer, and schedule of fines. Such summons or traffic tickets may be served by attaching or affixing a copy thereof in some prominent place outside such vehicle or by personally serving the operator.

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 Order 82-1, filed 10/11/82)

WAC 132S-50-080 Traffic and parking—Fines and penalties. The ~~((dean of student services or his designee))~~ vice president of administration or designee, is authorized to impose the following fines and penalties for the violation of the rules and regulations contained in this chapter:

(1) Except as provided under subsection (2) of this section, fines will be levied for all violations of the regulations contained in this chapter.

(2) Vehicles which are parked on any campus within Community College District No. 19 and which are in violation of any of the regulations contained in this chapter, may be impounded or detained by use of mechanical devices at the discretion of the ~~((dean of student services))~~ vice president of administration. If a vehicle is impounded, it may be taken to such place for storage as the ~~((dean of student services))~~ vice president of administration or ~~((his))~~ designee selects. The expenses of such impounding and storage shall be charged to the owner or operator of the vehicle and paid by him prior to its release. The college and its employees shall not be liable

for loss or damage of any kind resulting from such impounding and storage.

(3) At the discretion of the ~~((dean of student services))~~ vice president of administration, an accumulation of traffic violations by a student will be cause for disciplinary action, and the ~~((dean of student services))~~ vice president of administration shall initiate disciplinary proceedings against such student.

(4) A schedule of fines shall be set and reviewed ~~((annually))~~ by a committee of students appointed by the ~~((dean of students))~~ vice president of administration. This schedule shall be published in the student handbook, summary of parking regulations, and traffic summons form.

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 Order 82-1, filed 10/11/82)

WAC 132S-50-085 Authorization for issuance of parking permits. The ~~((dean of student services or his appointed designee))~~ vice president of administration or designee is authorized to issue parking permits to faculty members and staff members of the college pursuant to the following regulations:

(1) Faculty and staff members may be issued parking permits upon the registration of their vehicles at the beginning of fall quarter; provided that new faculty and staff members employed during the regular academic year may be issued parking permits upon the registration of their vehicles at the time they begin their employment at the college.

(2) The ~~((dean of student services or his designee,))~~ vice president of administration or designee may issue temporary and special parking permits when such permits are necessary to enhance the business or operation of the college.

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 Order 82-1, filed 10/11/82)]

WAC 132S-50-090 Valid parking permit. A valid parking permit is:

(1) An unexpired parking permit registered and properly displayed;

(2) A temporary parking permit authorized by the ~~((dean of student services or his designee))~~ vice president of administration or designee, and properly displayed;

(3) A special parking permit authorized by the ~~((dean of student services or his designee))~~ vice president of administration or designee, and properly displayed;

(4) A visitor's permit authorized by the ~~((dean of student services or his designee))~~ vice president of administration or designee, and properly displayed; or

(5) A shop permit authorized by a vocational-technical instructor and properly displayed.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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

AMENDATORY SECTION (Amending Order 82-1, filed 10/11/82)

WAC 132S-50-100 Transfer of parking permits.

Parking permits are ~~((not))~~ transferable. If a vehicle is sold or traded, ~~((a new permit will be issued to))~~ the permit holder may transfer the parking permit to the new vehicle if the vehicle is registered with the plant operations office when it is first driven onto campus. ~~((at no additional cost if the permit holder does the following-~~

- (1) Records permit number;
- (2) Removes permit from vehicle which has been traded or sold.)

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 Order 82-1, filed 10/11/82)]

WAC 132S-50-110 Parking permit revocation. Parking permits are the property of the college and may be recalled by the ~~((dean of student services))~~ vice president of administration for any of the following reasons:

- (1) When the purpose for which the permit was issued changes or no longer exists;
- (2) When a permit is used by an unregistered vehicle or by an unauthorized individual;
- (3) Falsification on a parking permit application;
- (4) Continued violations of parking regulations; or
- (5) Counterfeiting or altering a parking permit.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending Order 82-1, filed 10/11/82)

WAC 132S-50-115 Parking permit revocation—Hearing provided. Cancellation or revocation of any parking permit because of any of the causes stated in WAC 132S-50-110 (2) through (5) may be appealed to the ~~((dean of student services))~~ vice president of administration, who shall then refer the matter to a hearing before a special hearing officer designated by the ~~((dean of student services))~~ vice president of administration. The hearing shall conform to the due process requirements of the Columbia Basin College student code and the decision of the hearing officer shall be final. The same appeal procedure as above shall be utilized in the case where the revoked permit has been held by an administrator or faculty member.

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

Reviser's note: 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 Order 82-1, filed 10/11/82)

WAC 132S-50-120 Allocation of parking space. The parking space available on campus shall be designated and allocated by the ~~((dean of student services or his designee))~~ vice president of administration or designee, in such a manner as will best effectuate the objectives of the rules and regulations in this chapter.

(1) Faculty and staff spaces will be so designated for their use; provided, physically handicapped students and others designated by the ~~((dean of student services))~~ vice president of administration or ~~((his appointed))~~ designee may be granted special permits to park in close proximity to the classroom used by such students.

(2) Parking spaces will be designated for use of visitors on campus.

(3) Handicap parking spaces will be designated. The allocated parking spaces are exclusively for use by those designated, provided that the appropriate parking permits are obtained by the users and are displayed properly upon their vehicles. People with disabilities - staff, visitors, and students - shall be given parking priority whenever possible within close proximity to offices, classrooms, or access ways. No student or staff member shall park in a handicapped designated parking space without possessing either a Washington state permanent handicapped permit or a CBC temporary handicapped parking permit approved by the vice president of administration or designee. A fine may be imposed for non-handicap users parking in a designated handicap parking space.

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 Order 82-1, filed 10/11/82)

WAC 132S-50-125 Parking within designated spaces. (1) All vehicles shall follow traffic arrows and other markings established for the purpose of directing traffic on campus.

(2) In areas marked for diagonal parking, vehicles shall be parked at a forty-five degree angle, facing head in.

(3) In areas marked for parallel or right-angle parking, space or stall markings will be observed, and vehicles will park facing head in.

(4) No vehicle shall be parked so as to occupy any portion of more than one parking space or stall as designated within the parking area. The fact that other vehicles may have been so parked as to require the vehicle parked to occupy a portion of more than one space or stall shall not constitute an excuse for a violation of this section.

(5) No vehicle shall be parked on the campus except in those areas set aside and designated pursuant to WAC 132S-50-120.

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

AMENDATORY SECTION (Amending Order 82-1, filed 10/11/82)

WAC 132S-50-140 Regulatory signs and directions.

The ~~((dean of student services or his appointed designee,))~~ vice president of administration or designee is authorized to erect signs, barricades and other structures and to paint marks or other directions upon the entry ways and streets on campus and upon the various parking lots owned or operated by the college. Such signs, barricades, structures, markings, and directions, shall be so made and placed as in the opinion of the ~~((dean of student services, or his designee))~~ vice president of administration or designee, will best effectuate the rules and regulations contained in this chapter. Drivers of vehicles shall observe and obey the signs, barricades, structures, markings and directions erected pursuant to this section. Drivers shall also comply with the directions given them by the campus patrolman in the control and regulation of traffic.

AMENDATORY SECTION (Amending Order 82-1, filed 10/11/82)

WAC 132S-50-160 Report of accidents. The operator of any vehicle involved in an accident on campus resulting in injury to or death of any person or total of claimed damage to either or both vehicles exceeding one hundred dollars shall immediately report such accident to the ~~((dean of student services))~~ vice president of administration and shall within twenty-four hours after such accident, file a State of Washington motor vehicle accident report.

AMENDATORY SECTION (Amending Order 82-1, filed 10/11/82)

WAC 132S-50-170 Delegation of authority. The authority and powers conferred upon the ~~((dean of student services))~~ vice president of administration by these regulations shall be subject to delegation ~~((by him))~~ to ~~((his))~~ appointed designees.

AMENDATORY SECTION (Amending Order 82-1, filed 10/11/82)

WAC 132S-50-185 ~~Pet~~ Animal control. In order to assure the health and safety of all persons on properties owned or controlled by Columbia Basin College, the following rules and regulations regarding ~~pet~~ animal control are hereby promulgated: No person will be permitted to bring any ~~pet~~ animal upon properties owned or controlled by Columbia Basin College unless such ~~pet~~ animal is a service dog as defined in RCW 70.84.020 and is under the immediate control of such person. ~~((provided, however, under no circumstances will pets be permitted to enter into buildings owned or controlled by Columbia Basin College, except))~~ Only service dogs as defined in RCW 70.84.020 will be permitted to enter buildings owned or controlled by Columbia Basin College.

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.

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 Order 82-1, filed 10/11/82)

WAC 132S-50-195 ~~((Smoking regulations for campus buildings.~~ Smoking of tobacco substances are subject to the provisions of this chapter, insofar as it designates where such smoking is permitted or prohibited.

(1) Smoking is permitted in the following areas:

- (a) Office (at the discretion of the assigned occupants);
- (b) Meeting rooms (at the option of the group);
- (c) Lounges;
- (d) Public lavatories;
- (e) Designated corridors.

(2) The president of Columbia Basin College or his designee may prohibit smoking in the following areas:

- (a) Classrooms during scheduled classes;
- (b) Laboratories;
- (c) Library;
- (d) Auditoriums;
- (e) Storerooms;
- (f) Places deemed fire hazard areas by the city of Pasco fire department.

(3) ~~The responsibility of fire prevention is the smoker's.)~~

Smoke and Tobacco-Free Environment.

(1) Smoking and tobacco products are not allowed inside any building or vehicle operated by Columbia Basin College.

(2) Smoking materials and related tobacco supplies will not be available for sale or vended on the campuses.

(3) Smoking and tobacco use by students and nonstudents, including visitors, are prohibited within at least 50 feet of building openings (i.e., doors, air intakes, windows), and spaces near outdoor work areas.

(4) Smoking is prohibited in any location where the air-flow carries smoke directly into a facility work area.

(5) Smokers must dispose of smoking and tobacco refuse in ash cans or other containers specifically designed and placed for such disposal.

(6) CBC shall ensure, through proper posting, that outside smoking and tobacco use areas are at least 50 feet from doorways and air intakes.

(7) Any student, staff or faculty member who violates the college smoking policy may be subject to disciplinary action. In addition, violations of the college smoking policy may be subject to enforcement by the Pasco Police Department.

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

WSR 05-24-009**PERMANENT RULES****DEPARTMENT OF CORRECTIONS**

[Filed November 28, 2005, 2:14 p.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Purpose: Revise the procedures for operation of work release and standardize serious infractions for prison and work release offenders.

Citation of Existing Rules Affected by this Order: Repealing WAC 137-28-260; and amending chapter 137-56 WAC.

Statutory Authority for Adoption: RCW 72.01.090, 72.09.130, and 9.94.070.

Adopted under notice filed as WSR 05-21-105 on October 18, 2005.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 23, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 23, 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 3, Amended 23, Repealed 1.

Date Adopted: November 28, 2005.

H. W. Clarke
Secretary

Chapter 137-25 WAC**SERIOUS INFRACTIONS—TOTAL AND PARTIAL CONFINEMENT FACILITIES**NEW SECTION

WAC 137-25-010 Application of chapter. The definitions and serious infractions described herein apply to offenders committed to both full and partial confinement facilities.

NEW SECTION

WAC 137-25-020 Definitions. For the purposes of this chapter, the following words have the following meanings:

Abusive sexual contact - an incident in which the contact occurs without his/her consent or he/she was unable to consent or refuse. Abusive sexual contact includes one or more of the following behaviors:

- Intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

Adult correctional institution and institution - a facility identified in RCW 72.01.050(2) and any similar facility hereinafter established.

Aggravated assault - an assault resulting in physical injury and requiring medical care (see definition of medical care).

Assault - a physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to, weapons, body parts, food products, or bodily secretions.

Attempted suicide - an unsuccessful attempt to kill oneself as determined by a medical or mental health professional.

Attempt - putting forth an effort to commit any infraction shall be considered the same as commission of the infraction. However, attempted aggravated assault shall be considered an attempted assault.

Bodily harm - physical pain or injury, illness, or impairment of physical condition.

Cell tag - if contraband or other violation is discovered in an area under control of the inmate (such as within the confines or contents of a cell), the contraband or other violation shall be constructively attributed to the inmate(s) assigned to that area, unless the inmate(s) can establish a lack of involvement in the infraction at the disciplinary hearing.

Conspiracy - an agreement between two or more persons to commit an infraction. Conspiracy to commit an infraction shall be considered the same as commission of the infraction.

Deputy secretary - the deputy secretary of the office of correctional operations of the Washington state department of corrections, or the deputy secretary's designee.

Discovery - when a staff member discovers that an infraction has occurred or when an investigation into the incident is concluded.

Earned time - means that portion of time an offender is eligible to earn for program participation approved by the classification process and consistent with his/her case management plan.

Earned release time - means the combined earned time and good conduct time credit an offender is eligible to earn off the minimum term established by the indeterminate sentence review board or the sentencing court.

Good conduct time credits - that portion of an inmate's potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.

Hearing officer - staff member(s) designated by the superintendent or hearings program administrator to conduct disciplinary hearings.

Infraction - commission of, attempt to commit, or conspiracy with another to commit any violation of rules as enumerated in this code. Aiding or abetting another to commit an infraction will be considered the same as commission of the infraction.

Infraction review officer - staff member(s) designated by the superintendent to review a serious infraction.

Lesser included offense - any infraction that must necessarily have been committed in order to commit another infraction.

Medical care - any care conducted in a medical facility/treatment center by medical staff to treat a documented,

physical injury, including, but not limited to, bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered medical care.

Mental health professional - an individual with a unique set of knowledge, skills and abilities that makes him/her competent in either development, research, administration, assessment, prevention, treatment, education or training aimed at affecting the onset, occurrence, and maintenance of mental, behavioral and in some cases physical health disorders.

Mitigating factors - factors to be considered by the infracting officer in deciding whether to charge a #328 general infraction rather than a #728 serious infraction. Also, factors to be considered by the infraction review officer, hearings officer, and superintendent for the purpose of deciding whether a #728 serious infraction should be reduced to a #328 general infraction. Mitigating factors may include the seriousness of the sexually explicit material involved, whether the inmate has been convicted of a sexually motivated crime, the treatment needs of the inmate, the prior history of similar behavior, and the source of the material.

Possession - established when an item(s) is found on a person or in an area which is under the control of the individual(s) charged.

Promptly - to act as soon as reasonably possible, consistent with institutional goals of safety, security, and rehabilitation.

Secretary - the secretary of the Washington state department of corrections, or the secretary's designee.

Sexual harassment - any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.

Sexually explicit - means a depiction of one of the following:

- One of the participants in the sexual act is, or appears to be, nonconsenting;
- One of the participants in the sexual act appears to be forceful, threatening, or violent;
- One of the partners in the sexual act is dominating one of the other participants and one of the individuals is obviously in a submissive role or one of the participants is degraded, humiliated, or willingly engages in behavior that is degrading or humiliating;
- One of the participants in the sexual act is a minor, or appears to be a minor, or a minor alone is depicted in a sexually suggestive way;
- Actual penetration, be it penile/vaginal-oral, penile-anal, or penile-vaginal; digital-anal; digital-vaginal; or insertion of any inanimate object in the vaginal or anal cavity, and the depiction in the context presented is deemed to be a threat to legitimate penological objectives;
- Any bodily excretory function which is sexual in nature;
- Bestiality, sadomasochistic behavior, bondage; or
- Material reasonably deemed to be a threat to legitimate penological objectives.

Staff member - for purposes of this chapter includes employees of the department of corrections, contract employees, and volunteers.

Superintendent - superintendent of an adult correctional institution or the superintendent's designee.

Working days - Monday through Friday, excluding weekends and holidays.

NEW SECTION

WAC 137-25-030 Serious infractions.

Category A

501 - Committing homicide.
502 - Aggravated assault on another offender.
507 - Committing a felony.
511 - Aggravated assault on a visitor or community member.
521 - Taking or holding any person hostage.
550 - Escape or attempted escape.
601 - Possession, manufacture, or introduction of an explosive device or any ammunition, or any components of an explosive device or ammunition.
602 - Possession, manufacture, or introduction of any gun, firearm, weapon, sharpened instrument, knife, or poison or any component thereof.
603 - Possession, introduction, use or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug, mind altering substance, or drug paraphernalia.
604 - Aggravated assault on a staff member.
611 - Nonconsensual sexual assault on a staff member.
612 - Attempted nonconsensual sexual assault of staff.
613 - Abusive sexual contact with staff.
635 - Nonconsensual sexual assault on another offender.
636 - Attempted nonconsensual sexual assault of another offender.
637 - Abusive sexual contact with another offender.
650 - Rioting.
651 - Inciting others to riot.

Category B

762 - Failing to comply with DOSA requirements.

Category B - Level 1

504 - Engaging in sexual acts with others within the facility with the exception of approved conjugal visits.
553 - Setting a fire.
560 - Unauthorized possession of items or materials likely to be used in an escape attempt.
588 - Causing a valid and documented threat of transmission of a contagious disease to any person due to intentional, negligent or reckless action.
633 - Assault on another offender.

Category B - Level 1

704 - Assault on a staff member.
711 - Assault on a visitor or community member.
744 - Making a bomb threat.

Category B - Level 2

505 - Fighting with any person.
556 - Refusing to submit or cooperate in a search when ordered to do so by a staff member.
607 - Refusing to submit to a urinalysis and/or failure to provide a urine sample when ordered to do so by a staff member within the allotted time frame.
608 - Refusing or failing to submit to a breathalyzer or other standard sobriety test when ordered to do so by a staff member.
609 - Refusing or failing to submit to testing required by policy, statute, or court order, such as DNA blood tests when ordered to do so by a staff member.
652 - Engaging in or inciting a group demonstration.
655 - Making intoxicants, alcohol, controlled substances, narcotics, or possession of ingredients, equipment, items, formulas, or instructions that are used in making intoxicants, alcohol, controlled substances, or narcotics.
682 - Engaging in or inciting an organized work stoppage.
707 - Possession, introduction, or transfer of any alcoholic or intoxicating beverage.
716 - Unauthorized use of prescribed or over the counter medication.
736 - Possession, manufacture or introduction of unauthorized keys.
750 - Indecent exposure.
752 - Receiving a positive test for use of unauthorized drugs, alcohol, or other intoxicants.
830 - Any escape from work release with voluntary return within 24 hours.

Category B - Level 3

503 - Extortion, blackmail, demanding or receiving money or anything of value in return for protection against others, or under threat of informing.
506 - Threatening another with bodily harm or with any offense against another person, property, or family.
509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area.
525 - Violating conditions of a furlough.
557 - Refusing to participate in an available education or work program or other mandatory programming assignment.

Category B - Level 3

558 - Interfering with staff members, medical personnel, fire fighters, or law enforcement personnel in the performance of their duties.
600 - Tampering with, damaging, blocking, or interfering with any locking or security device.
605 - Impersonating any staff member, contracted staff member, volunteer, other offenders or visitor.
653 - Causing an inaccurate count or interfering with count by means of unauthorized absence, hiding, concealing oneself, or other form of deception or distraction.
654 - Counterfeiting, forgery, altering, falsification, or unauthorized reproduction of any document, article, or identification, money, security, or official paper.
660 - Unauthorized possession of money or other negotiable instruments the value of which is five dollars or more.
709 - Out-of-bounds: Being in another offender's cell or other area in the facility where not assigned or authorized; being in an area in the facility with one or more offenders without authorization.
738 - Possession of clothing of a staff member.
739 - Possession of personal information about currently employed staff, contractors, or volunteers, or their immediate family members, not voluntarily given to the offender by the individual involved; including, but not limited to: Social Security numbers, unpublished home addresses or telephone numbers, driver's license numbers, medical, personnel, financial, or real estate records, bank or credit card numbers, or other like information not authorized by the court or the superintendent.
745 - Refusing a transfer to another institution.
746 - Engaging in or inciting an organized hunger strike.
777 - Causing injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.
813 - Unauthorized/unaccounted time in the community or being in an unauthorized location in the community.
814 - Violation of an imposed special condition.
831 - While in work release, failure to return from an authorized sign out.
879 - Operating a motor vehicle without permission.

Category C - Level 1

508 - Throwing objects, materials, substances, or spitting at staff, visitors, or other offenders.
517 - Committing a misdemeanor.
555 - Theft of property or possession of stolen property.
563 - Making a false fire alarm or tampering with, damaging, blocking, or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other fire fighting equipment or devices.

Category C - Level 1

610 - Unauthorized accumulation of prescribed medication greater than a single or daily dose.
620 - Receipt or possession of contraband during participation in off-grounds or outer perimeter activity or work detail.
659 - Sexual harassment.
663 - Using physical force, intimidation or coercion against any person.
702 - Possession, manufacture or introduction of an unauthorized tool.
708 - Organizing or participating in unauthorized group activity or meeting.
714 - Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another offender or that offender's friend(s) or family, the value of which is ten dollars or more.
717 - Causing a threat of injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.
720 - Flooding a cell or other area of the institution/facility.
724 - Refusing a cell or housing assignment.
734 - Participating or engaging in the activities of any unauthorized club, organization, gang or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang or security threat group.

Category C - Level 2

552 - Causing an innocent person to be penalized or proceeded against by providing false information.
554 - Mutilating, altering, defacing, or destroying any item the value of which is ten dollars or more and that is not the personal property of the offender.
559 - Gambling; possession of gambling paraphernalia.
656 - Giving, receiving, or offering any person a bribe or anything of value for an unauthorized favor or service.
706 - Giving false information when proposing a release plan.
710 - Being tattooed while incarcerated, tattooing another, or possessing tattoo paraphernalia.
718 - Use of mail or telephone in violation of court order or local, state, or federal law.
726 - Telephoning or sending written communication or otherwise initiating communication with a minor without the approval of that minor's parent or guardian.
727 - Telephoning or sending written communications to any person contrary to previous written warnings and/or documented disciplinary action.

Category C - Level 2

728 - Possession of any written photographic or hand drawn material, that depicts sexually explicit acts as defined in department policy.
740 - Fraud, embezzlement, or obtaining goods, services, money, or anything of value under false pretense.
742 - A pattern of creating a false emergency by feigning illness.
778 - Providing a false and/or adulterated urine sample.

Category C - Level 3

551 - Providing false information to the disciplinary hearings officer or on a disciplinary appeal.
606 - Possession, introduction, or transfer of any tobacco, tobacco products, matches, or tobacco paraphernalia.
657 - Being found guilty of four or more general infractions arising out of separate incidents within a 90-day period.
658 - Failing to comply with any administrative or post-hearing sanction imposed for committing any general or serious infraction.
662 - Soliciting goods or services for which the provider would expect payment when the offender knows or should know that no funds are available to pay for those goods or services.
712 - Attempted suicide as determined by mental health staff.
713 - Self-mutilation or self-harm.
741 - Theft of food the value of which is more than five dollars.
755 - Misuse or waste of issued supplies, goods, services, or property the replacement value of which is ten dollars or more.
810 - Willful failure to seek/maintain employment or training oneself financially or being terminated from a job for negative or substandard performance.
811 - Entering into an unauthorized contract.
812 - Failure to report/turn in all earnings income.
854 - Destroying or damaging state property, or the property of another person.
861 - Performing or taking part in an unauthorized marriage.

Definitions: Attempting to commit or aiding another person to commit a serious infraction - such action shall be considered the same as commission of the offense itself.

AMENDATORY SECTION (Amending WSR 05-16-033, filed 7/26/05, effective 8/26/05)

WAC 137-28-260 Serious infractions.

~~((1) Assault/threatening actions/causing injury to another person~~

- 501 - Committing homicide.
- 502 - Aggravated assault on another offender.
- 503 - Extortion, blackmail, or demanding or receiving money or anything of value in return for protection against others, or under threat of informing.
- 505 - Fighting with any person.
- 506 - Threatening another with bodily harm or with any offense against another person, property or family.
- 508 - Throwing objects, materials, substances or spitting at staff, visitors, or other inmates.
- 511 - Aggravated assault on a visitor.
- 521 - Taking or holding any person hostage.
- 588 - Causing a valid and documented threat of transmission of a contagious disease to any person due to intentional, negligent or reckless action.
- 604 - Aggravated assault on a staff member.
- 611 - Sexual assault on a staff member.
- 612 - Attempted sexual assault of staff.*
- 613 - Abusive sexual contact with staff.
- 633 - Assault on another offender.
- 635 - Sexual assault on another offender.
- 636 - Attempted sexual assault on another offender.*
- 637 - Abusive sexual contact with another offender.
- 663 - Using physical force, intimidation or coercion against any person.
- 704 - Assault on a staff member.
- 711 - Assault on a visitor.
- 717 - Causing a threat of injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.
- 777 - Causing injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.

Unauthorized possession

- 559 - Gambling; possession of gambling paraphernalia.
- 601 - Possession, manufacture or introduction of an explosive device or any ammunition, or any components of an explosive device or ammunition.
- 602 - Possession, manufacture or introduction of any gun, firearm, weapon, sharpened instrument, knife, or poison or any components thereof.
- 620 - Receipt or possession of contraband during participation in off-grounds or outer perimeter activity or work detail.

- 660 - Unauthorized possession of money, stamps, or negotiable instruments, the value of which is five dollars or more.
- 702 - Possession, manufacture or introduction of an unauthorized tool.
- 736 - Possession, manufacture or introduction of unauthorized keys.
- 738 - Possession of the clothing of a staff member.
- 739 - Possession of personal information about currently employed staff, contractors or volunteers, or their immediate family members, not voluntarily given to the offender by the individual involved, including, but not limited to: Social Security numbers, unpublished home addresses or telephone numbers, drivers license numbers, medical, personnel, financial or real estate records, bank or credit card numbers, or other like information not authorized by the court or the superintendent.

Tattooing

- 710 - Being tattooed while incarcerated, tattooing another, or possessing tattoo paraphernalia.

Theft/possession of stolen property

- 555 - Theft of property or possession of stolen property.
- 741 - Theft of food, the value of which is more than five dollars.
- 755 - Misuse or waste of issued supplies, goods, services or property, the replacement value of which is ten dollars or more.

Forgery

- 654 - Counterfeiting, forging, altering or unauthorized reproduction of any document, article of identification, money, security, or official paper.

Setting fire, damaging or destroying property

- 553 - Setting a fire.
- 554 - Mutilating, altering, defacing or destroying any item, the value of which is ten dollars or more and that is not the personal property of the inmate.
- 563 - Making a false fire alarm, tampering, damaging, blocking or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other fire fighting equipment or devices.
- 600 - Tampering with, damaging, blocking, or interfering with any locking or security device.
- 720 - Flooding a cell or other area of the institution.

Inciting others/participation in unacceptable group behavior

- 650 - Rioting.
- 651 - Inciting others to riot.
- 652 - Engaging in or inciting a group demonstration.
- 682 - Engaging in or inciting an organized work-stoppage.
- 708 - Organizing or participating in an unauthorized group activity or meeting.
- 734 - Participating or engaging in the activities of any unauthorized club, organization, gang or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang or security threat group.
- 746 - Engaging in or inciting an organized hunger-strike.

Inappropriate sexual behavior

- 504 - Engaging in sexual acts with others with the exception of spouses during approved extended family visits.
- 659 - Sexual harassment; any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.
- 728 - Possession of any written, photographic or hand-drawn material that depicts a sexually explicit act as defined in WAC 137-28-160.
- 750 - Indecent exposure.

Providing false statements

- 551 - Providing false information to a disciplinary hearing officer or on a disciplinary appeal.
- 552 - Causing an innocent person to be penalized or proceeded against by providing false information.
- 706 - Giving false information about proposed community residence when proposing a release plan, community placement, etc.

Interfering with staff/impersonating

- 558 - Interfering with staff members, medical personnel, fire fighters, or law enforcement personnel in the performance of their duties.
- 605 - Impersonating any staff member, other inmate or visitor.

Failure to follow orders and rules

- 509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area.
- 556 - Refusing to submit to or cooperate in a search when ordered to do so by a staff member.
- 557 - Refusing to participate in an available education or work program or other mandatory programming assignment.
- 609 - Refusing or failing to submit to testing required by policy, statute, or court order, such as DNA blood tests, when ordered to do so by a staff member.

- 658 - Failing to comply with any administrative or posthearing sanction imposed for committing any general or serious infraction.
- 724 - Refusing a cell or housing assignment.
- 745 - Refusing a transfer to another facility.

Counts/unauthorized absence

- 653 - Causing an inaccurate count by means of unauthorized absence, hiding, concealing ones self or other form of deception or distraction.

Escape/attempted escape

- 525 - Violating conditions of furlough.
- 550 - Escape or attempted escape.
- 560 - Unauthorized possession of items or materials likely to be used in an escape attempt.

Committing crimes/excess infractions

- 507 - Committing any act that is a felony under state or federal law that is not otherwise included in these rules.
- 517 - Committing any act that is a misdemeanor under local, state, or federal law that is not otherwise included in these rules.
- 657 - Being found guilty of four or more general infractions which have been reported in writing arising out of separate incidents, all of which occur within a six-month period.

Unacceptable communication

- 718 - Use of mail or telephone in violation of court order or local, state or federal law.
- 726 - Telephoning or sending written communication or otherwise initiating communication with a minor without the approval of that minor's parent or guardian.
- 727 - Telephoning or sending written communications to any person contrary to previous written warnings and/or documented disciplinary actions.

Misuse of controlled substances, drugs, alcohol and related programs

- 603 - Possession, introduction, or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug or drug paraphernalia.
- 606 - Possession, introduction or transfer of any tobacco, tobacco products, matches, or tobacco paraphernalia.
- 607 - Refusing to submit to a urinalysis and/or failure to provide a urine sample when ordered to do so by a staff member.
- 608 - Refusing or failing to submit to a breathalyzer or other standard sobriety test when ordered to do so by a staff member.
- 610 - Unauthorized accumulation of prescribed medication greater than a single or daily dose.

- 655 - Making intoxicants, alcohol, controlled substances, narcotics, or the possession of ingredients, equipment, items, formulas or instructions that are used in making intoxicants, alcohol, controlled substances, or narcotics.
- 707 - Possession, introduction, or transfer of any alcoholic or intoxicating beverage.
- 716 - Unauthorized use of drugs, alcohol or other intoxicants.
- 752 - Receiving a positive test for use of unauthorized drugs, alcohol, or other intoxicants.

Soliciting/fraud

- 656 - Giving, offering or receiving from any person a bribe or anything of value for an unauthorized favor or service.
- 662 - Soliciting goods or services for which the provider would expect payment when the inmate knows or should know that no funds are available to pay for those goods or services.
- 714 - Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another inmate or that inmate's friend(s) or family, the value of which is ten dollars or more.
- 740 - Fraud, embezzlement, or obtaining goods, services, money, or anything of value under false pretense.

Creating an emergency situation

- 712 - Attempted suicide as determined by mental health staff.
- 713 - Self-mutilation or self-harm.
- 742 - Creating a false emergency by feigning illness when contrary to medical/mental health screening results.
- 744 - Making a bomb threat.

(2) In determining whether a #728 infraction or a #328 infraction pursuant to WAC 137-28-220 should be charged, the infracting officer shall consider mitigating factors as defined in WAC 137-28-160.

*Attempts to commit infractions #611 or #635 are now separate infractions #612 and #636 for the Prison Rape Elimination Act (PREA) reporting purposes only and do not impact the definition in WAC 137-28-160 which includes "attempts.")

See WAC 137-25-030 for the list of serious infractions.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-010 Definitions. (1) "Secretary" is the secretary of the department of corrections or his/her designee.

~~(2) ("Director" is the director, division of community services, department of corrections.~~

~~(3) "Assistant director" is the assistant director, division of community corrections, department of corrections or his/her designee and is the staff member assigned by the director to administer and supervise the work/training release programs in a specific geographic area.~~

~~(4)) "Department" is the department of corrections.~~

~~((5)) (3) "Work/training release facility supervisor" is a staff member assigned by the community corrections regional administrator to administer and supervise a specific work/training release facility and includes his/her designee.~~

~~((6)) (4) "Work/training release community corrections officer" is a staff member assigned by the work/training release facility supervisor to supervise and counsel a caseload of work/training release residents at a specific work/training release facility.~~

~~((7)) (5) "Contract staff" is the staff member(s) of an agency under contract to the department of corrections to provide housing and monitoring for work/training release residents.~~

~~((8) "Work/training release coordinator" is a staff member assigned by the superintendent of an adult correctional institution to act as liaison between the institution and work/training release facility personnel.~~

~~(9)) (6) "Work/training release ((resident)) offender" is any offender committed to or transferred to the department's custody pursuant to a valid criminal conviction who has been approved by the department for placement in a designated work/training release facility.~~

~~((10)) (7) "Sponsor-escort" is a responsible citizen assigned to escort and monitor a resident during official and social activities outside of the work/training release facility.~~

~~((11)) (8) "Work/training release facility" is an establishment approved for housing and monitoring of work/training release residents during the resident's stay in a work/training release program.~~

~~((12)) (9) "One working day" is a nine-hour day, 8:00 a.m. to 5:00 p.m. excluding weekends and holidays.~~

~~(10) "Hearing officer" means an employee of the department authorized to conduct disciplinary/department hearings.~~

~~(11) "Hearings program administrator" means the administrator of the hearings unit of the department, or the hearing program administrator's designee.~~

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-015 Disposition of earnings. Reasonable payment as determined by the department of board and room charges will be deducted from the work/training release residents' earnings. For purposes of this section, earnings shall constitute all income and money received or possessed by the work/training release ((resident)) offender while under a work release plan. Nothing in this section shall prohibit the department's authority to obtain reimbursement for moneys advanced to a work/training release ((resident)) offender by the department.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-030 Reasons for ~~((which given))~~ placement in a work release program. Work/training release may be authorized for one or more of the following:

- (1) To ~~((take))~~ participate in full-time employment or part-time employment ~~((or to make application to or be interviewed by a prospective employer))~~ at specialized programs;
- (2) To ~~((take))~~ participate in a vocational training program, including attendance at an accredited college.
- (3) To ~~((make use of transitional))~~ secure services to support transition back to the community.
- (4) As a sanction for violating ~~((release))~~ community supervision conditions.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-040 ~~((Application—Who may apply))~~ Eligibility criteria. (1) An ~~((inmate may apply))~~ offender is eligible for work/training release provided that:

- (a) He or she has a minimum security status;
- (b) ~~((His or her minimum term has been fixed by the indeterminate sentence review board;~~
- ~~((e)))~~ He or she is within the last one hundred eighty days of their confinement ~~((SRA offenders only))~~.
- (2) ~~((Persons))~~ Offenders convicted of rape in the first degree shall not be eligible for work/training release at any time during the first three years of confinement.
- (3) ~~((Persons))~~ Offenders convicted of murder first degree are not eligible for work/training release, without the written approval of the secretary.
- (4) Offender who violates condition(s) of community supervision and is sanctioned to a term less than one hundred eighty days.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-050 Application—Consideration. (1) ~~((The inmate shall submit his or her application for work/training release to his or her counselor on forms prescribed by the department.~~

~~(2) The classification committee shall make its recommendations to the superintendent, giving written documentation of the information which the committee relied on and giving reasons for the recommendation.~~

~~(3) Probationers/parolees/SRA offenders may be referred by the superior court or indeterminate sentence review board.)~~ Based on the offender's request to participate in a work release program and/or the offender's need to transition through a work release program, the facility classification review team will refer the offender to the appropriate program.

(2) The community corrections officer can make recommendation for placement in a work release program as a result of violation of conditions of supervision in the community.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-070 ~~((Plan—Investigation))~~ Screening referrals. (1) ~~((Upon receipt of a community release plan.))~~ The work/training release facility supervisor or his or her designee shall screen the ~~((information))~~ offenders referred to the program.

(2) The work/training release screening process will be based on established criteria ~~((and any additional factors which may affect the resident's ability to successfully complete a work/training release program.~~

~~(3) The screening decision will be forwarded by the work/training release facility supervisor to the referral source indicating the action taken.)~~

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-080 Plan—Approval or denial. (1) ~~((The division director, or his or her designee has the authority to approve or disapprove a plan.~~

~~(2) If approved, the resident shall sign and agree under oath, to the standard rules of work/training release. (See WAC 137-56-100.)~~

~~(3) If the plan is disapproved, the director, or his or her designee shall state the reasons for denial in writing with a copy to the superintendent and inmate and will set a date when the inmate can reapply.)~~ The work release supervisor or designee's screening decision will be documented by the work/training release facility supervisor/designee on the offender tracking system indicating the action taken.

(2) Approved offenders will be placed in the program based on priority with high risk offenders being placed first. Disapproved offenders can obtain the reasons for the denial, as documented on the offender tracking system.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-090 Plan—Restrictions. ~~((1) A resident may be permitted to travel outside the state for the purpose of employment, training, or treatment with prior written permission of the facility supervisor and agreement to waive extradition.~~

~~(2))~~ The work or training site shall be within reasonable commuting distance (in most circumstances not more than fifty miles) of the work/training release facility ~~((or institution))~~ in which the ~~((resident))~~ offender is confined.

~~((3) If the resident has been placed in a work/training release facility for the purpose of developing a plan and the plan is not secured within a reasonable period of time as determined by the department from the date of issuance of transfer orders, the resident may be returned to the institution without prejudice.~~

~~(4) A purpose of work/training release is to provide a transition period prior to release. Before a work/training release plan is approved, the staff will have a reasonable expectation that the resident will be released in a period of time which will normally not exceed six months. If a release date is not fixed within six months of placement in a work/~~

training release plan, the assistant director, or his or her designee will review the case on an individual basis and may return the resident to the institution if it appears that the resident will be on work/training release for an extended period of time.)

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-095 ((Notification)) Orientation. (1) At the time of admission, each work/training release ((resident)) offender shall be advised in writing of:

- (a) ~~((His/her rights and responsibilities;~~
- (b) ~~Acts prohibited in the work release facility; and)~~

Program goals and services available.

(b) Rules governing conduct and program rules.

(c) Disciplinary action which may be taken in the event of a serious infraction or violation of ~~((local))~~ rules(-

~~(2) Each resident, upon entering the work release facility, shall be given a copy of the rules in this chapter and of all local rules of the work/training release facility to which he/she is assigned.~~

~~(3))~~ or special conditions. To include, but not be limited to:

(i) Remain confined to the work/training release premises at all times other than the time necessary to implement the plan or when authorized under WAC 137-56-140. Any work/training release resident approved for placement under a work/training release plan who willfully fails to report to his or her designated assignment or return to the designated place of confinement at the time specified may be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a felony and sentenced in accordance with state law.

(ii) Have employment or other approved resources in order to maintain himself or herself financially.

(iii) Not consume, ingest, inject, or possess nonprescription narcotic or "dangerous" drugs or controlled substances or alcoholic beverages.

(iv) Report all income to the work/training facility supervisor or his or her designee. All income from any source shall be immediately placed in the resident's inmate banking account by the facility supervisor or his/her designee. A receipt will be issued.

(2) All amendments or additions to ((this chapter and all amendments or additions to local)) disciplinary rules, policies, and procedures shall be posted at a specifically designated place or places in each work/training release facility in advance of their effective date if possible and for at least thirty days after their effective date. Work/training release ((residents)) offenders shall be responsible for informing themselves of such postings. Complete and up-to-date copies of these rules and all ((local)) program rules shall be available at each work/training release facility for examination.

~~((4))~~ (3) The work/training release facility supervisor shall ensure that each work/training release resident has the opportunity to understand rules which relate to his/her conduct. If the resident is unable to read or understand English, the rules shall be read to him/her promptly in his/her accustomed language.

(4) All offenders will receive orientation within forty-eight hours of arrival. Orientation must be completed before the offender can leave the facility. The offender must sign the appropriate form indicating he/she will comply with all the work release policies and program rules.

AMENDATORY SECTION (Amending WSR 99-16-078, filed 8/3/99, effective 8/18/99)

WAC 137-56-110 Serious infractions. ~~((Any of the following acts or omissions of the work/training release resident described and codified in the form below shall constitute a))~~ Refer to chapter 137-25 WAC, serious infractions.

~~((Infraction~~

Code	Act/Omission
800	— Creating a risk to the orderly operation of the facility or the health and safety of its residents, staff, or visitors.
801	— Assaulting any person which results in the hospitalization of the person assaulted.
802	— Assaulting any person.
803	— Extortion, blackmail, demanding or receiving money or anything of value in return for protection against others, or under threat of informing.
804	— Engaging in sexual acts with others within the facility boundaries.
805	— Fighting with any person, provided, however, that self-defense may be a defense to a serious infraction for fighting.
806	— Threatening another with bodily harm or with any offense against his/her person.
810	— Intentionally failing to seek or maintain employment or training or to maintain oneself financially.
811	— Entering into an unauthorized contract.
812	— Failing to report or turn in all earnings or income.
813	— Modifying a work release plan by the releasee without authorization.
814	— Violating a special condition of work release plan.
815	— Failing to comply with all federal, state, and local laws, or court orders.
816	— Tampering with or blocking any locking device.
817	— Possessing or introducing into the facility an explosive or any ammunition or components of explosives or ammunitions.
818	— Possessing or introducing into the facility any unauthorized tool.

((Infraction

- | Code | Act/Omission |
|------|---|
| 819 | — Possessing or introducing into the facility any gun, firearm, weapon, sharpened instrument, knife, or components thereof. |
| 821 | — Holding a person hostage or restraining a person against his/her will. |
| 825 | — Violating conditions of furlough. |
| 830 | — Escaping/absconding with voluntary return within twenty-four hours. |
| 831 | — Failing to return to the facility from an authorized sign out. |
| 832 | — Escape from the facility. |
| 833 | — Using physical force in the act of escape. |
| 834 | — Escape and apprehension out of state. |
| 842 | — Receiving a positive test result for use of marijuana. |
| 843 | — Possessing, introducing, or using alcohol. |
| 844 | — Possessing or introducing marijuana or related paraphernalia. |
| 845 | — Possessing, introducing, or transferring any narcotics, controlled substance, or related paraphernalia unless authorized by the supervisor pursuant to a valid prescription or order issued in the course of professional treatment by a licensed medical practitioner. |
| 846 | — Refusing to submit to a urinalysis, breathalyzer, or other sobriety test. |
| 847 | — Receiving a positive test result for use of unauthorized drugs, controlled substances or intoxicants. |
| 851 | — Lying to a hearing committee. |
| 852 | — Lying to a staff member which causes an innocent person to be penalized, disciplined, or proceeded against. |
| 853 | — Intentionally or recklessly setting a fire. |
| 854 | — Intentionally or recklessly destroying or damaging state property, or the property of another person. |
| 855 | — Stealing (theft) or knowingly possessing stolen property. |
| 856 | — Refusing to submit to a body search when lawfully ordered to do so by staff. |
| 857 | — Refusing and/or failing to work or attend regularly scheduled assignments. |
| 858 | — Intentionally interfering with a staff member in the performance of his/her duties. |
| 859 | — Gambling. |
| 860 | — Possessing money or other negotiable instruments without prior authorization. |

((Infraction

- | Code | Act/Omission |
|------|---|
| 861 | — Performing or participating in a marriage ceremony in the facility or on the facility grounds, except when such marriage was approved by the supervisor. |
| 870 | — Rioting. |
| 871 | — Inciting others to riot. |
| 872 | — Engaging in or inciting prohibited group demonstration. |
| 873 | — Intentionally interfering with the taking of count. |
| 874 | — Counterfeiting, forging, falsification, or unauthorized reproduction of any document, article of identification, money, security, or official paper. |
| 875 | — Making intoxicants, narcotics, or other controlled substances. |
| 876 | — Giving or offering any official staff member or volunteer a bribe or anything of value for favor or unauthorized service. |
| 877 | — Committing four or more general infractions within a ninety-day period all of which arise out of separate incidents and have been reported in writing. |
| 878 | — Intentionally failing to comply with an administrative or post hearing sanction. |
| 900 | — Attempting to commit or aiding another person to commit a serious infraction as enumerated in this section. Such action shall be considered the same as commission of the offense itself. |
| 901 | — Operating a motor vehicle without permission.)) |

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-120 Provisions of supervision. In meeting its responsibilities for ~~((the care of residents, a work/training release facility shall provide))~~ providing supervision of offenders in the program, the following will be provided at the work release facility:

(1) ~~((A))~~ Staff on duty twenty-four hours ((duty and an office within the facility so that the staff can monitor the activities of the residents)) a day, seven days a week;

(2) A check-in and check-out system to ensure that the stated whereabouts of the ~~((resident))~~ offender is known at all times, including checks ~~((on the resident))~~ at school, work, furlough, sponsored outing, pass, etc.;

(3) Bed checks or head counts to account for the resident's whereabouts; a minimum of three counts ~~((per shift))~~ daily shall be required;

(4) Provide adequately for the resident with respect to sleeping quarters, bathroom facilities, and accommodations for cooking, dining, lounging and leisure time activities;

(5) Comply with state and local fire codes and applicable building, safety, and sanitation codes.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-140 Limits of confinement. A work/training release (~~(resident)~~) offender shall be confined to the facility at all times except:

(1) When (~~(interviewing prospective employers)~~) seeking or arranging for registration at a school or training facility;

(2) When working at paid employment or attending a training facility in a vocational or academic program;

(3) (~~(If enrolled in an on-campus training program and housed in an on-campus facility, when participating in customary and official on-campus activities or mandatory field trips;~~)

(4)) When authorized a point-to-point pass not to exceed two hours, excluding travel, for the purpose of transacting personal business including a treatment regimen, between the hours of (~~(8:00)~~) 7:00 a.m. and 10:00 p.m. and/or outside that time frame with written permission of the facility supervisor or designee;

(~~(5)~~) (4) When authorized to participate in social and recreational activities in company with a sponsor-escort between 8:00 a.m. and midnight;

(~~(6)~~) (5) When on furlough;

(~~(7)~~) (6) When on authorized medical appointments or court appearances;

(~~(8)~~) (7) When ordered to perform community service;

(8) When seeking employment as approved on an approved job search pass.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-150 Sponsor-escort. (1) A sponsor-escort shall be a responsible citizen who shall accompany and monitor a work/training release (~~(resident)~~) offender during a social or recreational activity. The sponsor-escort must be approved by the work/training release facility supervisor or designee; and the sponsor and resident must sign an agreement with the department which describes his or her responsibilities.

(2) Persons who are on active/inactive felony probation or parole or under an active SRA sentence, shall not be approved as sponsor-escorts. Persons who have a past felony conviction and who have earned a discharge may be approved as sponsor-escorts on an individual basis by the (~~(assistant director)~~) work release supervisor, or his or her designee.

(3) Sponsor-escorts must complete a sponsor orientation provided by the work/training release facility before eligibility under this section.

(4) Sponsor-escorts may not be party to an active no-contact order with the offender.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-160 Termination of plan. (~~((4))~~) At any time after approval has been granted to any work/training release (~~(resident)~~) offender to participate in the work/training release program, such approval may be revoked, and (~~(if the work/training release resident has been released from)~~) the offender may be sent to a state correctional institution (~~(on a work release plan, he/she may be returned to a state correctional institution, or the plan may be modified, in the sole discretion of the secretary.~~)

(2) ~~Without limiting the authority of the secretary under subsection (1) of this section, a work/training release plan may be terminated or disciplinary action taken by the classification/disciplinary committee pursuant to this chapter)~~ or jail. A work release offender may be terminated from the program as a result of a disciplinary or classification decision or the following:

(~~((a))~~) (1) If requested in writing by the work/training release (~~(resident)~~) offender;

(~~((b))~~) ~~If the work/training release facility refuses to accept or continue to serve the work/training release resident in accordance with its contract with the department;~~

(~~((c))~~) ~~If the plan is discontinued or modified so that it no longer meets agency standards or if the work/training release resident becomes unable to comply with the terms of the plan;~~

(~~((d))~~) (2) If the work/training release (~~(resident)~~) offender lacks aptitude for the assignment or is improperly placed; or

(~~((e))~~) (3) If the work/training release (~~(resident)~~) offender has been unable to adjust or adapt to the conditions of the work/training release facility; or

(~~((f))~~) ~~If the work/training release resident has demonstrated through his or her behavior an unwillingness to respond to counseling by staff; or~~

(~~((g))~~) (4) If the work/training release (~~(resident's)~~) offender's situation and circumstances have significantly changed; or

(~~((h))~~) (5) If the work/training release (~~(resident)~~) offender has failed to comply with federal or state laws or local ordinances(~~(, or~~

(i) ~~If the work/training release resident has failed to comply with standard work/training release rules as enumerated in WAC 137-56-100; or~~

(j) ~~If the work/training release resident has failed to comply with such other written facility rules as are promulgated by the facility supervisor; or~~

(k) ~~If the work/training release resident has failed to comply with such other specific restrictions or behavior expectations which have previously been called to the attention of the work/training release resident by the work/training release facility supervisor and are documented in writing; or~~

(l) ~~If the work/training release resident has committed a serious infraction as enumerated in WAC 137-56-110).~~

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-170 Service of notice of proposed disciplinary action. (1) If disciplinary action is proposed, the work/training release facility supervisor or community corrections officer may suspend the work/training release plan and place the ~~((resident))~~ offender in custody pending a disciplinary hearing.

(2) The work/training release facility supervisor or designee shall advise the ~~((resident))~~ offender in writing of the factual allegations which provide the basis for the proposed disciplinary action within one working day after the suspension of the work/training release plan.

(3) If the work/training release plan is not suspended pending the disciplinary hearing, then the facility supervisor or designee shall advise the offender at least twenty-four hours prior to the scheduled hearing.

(4) The factual allegations may be amended and/or new allegations added at any time prior to the disciplinary hearing, provided that the work/training release ~~((resident))~~ offender shall have notice of such new and/or amended allegations at least twenty-four hours prior to the disciplinary hearing unless such notice shall be waived in writing by the ~~((resident))~~ offender.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-175 ~~((Facility)) Alternatives to the formal disciplinary hearing ((committee)).~~ ~~((1) The disciplinary hearing committee shall consist of at least two members, including the work/training release facility supervisor, or his/her designee, and a member of the contractor's staff, if the facility is under contract with the department. No resident may be a member of this committee. The facility supervisor or designee shall serve as chairperson and shall have the authority to make the final decision. The facility supervisor or his or her designee shall inform the resident, in writing, of the disciplinary hearing committee's decision within three working days.~~

~~(2) At institutions, prerelease facilities, and noncontract work/release facilities, a single hearing officer or the classification committee may serve as the disciplinary hearing committee for work/training release residents housed at those facilities. If the hearing is conducted by a single hearing officer, the hearing must be taped and the tape kept for a minimum of one hundred twenty days after the date of the appeal decision or court action, whichever is later.~~

~~(3) No person making an allegation involved in the incident, or called as a witness, shall be a member of the disciplinary hearing committee. Persons called as witnesses must be approved by the disciplinary hearing committee chairperson and must have information or facts which are relative to the allegations being considered. In the event that an individual is disqualified, or disqualifies himself or herself, under this rule or for any other reason, a replacement may be designated by the facility supervisor.)~~ When addressing serious infractions, the work/training release community corrections officer may, with the facility supervisor's permission, choose to address the infraction behavior using either a department

authorized stipulated agreement or the negotiated sanction agreement process.

AMENDATORY SECTION (Amending WSR 95-22-060, filed 10/30/95, effective 12/1/95)

WAC 137-56-180 Disciplinary hearing. (1) A work/training release ~~((resident))~~ offender served with allegations providing the basis for a proposed disciplinary action shall be notified in writing that a hearing has been set before ~~((a disciplinary hearing committee/))~~ department hearing officer. An allegation involving the commission by the ~~((resident))~~ offender of a serious infraction may be amended at anytime by the department, provided that twenty-four hours notice be given to the ~~((resident))~~ offender or the ~~((resident))~~ offender agrees in writing to waive notice to respond to the allegations. The hearing will be ~~((set))~~ held within ~~((five))~~ eight working days of the suspension of the work/training release plan, unless a longer time is approved by the ~~((area assistant director))~~ hearings program administrator or his or her designee. The written notice of hearing shall be given to the ~~((resident))~~ offender at least twenty-four hours before the hearing unless notice is waived, in writing, and advise the ~~((resident))~~ offender of his or her rights, including the following:

(a) The ~~((resident))~~ offender shall be present at all stages of the hearing, except during deliberation in appropriate circumstances.

(b) The ~~((resident))~~ offender shall present his or her own case to the ~~((disciplinary hearing committee/))~~ hearing officer. If there is a language or communications barrier, the ~~((disciplinary hearing committee chairperson/))~~ hearing officer shall appoint an advisor.

(c) The ~~((resident))~~ offender may have an attorney present at his/her expense, only when a felony has been alleged. Such representation is limited to advising the ~~((resident))~~ offender of his or her rights to remain silent, and does not include the right to act as an advocate throughout the hearing.

(d) The ~~((resident))~~ offender may testify during the hearing or remain silent, and his or her silence will not be held against him or her.

(e) The work/training release ~~((resident))~~ offender may, in preparation for the hearing, ask the ~~((disciplinary hearing committee chairperson/))~~ hearing officer that certain department or contract staff members, other work/training release ~~((residents))~~ offenders, and other persons be present as witnesses at the hearing. The ~~((disciplinary hearing committee/))~~ hearing officer shall grant such request if it is determined by the ~~((disciplinary hearing committee chairperson/))~~ hearing officer that to do so would not be unduly hazardous to the work/training release facility's safety or correctional goals. Provided, however, Limitations may be made by the ~~((disciplinary committee))~~ hearing officer if the information to be presented by the witnesses is deemed to be irrelevant, duplicative, or unnecessary to the adequate presentation of the work/training release ~~((resident's))~~ offender's case.

(2) Attendance at the hearing shall be limited to parties directly concerned. The ~~((disciplinary hearing committee~~

~~chairperson/))~~ hearing officer may exclude unauthorized persons.

(3) ~~((The disciplinary hearing committee/hearing officer shall make an evaluation of the resident and may make a recommendation to the indeterminate sentence review board regarding good time credits and readiness for parole.))~~ Hearings shall be recorded and a copy of the recording maintained in accordance with the statewide retention schedule.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-200 Disciplinary hearing—Waiver. (1)

At any time after having been served with an allegation providing the basis for a proposed disciplinary action, the ~~((resident))~~ offender may choose to waive his or her right to a hearing by signing an admission of the allegation and request that the hearing be dispensed with entirely or limited only to questions of disposition. Also, the ~~((resident))~~ offender may waive, in writing, the twenty-four hour notice.

(2) The ~~((resident))~~ offender may admit in writing to part of the allegations and thereby limit the scope of the hearing.

(3) In those cases where the allegation involves misbehavior or other culpability on the part of the ~~((resident))~~ offender, he or she shall be advised in writing that in admitting the violation and waiving the hearing, a report will be submitted which may result in the loss of work/training release status, good time credits and/or the extension of the minimum term.

AMENDATORY SECTION (Amending WSR 95-22-060, filed 10/30/95, effective 12/1/95)

WAC 137-56-210 Disciplinary hearing—Rules of evidence. (1) All relevant and material evidence is admissible which, in the opinion of the ~~((disciplinary hearing committee chairperson))~~ hearing officer, is the best evidence reasonably obtainable having due regard for its necessity, availability, and trustworthiness.

(2) All evidence material to the issues raised in the hearing shall be offered into evidence. All evidence forming the basis for the ~~((department's))~~ hearing officer's decision in a matter shall be offered into evidence.

(3) The work/training release ~~((resident))~~ offender shall be allowed to call witnesses approved by the ~~((disciplinary hearing committee chairperson))~~ hearing officer pursuant to WAC 137-56-180 (1)(e) and to present documentary evidence in his/her defense at the hearing when permitting the work/training release ~~((resident))~~ offender to do so will not be unduly hazardous to the work/training release facility's safety or correctional goals unless the testimony to be presented by the witness and/or the information desired to be presented is deemed by the ~~((disciplinary hearing committee chairperson))~~ hearing officer to be irrelevant, immaterial, unnecessarily duplicative of other information and/or testimony before the ~~((disciplinary hearing committee))~~ hearing officer, or otherwise found to be unnecessary to the adequate presentation of the work/training release ~~((resident's))~~ offender's case. The testimony of all witnesses from outside the work/training release facility shall be considered in writing. In the event the ~~((disciplinary hearing committee chair-~~

~~person))~~ hearing officer determines that the presence of a witness is appropriate, the ~~((disciplinary hearing committee))~~ hearing officer should call the witness, or in its discretion, may continue the hearing if the witness is unavailable, but will become available within a reasonable period of time: Provided, however, That if the witness is unavailable, the ~~((disciplinary hearing committee))~~ hearing officer may, in ~~((its))~~ his or her discretion, consider the written testimony previously submitted.

(4) The work/training release ~~((resident))~~ offender may question witnesses against him/her at the discretion of the ~~((disciplinary hearing committee chairperson))~~ hearing officer. If the ~~((disciplinary hearing chairperson))~~ hearing officer determines that a source of information would be subject to risk or harm if his/her identity were disclosed, testimony of the confidential source may be introduced by the testimony of a staff member. The confidential testimony may be provided by the source or by the written and signed statement of the source. If the staff member to whom the source provided information is unavailable, the written statement of this staff member may be used. The ~~((disciplinary hearing chairperson))~~ hearing officer shall, out of the presence of all work/training release ~~((residents))~~ offenders and off the record, identify the confidential source, and how the testifying staff member received the confidential information. The staff member presenting the information from a confidential source shall identify the source and the circumstances surrounding the receipt of the confidential information to the ~~((disciplinary hearing chairperson))~~ hearing officer, off the record. The ~~((disciplinary hearing chairperson))~~ hearing officer shall make an independent determination regarding the reliability of the confidential source, the credibility of the confidential information, and the necessity of not revealing the source of the confidential information. In determining whether the confidential source is reliable and the confidential information is credible, the ~~((disciplinary hearing chairperson))~~ hearing officer should consider all relevant circumstances including, but not limited to:

- (a) Evidence from other staff members that the confidential source has previously given reliable information;
- (b) Evidence that the confidential source had no apparent motive to fabricate information;
- (c) Evidence that the confidential source received no benefit from providing the information;
- (d) Whether the confidential source is giving first-hand information;
- (e) Whether the confidential information is internally consistent and is consistent with other known facts; and
- (f) The existence of corroborating evidence.

The ~~((disciplinary hearing chairperson))~~ hearing officer shall also determine whether safety concerns justify nondisclosure of the source of confidential information. The reliability and credibility determination and the need for confidentiality must be made on the record.

(5) Documentary evidence, including written statements submitted by interested parties on behalf of the ~~((resident))~~ offender, may be received. Such evidence may include copies of documents, excerpts from documents and incorporation of written material by reference, including depositions.

(6) ~~((The chairperson of the disciplinary hearing committee may exclude relevant evidence if the probative value is outweighed by the danger of unfair prejudice, confusion of the issues, misleading the committee or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.~~

(7) ~~The ((disciplinary hearing committee)) hearing officer should determine if the ((resident)) offender is competent to understand the charges and proceedings or needs an interpreter to participate therein. If the ((resident)) offender is not competent or needs an interpreter, the ((disciplinary hearing committee)) hearing officer should postpone the hearing to secure a report on the competency of the ((resident)) offender, provide an interpreter, or take such other action as will assure the fairness and orderliness of the hearings.~~

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-220 Disciplinary hearing—Findings and conclusions. (1) At the conclusion of the hearing, the ~~((disciplinary hearing committee))~~ hearing officer will make a finding of fact ~~((within one working day))~~ as to whether or not the allegations made against the ~~((resident))~~ offender have been proven by a preponderance of the evidence presented at the hearing.

(2) If the ~~((disciplinary hearing committee))~~ hearing officer determines that the allegations have not been proven by a preponderance of the evidence presented at the hearing, the ~~((resident))~~ offender shall be restored/continued on work/training release status.

(3) If the ~~((disciplinary hearing committee))~~ hearing officer determines that one or more of the allegations have been proven by a preponderance of the evidence presented at the hearing, the ~~((disciplinary hearing committee))~~ hearing officer will proceed to a disposition.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-230 Disciplinary hearing—Disposition.

(1) ~~The hearing officer shall seek and consider input from the community corrections officer, the facility contract staff and pertinent treatment providers.~~

(2) ~~The ((disciplinary hearing committee)) hearing officer will consider the ((resident's)) offender's total background, adjustment on work/training release, attitude, recommendations of interested parties, and any other information relative to the ((resident's)) offender's ability to continue in the program. The ((disciplinary hearing committee)) hearing officer shall make a determination as to whether or not the ((resident)) offender has earned good time credits toward release, and whether the matter should be referred to the indeterminate sentence review board or the court for possible increase in the inmate's or ((resident's)) offender's minimum term.~~

~~((2))~~ (3) ~~The ((resident)) offender shall be present at all stages of the hearing, except for deliberation and even during deliberation when appropriate, and shall have the opportunity to make argument in his or her own behalf.~~

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-240 Disciplinary hearing—Decision.

(1) ~~The ((disciplinary hearing committee))~~ hearing officer may:

(a) Restore the work/training release ~~((resident))~~ offender to his or her work/training release status under the same or modified conditions as the original plan; or

(b) Restrict the ~~((resident))~~ offender to the work/training release facility for up to thirty days; or

(c) Require restitution be made by the work/training release ~~((resident))~~ offender; or

(d) Require extra duty to be performed by the ~~((resident))~~ offender; or

(e) Revoke approval of an approved sponsor; or

(f) Deny good conduct time; or

(g) ~~((Require additional time in prerelease; or~~

~~((h))~~ Terminate the work/training release plan and return the work/training release ~~((resident))~~ offender to an institution/jail, or facility~~((; or~~

~~((i) Refer the offender to the court or the indeterminate sentence review board for final disposition)).~~

(2) Nothing in this section shall preclude subsequent reclassification of the work/training release ~~((resident))~~ offender or placement into administrative segregation if demonstrable cause exists to support this action.

(3) ~~The ((facility supervisor or designee))~~ hearing officer shall notify the ~~((resident))~~ offender orally within one working day and confirm the decision in writing within five working days. The written decision shall specify the evidence upon which the ~~((disciplinary hearing committee))~~ hearing officer relied and shall include a description of the circumstances surrounding the allegation(s) upon which the termination of the work/training release is based, the reasons for the decision, a discussion of the ~~((resident's))~~ offender's personal culpability in the actions which have led to the termination, and an evaluation of the ~~((resident's))~~ offender's progress, attitudes, need for further programs including work training alternatives ~~((and readiness for release)).~~

AMENDATORY SECTION (Amending WSR 95-22-060, filed 10/30/95, effective 12/1/95)

WAC 137-56-250 Disciplinary hearing—Appeal.

~~The ((resident)) offender may appeal the decision of the ((facility disciplinary hearing committee)) hearing officer to the ((assistant director, or his or her designee)) area appeals panel. Appeal requests must be in writing, must be specific and based on objection to the procedures used or the information available to the ((committee)) hearing officer in making ((its) his or her decision. Appeals must be submitted within ((five working)) seven calendar days of the ((committee's oral)) hearing officer's written decision. For reasons of community protection, all sanctions ordered by the ((disciplinary hearing chairperson)) hearing officer will be imposed following the hearing and will not be stayed. The ((assistant director, or his or her designee)) appeals panel, upon receipt of an appeal, will review the findings and decision of the ((disciplinary hearing committee)) hearing officer and either:~~

(1) Affirm, or affirm and modify to a lesser sanction the decision of the ~~((facility disciplinary hearing committee)) hearing officer~~; or

(2) Reverse the decision of the ~~((facility disciplinary hearing committee)) hearing officer~~; or

(3) Remand ~~((the decision for additional findings or))~~ for a rehearing.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 137-56-060 Application—Decision.

WAC 137-56-100 Standard rules.

WSR 05-24-019

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed November 29, 2005, 11:19 a.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Purpose: Payroll deductions, chapter 296-126 WAC. The current payroll deductions rule (WAC 296-126-025) is in conflict with the chapters 49.46 and 49.52 RCW statute and have been since the ruling of *Pope v. University of Washington*. This court case addressed which deductions are permitted from termination wages and ruled that RCW 49.48.010, which limits the deductions that an employer may make from an employee's wages, applies only to deductions from wages upon termination of employment. RCW 49.52.060 limits deductions from wages to those provided by law and those that have been agreed upon in writing in advance and that accrue to the benefit of the worker, and specifies that the employer cannot benefit financially from the deduction.

The proposed wording also includes two new sections (WAC 296-126-028 and 296-126-030) for wage deductions during on-going employment and adjustments for overpayments. The proposed rule will clarify when an employer can deduct an employee's wages from final paychecks, on-going employment, or overpayments. It also clarifies when the employee's paycheck cannot go below minimum wage. The proposed rules are consistent with RCW 49.46.090, 49.48.010, and 49.52.060.

Citation of Existing Rules Affected by this Order: Amending WAC 296-126-025.

Statutory Authority for Adoption: Chapters 49.12, 49.46, 49.48, 49.52 RCW, and RCW 43.22.270.

Adopted under notice filed as WSR 05-13-150 on June 21, 2005; and WSR 05-20-070 on October 4, 2005.

Changes Other than Editing from Proposed to Adopted Version: The following changes were made to the proposed wording:

- WAC 296-126-025 Deductions from final wages.
 - Amended wording to allow an employer to deduct an employee's paycheck below minimum wage for personal loans.

- Amended wording to clarify the difference between an advance and a draw on wages.
- Reorganized wording for clarity.
- Added examples for clarity.

- WAC 296-126-028 Wage deductions during on-going employment.
 - Amended wording to allow an employer to deduct an employee's paycheck below minimum wage for personal loans.
 - Added note saying employers need to follow the Internal Revenue Service rules when charging interest.
 - Reorganized wording for clarity.
- WAC 296-126-030 Adjustments for overpayments.
 - Amended effective date to January 1, 2006.
 - Amended wording for clarification and ease of use.

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 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, 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 2, Amended 1, Repealed 0.

Date Adopted: November 29, 2005.

Gary Weeks
Director

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-025 Deductions from final wages.

~~((Except as otherwise provided by law, no employer shall make any deduction from the wage of an employee:~~

~~(1) For any cash shortage, walkout (failure of customer to pay), breakage, or loss of equipment, unless it can be shown that the shortage, walkout, breakage or loss was caused by a dishonest or willful act of the employee.~~

~~(2) For acceptance of a bad check, unless it can be shown that the employee accepted such a check in violation of procedures previously made known to him or her by the employer.~~

~~(3) For any cash shortage from a cash register, drawer or portable depository provided for that purpose, unless the employee has sole access to the cash and has participated in the cash accounting at the beginning of his or her shift and again at the end of said shift. Where a portable cash depository is in use the employer shall provide for periodic withdrawals of cash receipts during the shift to prevent large accumulations of cash.))~~ (1) An employer may deduct any portion of an employee's final wages and may reduce the

employee's final gross wages below the state minimum wage that is in effect at the time the work is performed, if the deduction is for any of the following:

(a) Required by state or federal law; or

(b) For medical, surgical, or hospital care or service. No deductions may be made for these services if covered under RCW 51.48.050; or

Example. During the final pay period, the business paid a worker's medical costs for an injury not related to the employee's job duties and deducted the amount from final wages to repay those costs to the employer.

(c) To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments.

(2) The following deductions must be specifically agreed upon orally or in writing by the employee or employer and may reduce the employee's final gross wages below the state minimum wage that is in effect at the time the work is performed, if the deduction is for any of the following:

(a) For pension, medical, dental, or other benefit plans when such agreements have been specifically agreed upon orally or in writing in advance by the employee and employer.

Example 1. Insurance premium: An employee and employer may have entered into an oral or written agreement in advance for deductions for monthly medical premiums.

Example 2. Retirement plan: The employee chose a 401K pension plan and agreed orally or in writing to a payroll deduction for the specified amount to participate in that plan.

(b) For a payment to a creditor or third party if the employee authorizes it orally or in writing in advance to pay a sum for the benefit of the employee. The creditor or third party can be the employer of the employee.

Example 1. Assignment to third party: An employee may request orally or in writing for the employer to withhold four hundred dollars from the final paycheck for an automobile loan to be paid directly to the employee's financial institution by the employer.

Example 2. Employee loan: The employer loaned the employee three hundred dollars and charged reasonable interest. A written agreement with the terms of repaying the loan at fifty dollars per pay period through payroll deductions was made in writing and in advance between the employer and employee. The agreement also contained a provision that if the employee left the employer's employment for any reason, any balance due on the loan could be withheld from the final paycheck. Note: Employers are advised to check with the United States Department of Labor, Wage and Hour Division and the Internal Revenue Service regarding application of federal laws on charging interest.

(3) An employer can deduct wages from an employee's final paycheck for the reasons in (a), (b), (c), and (d) of this subsection, but only when these incidents have occurred in the final pay period. An employer may not deduct wages from the final paycheck for incidents that occurred in previous pay periods under (a) through (d) of this subsection. None of the deductions contained in this subsection may reduce the employee's final gross wages below the state minimum wage that is in effect at the time the work is performed.

(a) For acceptance of a bad check or credit card, if it can be shown that the employee accepted the check or credit card in violation of procedures previously made known to the employee by the employer; or

(b) For any cash shortage from a cash register, drawer or portable depository provided for that purpose, if it can be shown that the employee has sole access to the cash and has participated in the cash accounting at the beginning of the employee's shift and again at the end of said shift; or

(c) For any cash shortage, walkout (failure of customer to pay), breakage, or loss of equipment, if it can be shown that the shortage, walkout, breakage or loss was caused by a dishonest or willful act of the employee; or

(d) Deductions taken due to alleged employee theft are permissible only if it can be shown that the employee's intent was to deprive and that the employer filed a police report.

(4) It is the employer's responsibility to prove the existence of any agreement. Therefore, the department recommends that all agreements, policies, and procedures be in writing and signed by the affected employees.

(5) The employer must identify and record all wage deductions openly and clearly in employee payroll records.

Helpful information:

The following are examples of situations when deductions are allowed from the employee's final paycheck:

Example 1. Employee purchase of employer's goods or services: An employee worked for a tire store. The employee purchased tires from the store and entered into a written agreement with the employer to deduct an agreed amount each pay period until the debt was paid in full, and the agreement further specified that any remaining balance due at the time of termination could be withheld from the final paycheck. This type of deduction may reduce the employee's wage below the state minimum wage.

Example 2. Advance or draw on wages. An employee may obtain an advance or draw on wages. The employer may deduct the advance or draw from the employee's final paycheck. The employer must record the advance or draw in the employee's payroll records. This type of deduction may reduce the employee's wage below the state minimum wage.

Example 3. Cost of uniforms: An employee and employer may agree orally or in writing that the employer may deduct the cost of uniforms provided by the employer if the uniforms are not returned by the employee at the time of termination. This type of deduction cannot reduce the employee's wage below the state minimum wage.

Example 4. Cash shortages: In a grocery store, the employees and employer agreed orally or in writing that the employer could deduct wages for cash shortages that occurred in the final pay period if the employees had sole access to their cash registers during their shifts and participated in the employer's cash accounting procedures before and after their shifts.

NEW SECTION

WAC 296-126-028 Wage deductions during on-going employment. (1) During an on-going employment relationship, an employer may deduct any portion of an employee's wages below the state minimum wage that is in effect at the

time the work is performed if the deduction is for any of the following reasons:

- (a) Required by state or federal law; or
- (b) For medical, surgical, or hospital care or service; or

Example: The business paid a worker's medical costs for an injury not related to the employee's job duties and deducted the amount to repay those costs to the employer.

(c) To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments.

(2) During an on-going employment relationship, an employer may deduct wages when the employee expressly authorizes the deduction in writing and in advance for a lawful purpose for the benefit of the employee. These deductions may reduce the employee's gross wages below the state minimum wage.

Example 1. Employee purchase of employer's goods or services: An employee works for a tire store and wants to buy tires from the store. The employee can enter into a written agreement in advance with the employer to buy the tires through a payroll deduction. However, the employer must sell the tires to the employee for the same price or less than it would sell the tires to the customer.

Example 2. Employee loan: An employee worked for a hardware store and asked the employer for a loan. The employer loaned the employee money and charged reasonable interest. An agreement with the terms of repaying the loan and interest through payroll deductions was made in writing and in advance between the employer and employee.

Example 3. Employee benefits: Deductions have been specifically agreed upon orally or in writing in advance by the employee and employer for monthly pension, medical, dental, or other benefit plans.

Example 4. Creditor or third party: An agreement with a creditor or third party to withhold \$400 from the final paycheck for an automobile loan to be paid directly to the employee's financial institution by the employer. The creditor or third party can be the employer of the employee.

(3) Neither the employer nor any person acting in the interest of the employer can derive any financial profit or benefit from any of the deductions under this regulation.

(4) For the purposes of this regulation, reasonable interest charged by the employer for a loan or credit extended to the employee is not considered to be of financial benefit to the employer. Note: Employers are advised to check with the United States Department of Labor, Wage and Hour Division and the Internal Revenue Service regarding application of federal laws on charging interest.

(5) The employer must identify and record all wage deductions openly and clearly in employee payroll records.

Helpful information:

The following are examples of situations when deductions are not allowed from the employee's wages during an on-going employment relationship:

Example 1. Customer's bad check or credit card: The amount of a customer's check that is returned for nonsufficient funds when an employee accepts a check in violation of established policies, or if an employee accepts a customer's bad credit card in violation of established policies.

Example 2. Shortage from cash register: The amount of a till shortage even when an employee participates in cash accounting at the beginning and end of their shift, has sole access to the cash register, and is short at the end of the shift.

Example 3. Customer walks out without paying: An unpaid bill when a customer leaves the restaurant without paying even when an employee is not watching their customers at a restaurant and ignores the fact the customers are finished dining and are ready for their check.

Example 4. Damage or loss: The cost for replacing broken glasses when the employee drops a tray of glasses when unloading the dishwasher.

NEW SECTION

WAC 296-126-030 Adjustments for overpayments.

(1) An overpayment occurs when an employer pays an employee for:

- (a) More than the agreed-upon wage rate; or
- (b) More than the hours actually worked.

(2) Recouping the overpayment may reduce the employee's gross wages below the state minimum wage.

(3) An employer cannot recover an overpayment when the disputed amount concerns the quality of work.

(4) An employer can recover an overpayment from an employee's paycheck provided the overpayment was infrequent and inadvertent. Infrequent means rarely, not occurring regularly, or not showing a pattern. Inadvertent means an error that was accidental, unintentional, or not deliberately done. The burden of proving the inadvertent error rests with the employer who made the error. The employer has ninety days from the initial overpayment to detect and implement a plan with the employee to collect the overpayment. If the overpayment is not detected within the ninety-day period, the employer cannot adjust an employee's current or future wages to recoup the overpayment. Recouping of overpayments is limited to the ninety-day detection period.

(5) In the case of employees covered by an unexpired collective bargaining agreement that expires on or after January 1, 2006, in which overpayments are included in the terms of the collective bargaining agreement, the effective date of this rule shall be the later of:

- (a) The first day following expiration of the collective bargaining agreement; or
- (b) The effective date of the revised collective bargaining agreement.

Helpful information:

The following are examples of when overpayments may or may not be allowed:

Example 1. Allowed. Overpayment of agreed wage rate: An employee was paid an agreed rate of ten dollars per hour but received a paycheck at the rate of eleven dollars per hour. The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the amount overpaid in the previous pay period.

Example 2. Allowed. Overpayment for hours worked: An employee worked seventy-two hours in the pay period, but the employee was paid for eighty hours for that period. The employer provided documentation of the overpayment to

the affected employee and adjusted the employee's next paycheck for the eight hours overpaid in the previous pay period.

Example 3. Not allowed. Overpayment not detected within ninety days of first occurrence: An employer agreed to pay an employee ten dollars per hour, but when the first check was received, the amount paid was paid at eleven dollars per hour. The employee may or may not have brought it to the attention of the employer. Six months later the employer detected the overpayments and adjusted the employee's wages in the next paycheck for the entire amount of the overpayment. This is not an allowable adjustment because it was not detected within ninety days from the first occurrence.

(6) The employer must provide advance written notice to the employee before any adjustment is made. The notice must include the terms under which the overpayment will be recouped. For example: One adjustment or a series of adjustments.

(7) The employer must provide documentation of the overpayment to the affected employee or employees.

(8) The employer must identify and record all wage deductions openly and clearly in employee payroll records.

(9) Regardless of the provisions of this section, if appropriate, employers retain the right of private legal action to recover an overpayment from an employee.

(10) This regulation does not apply to public employers. See chapter 49.48 RCW, Wages—Payment—Collection.

WSR 05-24-020
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 29, 2005, 11:20 a.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Purpose: Chapter 296-150M WAC, Manufactured homes, this rule making is a result of chapter 399, Laws of 2005 (SHB 1393), which passed the 2005 legislature. This legislation requires the department to perform a fire safety inspection and issue a certificate on all pre-HUD (mobile) homes prior to them being moved from their current location.

Citation of Existing Rules Affected by this Order: Amending WAC 296-150M-0302, 296-150M-0306, 296-150M-0309, 296-150M-0805, and 296-150M-3000.

Statutory Authority for Adoption: Chapter 43.22 RCW and chapter 399, Laws of 2005 (SHB 1393).

Adopted under notice filed as WSR 05-20-067 on October 4, 2005.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 5, Repealed 0.

Date Adopted: November 29, 2005.

Gary Weeks
 Director

AMENDATORY SECTION (Amending WSR 05-01-102, filed 12/14/04, effective 2/1/05)

WAC 296-150M-0302 What are some examples of work to manufactured or mobile homes that either require or do not require a permit and inspection?

TYPE OF WORK	ALTERATION PERMIT AND INSPECTION REQUIRED?	
	Yes	No
(1) Air Conditioner/Heat Pump		
(a) New installation	X	
(b) Replacement	X	
(c) Reconnection after moving home	X	
(d) Repair		X
(e) Adjustment and/or maintenance		X
(2) Bottom Board - Repair		X
(3) Clothes Washer		
(a) New installation		X
(b) Replacement		X
(c) Repair with approved parts		X
(d) Adjustment and/or maintenance		X
(4) Clothes Dryer (Electric)		
(a) New installation (Prewired electrical)		X
(b) Replacement		X
(c) Repair with approved parts		X
(d) Adjustment and/or maintenance		X
(e) Replacement with gas clothes dryer when modifications to electrical or gas systems are performed	X	
(5) Clothes Dryer (Gas)		
(a) New installation (Preplumbed gas)		X
(b) Replacement		X
(c) Repair with approved parts		X
(d) Adjustment and/or maintenance		X
(e) Replacement with electric clothes dryer when modifications to electrical or gas systems are performed	X	
(6) Dishwasher		
(a) New installation	X	
(b) Replacement		
(i) Cord connected		X
(ii) Direct wired	X	

TYPE OF WORK	ALTERATION PERMIT AND INSPECTION REQUIRED?	
	Yes	No
(c) Repair		X
(d) Adjustment and/or maintenance		X
(7) Doors (Interior and Exterior)		
(a) Additional*	X	
(b) Replacement of door that fits into the same opening		X
(8) Electrical		
(a) Replacing main electrical panel*****	X	
(b) Adding circuits	X	
(c) Extending existing circuit(s)	X	
(d) Replacing lighting fixtures****		X
(e) Replacing circuit breakers/fuses		X
(f) Replacing switches, receptacles, light bulbs, fluorescent tubes and glass or plastic shades		X
(g) Repairing bath exhaust fans		X
(h) Repairing fans in kitchen range hoods		X
(9) Exterior Finish		
(a) Painting		X
(b) Replacement of siding	X	
(10) Furnace (Electric)		
(a) New installation	X	
(b) Replacement	X	
(c) Repair		X
(d) Adjustment and/or maintenance		X
(e) Replacement with gas furnace	X	
(11) Furnace (Gas)		
(a) New installation	X	
(b) Replacement	X	
(c) Repair		X
(d) Change from LP Gas to Natural Gas or from Natural Gas to LP gas per its listing		X
(e) Adjustment and/or maintenance		X
(f) Replacement with electric furnace	X	
(12) Gas Lines		
(a) New installation	X	
(b) Extend existing gas line	X	
(c) Repair	X	
(13) Interior		
(a) Painting, wall papering and similar finish work		X
(b) Replacement or addition of curtains, drapes, blinds, window shades and other window coverings		X
(c) Replacement of carpeting and other floor-covering materials with similar materials		X

TYPE OF WORK	ALTERATION PERMIT AND INSPECTION REQUIRED?	
	Yes	No
(14) Microwave Oven (Over range)		
(a) New installation when electrical system modifications are performed	X	
(b) Replacement		X
(c) Repair		X
(d) Adjustment and/or maintenance		X
(15) Microwave Oven (Countertop)		X
(16) Pellet Stove		
(a) New installation	X	
(b) Replacement	X	
(c) Repair		X
(d) Adjustment and/or maintenance		X
(17) Plumbing		
(a) Adding plumbing fixtures***	X	
(b) Repairing damage***	X	
(c) Replacing fixtures***		X
(d) Repairing fixtures***		X
(e) Replacement/repair of shower doors and curtains		X
(18) Range/Cook Top/Eye Level Oven (Electric)		
(a) Replacement		
(i) Cord connected		X
(ii) Direct wired	X	
(b) Repair with approved parts		X
(c) Adjustment and/or maintenance		X
(d) Replacement with gas appliance(s)	X	
(19) Range/Cook Top/Eye Level Oven (Gas)		
(a) New installation	X	
(b) Replacement		X
(c) Repair with approved parts		X
(d) Adjustment and/or maintenance		X
(e) Replacement with electric appliance(s)	X	
(20) Roofing		
(a) Reroofing	X	
(b) Applying liquid or mastic roof sealant to a metal roof		X
(c) Repair of damaged composition shingles		X
(21) Structural changes		
(a) Adding a dormer*	X	
(b) Truss repairs*	X	
(c) Add opening in wall**	X	
(d) Add gypsum board to walls or ceilings	X	
(e) Repair or replacing floor decking/joists	X	
(22) Water Heater (Electric)		
(a) Replacement w/electric water heater	X	
(b) Repair		X

TYPE OF WORK	ALTERATION PERMIT AND INSPECTION REQUIRED?	
	Yes	No
(c) Adjustment and/or maintenance		X
(d) Replacement with gas water heater	X	
(23) Water Heater (Gas)		
(a) Replacement w/gas water heater	X	
(b) Repair		X
(c) Change from LP gas to Natural Gas or from Natural Gas to LP gas per its listing		X
(d) Adjustment and/or maintenance		X
(e) Replacement with electric water heater	X	
(24) Windows		
(a) Replacement ((is)) in same opening with no structural changes*****		X
(b) Replacement when structural changes are required	X	
(c) Replacement of glass		X
(25) Wood Stove/Fireplace		
(a) New installation	X	
(b) Replacement	X	
(c) Repair		X
(d) Adjustment and/or maintenance		X

* May also require a plan review. Please contact your local L&I representative.

** May also require a plan review. The department has detailed drawings you may use for openings in sidewalls. Please contact your local L&I representative.

*** Fixtures include: Faucets, sinks, lavatories, laundry tubs, water closets (toilets), tubs, showers and tub/shower combos.

**** Fixtures must be installed per its listing and intended use.

***** Windows in bedrooms must be of egress type.

***** Meter bases may only be installed by the manufacturer of the home unless repaired or replaced.

NOTE: Exemption from the permit and inspection requirements shall not be deemed to grant authorization for any work to be done in violation of the applicable code, Chapter 296-150M WAC.

AMENDATORY SECTION (Amending WSR 00-17-148, filed 8/22/00, effective 9/30/00)

WAC 296-150M-0306 What codes are used when altering a manufactured((f))/mobile((g)) home? Alterations to a manufactured((f))/mobile((g)) home must be in compliance with the Manufactured Home Construction and Safety Standards, 24 CFR Part 3280, as adopted by the Secretary for the Department of Housing and Urban Development (HUD) and the amendments to that federal standard adopted in this WAC chapter. The department will accept the following provisions, which supersede the applicable requirements in 24 CFR Part 3280.

(1) Tested equivalent air conditioning/heat pump components that have been tested and listed for use with a particular furnace by a nationally recognized testing laboratory.

(2) Water heaters that are listed by a nationally recognized testing laboratory and installed per the manufacturer's installation instructions.

(3) Pellet stoves for installation that have been listed by a department approved testing laboratory. For a current list of approved laboratories, contact any department field office or the department at the address shown in WAC 296-150M-0020.

(4) All electrical alterations and additions to the manufactured/mobile home shall comply with the current edition of the National Electrical Code.

(5) The International Residential Code for structural alterations.

Note: The replacement of exterior siding is an alteration and requires the approval of the department and an alteration insignia.

AMENDATORY SECTION (Amending WSR 99-13-010, filed 6/4/99, effective 7/5/99)

WAC 296-150M-0309 How do I apply for alteration approval and obtain an alteration insignia? (1) To apply for alteration approval and the alteration insignia, you must:

(a) Complete an alteration permit form and an application for alteration insignia. We will provide the forms upon request.

(b) Submit the completed forms to us, with the first hour of inspection fee and alteration insignia fee. Alterations requiring more than one inspection shall have the first hour inspection fee paid to the department prior to any inspection. (See WAC 296-150M-3000.)

(2) The request for inspection of your alteration should be at least five days before the date you want the inspection.

(3) Once we approve your alteration, we will attach the alteration insignia to your manufactured home.

Note: Specifications, engineering data, and test results should be available for our inspector. If applicable, your approved design plan must also be available during the inspection.

(4) The department will send written notification to the local jurisdiction in which the mobile home will be located, if the mobile home fails the fire safety inspection.

NEW SECTION

WAC 296-150M-0540 How do I obtain a fire safety certificate to site my pre-HUD home. In order to install a pre-HUD home in Washington, you will need to obtain and pass an inspection by the department. To apply for a fire safety certificate, you must:

(1) Complete an alteration permit form and a fire safety certificate application. We will provide you the forms on request.

(2) A fire safety preinspection checklist can be obtained at your local labor and industries office or on the web at <http://www.lni.wa.gov/tradeslicensing/fas>.

(3) Submit the completed forms to us, with the first hour of inspection fee and the site placement form. Alterations

requiring more than one inspection shall have the first hour of inspection paid to the department prior to each additional inspection. The following fees will need to be paid: Electrical fire safety, structural fire safety, insignia fees for fire safety. (See WAC 296-150M-3000, Manufactured/mobile home fees.)

(4) Any other alterations to the home that have not been previously inspected and approved by the department will cause the approval of this inspection to be denied.

(5) Once we approve the inspection, we will provide you with a completed alteration permit and fire safety certificate.

Note: After the home has been sited, any subsequent move will require a separate fire safety certificate.

NEW SECTION

WAC 296-150M-0550 What is required to meet the fire safety certificate requirements? You will need to complete the following requirements for your pre-HUD home.

(1) **Wiring system.** Aluminum wiring is not permitted for use in fifteen and twenty amp branch circuits. You must do one of the following:

(a) Rewire the fifteen and twenty amp branch circuits in copper.

(b) Install receptacles and switches that are approved for the use of either aluminum or copper (i.e., they will be marked AL/CU); or

(c) Install copper "pig tail" connections using wiring nuts approved for aluminum wire between the aluminum wire and the receptacle/switch/light fixture/bath and fans/range hoods.

Additionally, if the circuit breakers in the electrical panel for fifteen and twenty amp circuits are not approved for aluminum wiring, the breakers either need to be replaced with those that are acceptable for aluminum wire or they need to be pit tailed with copper wire and wire nuts acceptable for aluminum wire.

(2) **Fire protection.**

(a) Walls, doors and ceilings in the water heater and furnace compartments shall be protected by materials with a flame spread rating not exceeding twenty-five. (This can be met with gypsum wallboard having a minimum thickness of 5/16 inch or ceramic tile.)

(b) The range hood must be at least as wide as the appliance and have a lower front edge or "eyebrow" which extends at least three inches past the cabinet above.

(c) The surfaces of the exposed walls adjacent to and within six inches of a range or cooktop appliance must be composed of gypsum wallboard, with a minimum thickness of 5/16 inch, or ceramic tile. Kitchen cabinets constructed of combustible material that is located above a range or cooktop must be a minimum of twenty-four inches above the cooking surface. The cabinets must be protected on the bottom and on the exposed sides within six inches of either side of the appliance, by covering the surface with gypsum wallboard, with a minimum thickness of 5/16 inch, and installing a metal hood above the cooking appliance. A minimum of 3/8 inch gap is required between the cabinet and the gypsum on top of the hood.

(d) No window may be within twelve inches of the edge of a burner or element of the cooking appliance.

(3) **Emergency egress.**

(a) Every bedroom or other room designed expressly for sleeping purposes must have a window that meets the minimum requirements of at least 5.0 square feet of opening for emergency egress.

(b) Rooms that have a door, with a minimum clear opening of twenty-eight inches wide by seventy-two inches high, which opens directly to the outside do not need to have an emergency egress window.

(c) Windows and devices must be installed in a manner which allows for proper operation.

(d) The bottom of the opening of an egress window shall be no more than thirty-six inches above the floor.

(e) The height of the bottom of the window can be increased to forty-four inches when the clear net area is increased to 5.7 square feet of opening.

(4) **Smoke detectors.**

(a) Smoke detectors are required at each hallway or area giving access to a bedroom or group of bedrooms. When a furnace is located in the hall giving access to the bedrooms, the detector is to be located between the living area and the return air grill of the furnace.

(b) Smoke detectors must be installed on a wall and must be permanently wired and installed on a J-box with splices terminating inside the box.

(c) A smoke alarm with a rated life of ten years and provided with a listed ten year battery can be used in lieu of wired smoke detector.

(d) The smoke detector may not be switched and if more than one smoke detector is installed, then each one is to be wired on a different branch circuit.

(e) Smoke detectors do not need to be wired together to sound simultaneous alarms.

AMENDATORY SECTION (Amending WSR 03-12-044, filed 5/30/03, effective 5/30/03)

WAC 296-150M-0805 How does the department ensure that a contractor, firm, partnership, or corporation complies with the requirements of chapter 43.22 RCW? The department of labor and industries ensures that contractors, firms, partnerships, and corporations comply with the requirements of chapter 43.22 RCW and this chapter which require a permit and inspection by the department of alterations to manufactured and mobile homes by:

(1) Inspecting manufactured and mobile home job sites by the department's compliance inspectors; or

(2) Auditing the records of contractors per WAC ((~~296-150M-0720~~) 296-150M-0715).

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)**WAC 296-150M-3000 Manufactured/mobile home fees.**

INITIAL FILING FEE	\$31.40
DESIGN PLAN FEES:	
STRUCTURAL ALTERATION - MASTER DESIGN (CODE CYCLE)	\$126.60
STRUCTURAL ALTERATION - ONE YEAR DESIGN	\$84.90
RENEWAL FEE	\$37.80
RESUBMITTAL FEE	\$63.10
ADDENDUM (Approval expires on the same date as original plan.)	\$63.10
ELECTRONIC PLAN SUBMITTAL FEE \$4.80 per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT INSPECTION FEES:	
INSPECTION	
MECHANICAL	
Heat Pump	\$31.80
Combination Heat Pump (new) and Furnace (replacement)	\$42.40
Air Conditioning	\$31.80
Combination Air Conditioning (new) and Furnace (replacement)	\$42.40
Furnace Installation (gas*** or electric)	\$31.80
Gas*** Piping	\$31.80
Wood Stove	\$31.80
Pellet Stove	\$31.80
Gas*** Room Heater	\$31.80
Gas*** Decorative Appliance	\$31.80
Range: Changing from electric to gas***	\$31.80
Gas*** Water Heater Replacement	\$21.20
Water Heater: Changing from electric to gas***	\$21.20
Any combination of Furnace, Range, and Water Heater changing from electric to gas*** and includes Gas Piping charge	\$63.70
ELECTRICAL	
Heat Pump	\$42.40
Heat Pump (when home is prewired for a heat pump)	\$10.60
Combination Heat Pump (new) and Furnace (replacement)	\$53.10
Air Conditioner	\$42.40
Air Conditioner (when home is prewired for an air conditioner)	\$10.60
Combination Air Conditioner (new) and Furnace (replacement)	\$53.10
Furnace Installation (gas or electric)	\$42.40
Wood Stove (if applicable)	\$42.40
Pellet Stove (if applicable)	\$42.40
Gas*** Room Heater (if applicable)	\$42.40
Gas*** Decorative Appliance (if applicable)	\$42.40
Range: Changing from gas*** to electric	\$42.40
Electric Water Heater Replacement	\$42.40
Electric Water Heater replacing Gas*** Water Heater	\$42.40
Each added or modified 120 volt circuit (maximum charge is two circuits)	\$42.40
Each added 240 volt circuit (for other than Heat Pumps, Air Conditioners, Furnaces, Water Heaters, Ranges, Hot Tubs or Spas)	\$42.40
Hot Tub or Spa (power from home electrical panel)	\$42.40
Replace main electrical panel	\$42.40
Low voltage fire/intrusion alarm	\$42.40
Fire Safety	\$42.40
Any combination of Furnace, Range and Water Heater changing from electric to gas***	\$42.40

PLUMBING		
Fire sprinkler system (also requires a plan review)		\$21.20
Each added fixture		\$21.20
Replacement of water piping system (this includes two inspections)		\$95.60
STRUCTURAL		
Inspection as part of a mechanical/fire safety installation (cut truss/floor joist, sheet rocking)		\$42.40
Reroofs (may require a plan review)		\$74.30
Changes to home when additions bear loads on home per the design of a professional (also requires a plan review)		\$74.30
Other structural changes (may require a plan review)		\$74.30
Fire Safety (may also require an electrical fire safety inspection)		\$42.40
MISCELLANEOUS		
Other structural changes (may require a plan review)		\$74.30
Plan Review		\$84.90
OTHER REQUIRED INSPECTIONS (Per hour*)		\$58.40
ALL REINSPECTIONS (Per hour*)		\$58.40
Refund		\$10.60
INSIGNIA FEES:		
ALTERATION		\$10.60
FIRE SAFETY CERTIFICATE		\$10.60
REISSUED - LOST/DAMAGED		\$10.60
IPIA		
DEPARTMENT AUDIT FEES		
REGULARLY SCHEDULED IPIA AUDIT:		
First inspection on each section (one time only)		\$28.70
Second and succeeding inspections of unlabeled sections (Per hour*)		\$63.10
OTHER IPIA FEES:		
Red tag removal during a regularly scheduled IPIA audit (Per hour*separate from other fees)		\$63.10
Red tag removal at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)		\$63.10
Increased frequency surveillance (Per hour* plus travel time* and mileage**)		\$63.10
Attendance at manufacturers training classes (Per hour* only)		\$63.10
Subpart "I" investigations (Per hour* plus travel time* and mileage**)		\$63.10
Alterations to a labeled unit (Per hour* plus travel time* and mileage**)		\$63.10
IPIA Issues/Responses (Per hour* Plus travel time* and mileage**)		\$63.10
Monthly surveillance during a regularly scheduled IPIA audit (Per hour*plus travel time* and mileage**)		\$63.10
Monthly surveillance at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)		\$63.10
Plant certifications, recertifications and addenda updates (Per hour* plus travel time* and mileage** per each inspector)		\$63.10
Response to HBT Audit during a regularly scheduled IPIA audit (Per hour*)		\$63.10
Response to HBT Audit at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time*and mileage**)		\$63.10
Alternative construction (AC) letter inspections at placement site (Per hour* plus travel time*and mileage**)		\$63.10
Replacement of HUD labels (Per hour* plus travel time* and mileage**)		\$63.10
State Administrative Agency (SAA) inspection fee (Per hour* plus travel time* and mileage**)		\$63.10
OTHER FEES:		
FIELD TECHNICAL SERVICE (Per hour plus travel time* and mileage**)		\$58.40
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)		\$11.90
VARIANCE INSPECTION FEE		\$84.90
HOMEOWNER REQUESTED INSPECTION		\$84.90
DECERTIFICATION OF A MOBILE/MANUFACTURED HOME		\$84.90
DEMOLITION OF A MOBILE/MANUFACTURED HOME		\$84.90

NOTE: Local jurisdictions may have other fees that apply.	
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Gas means all gases; natural, propane, etc.	

**WSR 05-24-026
PERMANENT RULES
NOXIOUS WEED
CONTROL BOARD**

[Filed November 30, 2005, 9:37 a.m., effective December 31, 2005]

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

Purpose: The state noxious weed list provides the basis for noxious weed control efforts by county noxious weed control boards, weed districts, the state Noxious Weed Control Board and the Washington State Department of Agriculture, under the auspices of chapter 17.10 RCW. The effect of the state noxious weed list is to prioritize control of noxious weed species statewide, concentrating on prevention and early detection, while also allowing for local program flexibility.

This rule-making order adds two species, floating primrose-willow and reed sweetgrass, to the Class A noxious weed list. It also changes the designated control areas for three Class B noxious weeds. Two of the Class B weeds, gorse and kochia, have their designated control areas increased. For one of the Class B weeds, Dalmatian toadflax, the change is a technical correction, and does not change on-the-ground control work.

Citation of Existing Rules Affected by this Order: Amending WAC 16-750-005 and 16-750-011.

Statutory Authority for Adoption: Chapters 17.10 and 34.05 RCW.

Adopted under notice filed as WSR 05-20-031 on September 28, 2005.

Changes Other than Editing from Proposed to Adopted Version: Revisions concerning proposed Class C noxious weeds, there was not agreement within the Washington State Noxious Weed Control Board regarding the proposed listings of yellow archangel or common fennel as Class C noxious weeds. Therefore, those proposed changes were not adopted. All other proposed changes were adopted.

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 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 30, 2005.

Ray H. Fann
Chairman

AMENDATORY SECTION (Amending WSR 03-04-001, filed 1/22/03, effective 2/22/03)

WAC 16-750-005 State noxious weed list—Class A noxious weeds.

Common Name

bean-caper, Syrian
blueweed, Texas
broom, Spanish
buffalobur
clary, meadow
cordgrass, dense flower
cordgrass, salt meadow
crupina, common
flax, spurge
four o'clock, wild
goatsrue
hawkweed, yellow devil
hogweed, giant
hydrilla
johnsongrass
knapweed, bighead
knapweed, Vochin
kudzu
lawnweed
mustard, garlic
nightshade, silverleaf
primrose-willow, floating
sage, clary
sage, Mediterranean
spurge, eggleaf
starthistle, purple
sweetgrass, reed
thistle, Italian
thistle, milk
thistle, slenderflower

Scientific Name

Zygophyllum fabago
Helianthus ciliaris
Spartium junceum
Solanum rostratum
Salvia pratensis
Spartina densiflora
Spartina patens
Crupina vulgaris
Thymelaea passerina
Mirabilis nyctaginea
Galega officinalis
Hieracium floribundum
Heracleum mantegazzianum
Hydrilla verticillata
Sorghum halepense
Centaurea macrocephala
Centaurea nigrescens
Pueraria montana var. lobata
Soliva sessilis
Alliaria petiolata
Solanum elaeagnifolium
Ludwigia peploides
Salvia sclarea
Salvia aethiopsis
Euphorbia oblongata
Centaurea calcitrapa
Glyceria maxima
Carduus pycnocephalus
Silybum marianum
Carduus tenuiflorus

Common Name	Scientific Name
velvetleaf	<i>Abutilon theophrasti</i>
woad, dyers	<i>Isatis tinctoria</i>

AMENDATORY SECTION (Amending WSR 05-01-012, filed 12/2/04, effective 1/2/05)

WAC 16-750-011 State noxious weed list—Class B noxious weeds.

	Name	Will be a "Class B designate" in all lands lying within:
(1)	alyssum, hoary <i>Berteroa incana</i>	(a) regions 1, 2, 5, 6, 8, 9, 10 (b) region 3, except Okanogan County (c) Okanogan County, of region 3, except Ranges 29 through 31 East of Townships 37 through 40 North (d) Adams and Whitman counties of region 7.
(2)	arrowhead, grass-leaved <i>Sagittaria graminea</i>	(a) regions 1, 3, 4, 6, 7, 8, 9, 10 (b) region 2 except Lake Roesiger, Lake Serene, Lake Loma and Echo Lake in Snohomish County (c) region 5 except Mason Lake in Mason County.
(3)	blackgrass <i>Alopecurus myosuroides</i>	(a) regions 1, 2, 3, 5, 6, 8, 9, 10 (b) Ferry, Stevens, Pend Oreille counties of region 4 (c) Adams County of region 7.
(4)	bluweed <i>Echium vulgare</i>	(a) regions 1, 2, 3, 4, 5, 6, 8, 9, 10 (b) region 7 except for an area starting at the Stevens County line on SR 291 south to the SR 291 bridge over the Little Spokane River, thence upstream along the Little Spokane River to the first Rutter Parkway Bridge; thence south along the Rutter Parkway to the intersection of Rutter Parkway and Indian Trail Road; thence southerly along Indian Trail Road to a point three miles south (on section line between sections 22 and 27, T-26N, R-42E); thence due west to a point intersecting the line between Ranges 41 and 42; thence north along this line to a point 1/4 mile south of Charles Road; thence northwesterly parallel to Charles Road to a point 1/4 miles south of the intersection of Charles Road and West Shore Road; thence northerly along West Shore Road to the Spokane River (Long Lake); thence southeasterly along the Spokane River to the point of beginning.

	Name	Will be a "Class B designate" in all lands lying within:
(5)	broom, Scotch <i>Cytisus scoparius</i>	(a) regions 3, 4, 6, 7, 9, 10.
(6)	bryony, white <i>Bryonia alba</i>	(a) regions 1, 2, 3, 4, 5, 6, 8, 9 (b) region 7 except Whitman County (c) Franklin County of region 10.
(7)	bugloss, common <i>Anchusa officinalis</i>	(a) regions 1, 2, 3, 5, 6, 8, 9, 10 (b) region 4 except Stevens and Spokane counties (c) Lincoln, Adams, and Whitman counties of region 7.
(8)	bugloss, annual <i>Anchusa arvensis</i>	(a) regions 1, 2, 3, 4, 5, 6, 8, 9 (b) Lincoln and Adams counties (c) Whitman County except ranges 43 through 46 East of Townships 16 through 20 North.
(9)	camelthorn <i>Alhagi maurorum</i>	(a) regions 1, 2, 3, 4, 5, 7, 8, 9 (b) region 6 except those portions of Sections 23, 24, 25, and 29 through 36, T16N, R27E, W.M. lying outside Intercounty Weed District No. 52 and except Sections 1 through 12, T15N, R27E, W.M. in Grant County and except the area west of Highway 17 and north of Highway 26 in Adams County (c) Franklin, Columbia, Garfield, and Asotin counties of region 10 (d) an area beginning at the Washington—Oregon border at the southwest portion of section 5, R32E, T6N, then north to the northwest corner of section 3, R32E, T7N, then east to the northeast corner of section 3, R36E, T7N, then south to southeast portion of section 15, R36E, T6N, at the Washington—Oregon border, then west along the Washington—Oregon border to the point of beginning.
(10)	carrot, wild <i>Daucus carota</i>	(a) regions 3, 7 (except where intentionally cultivated) (b) Spokane and Ferry counties of region 4 (except where intentionally cultivated) (c) region 6, except Yakima County (except where intentionally cultivated) (d) region 9, except Yakima County (except where intentionally cultivated) (e) region 10, except Walla Walla County (except where intentionally cultivated).
(11)	catsear, common <i>Hypochaeris radicata</i>	(a) regions 3, 4, 6, 7, 10 (b) region 9 except Klickitat County.

		Will be a "Class B designate" in all lands lying within:				Will be a "Class B designate" in all lands lying within:	
	Name				Name		
(12)	chervil, wild <i>Anthriscus sylvestris</i>	(a)	regions 1, 3, 4, 6, 7, 9, 10	(21)	gorse <i>Ulex europaeus</i>	(a)	regions 1, 3, 4, 6, 7, 9, 10
		(b)	region 5 except those portions of Thurston County within T15, 16, 17N, R2, 3, 4W			(b)	Skagit, <u>Island</u> , and Whatcom counties of region 2
		(c)	region 2 except Guemes Island in Skagit County			(c)	Thurston, <u>Kitsap</u> , Pierce, and King counties of region 5
		(d)	region 8 except Clark County.			(d)	Wahkiakum, <u>Clark</u> , <u>Skamania</u> , Cowlitz, and Lewis counties of region 8.
(13)	cinquefoil, sulfur <i>Potentilla recta</i>	(a)	regions 1, 3, 8, 10	(22)	hawkweed, mouseear <i>Hieracium pilosella</i>	(a)	regions 1, 2, 3, 4, 6, 7, 8, 9, 10
		(b)	region 2 except Skagit County			(b)	region 5 except Thurston County
		(c)	region 4 except Stevens, Ferry, and Pend Oreille counties			(c)	Thurston County lying within T17N, R1W, S31; T16N, R2W, S30 W1/2; T16N, R3W, S25, SE1/4; T16N, R3W, S36, N1/2; T16N, R2W, S31, NW1/4.
		(d)	region 5 except Thurston and Pierce counties	(23)	hawkweed, orange <i>Hieracium aurantiacum</i>	(a)	regions 3, 6, 9, 10
		(e)	region 6 except Yakima County			(b)	Clallam County of region 1
		(f)	region 7 except Spokane County			(c)	Skagit County of region 2
		(g)	region 8 except Lewis County			(d)	Ferry County of region 4
		(h)	region 9 except Klickitat County.			(e)	Thurston and King counties of region 5
(14)	cordgrass, smooth <i>Spartina alterniflora</i>	(a)	regions 1, 3, 4, 5, 6, 7, 9, 10			(f)	Lincoln and Adams counties of region 7
		(b)	region 2 except Padilla Bay of Skagit County			(g)	Lewis County of region 8.
		(c)	region 8 except bays and estuaries of Pacific County.	(24)	hawkweed, polar <i>Hieracium atratum</i>	(a)	regions 1, 2, 3, 4, 6, 7, 8, 9, 10
(15)	cordgrass, common <i>Spartina anglica</i>	(a)	regions 1, 3, 4, 5, 6, 7, 8, 9, 10			(b)	region 5 outside the boundaries of Mt. Rainier National Park.
		(b)	region 2 except bays and estuaries of Skagit and Island counties and except bays and estuaries north of Everett in Snohomish County.	(25)	hawkweed, queen-devil <i>Hieracium glomeratum</i>	(a)	regions 1, 2, 3, 5, 6, 7, 8, 9, 10
		(c)	region 8 except bays and estuaries of Pacific County.			(b)	Ferry County of region 4.
(16)	daisy, oxeye <i>Leucanthemum vulgare</i>	(a)	regions 7, 10	(26)	hawkweed, smooth <i>Hieracium laevigatum</i>	(a)	regions 1, 3, 4, 5, 6, 7, 8, 9, 10
		(b)	region 9 except those areas lying within Klickitat and Yakima counties west of Range 13 East			(b)	San Juan, Island, and Skagit counties of region 2.
		(c)	region 6 except those areas lying within Yakima and Kittitas counties west of Range 13 E.	(27)	hawkweed, yellow <i>Hieracium caespitosum</i>	(a)	regions 1, 2, 3, 5, 6, 7, 8, 10
(17)	elodea, Brazilian <i>Egeria densa</i>	(a)	regions 3, 4, 6, 7, 9, 10			(b)	region 4 except Stevens and Pend Oreille counties
		(b)	Lewis County of region 8			(c)	region 9 except sections 32, 33 and 34 of T6N, R12E, and sections 4, 5, 6, and 7 of T5N, R12E, and section 12 of T5N, R11E, of Klickitat County.
		(c)	Clallam County of region 1			(a)	regions 1, 2, 3, 4, 5, 6, 7, 8, 10
		(d)	King County of region 5, except lakes Washington, Sammamish, Union and Fenwick.	(28)	hedgearsley <i>Torilis arvensis</i>	(b)	Yakima, Benton, Franklin counties
(18)	fanwort <i>Cabomba caroliniana</i>	(a)	regions 1, 2, 3, 4, 5, 6, 7, 9, 10			(c)	Klickitat County except those lands lying within T4N, R10E, R11E, R12E, R13E, R14E; T3N, R10E, R11E, R12E, R13E; T2N, R12E, R13E.
		(b)	region 8 except T8N, R3W of Cowlitz County.			(a)	regions 1, 3, 4, 6, 7, 8, 9, 10
(19)	fieldcress, Austrian <i>Rorippa austriaca</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9			(b)	region 2 except Whatcom County
		(b)	regions 7 and 10 except within the Palouse River Canyon from Big Palouse Falls to the Snake River.	(29)	helmet, policeman's <i>Impatiens glandulifera</i>	(a)	regions 1, 3, 4, 6, 7, 8, 9, 10
(20)	floating heart, yellow <i>Nymphoides peltata</i>	(a)	regions 1, 2, 3, 5, 6, 7, 8, 9, 10			(b)	region 2 except Whatcom County
		(b)	region 4 except the Spokane River between Long Lake Dam and Nine Mile Dam.				

		Will be a "Class B designate" in all lands lying within:				Will be a "Class B designate" in all lands lying within:	
Name				Name			
		(c)	region 5 except Pierce and Thurston counties.			(c)	Adams County except those areas within T15N, R36E, Section 36; T15N, R37E, Sections 22, 26, 27, 28, 31, 32, 33 and 34; T15N, R37E, western half of Sections 23, 24 and 25; T15N, R38E, Sections 2, 10, 11, 14, 15, 19 and 20; T16N, R38E, Sections 34 and 35; T17N, R37E, Sections 5 and 6
(30)	herb-Robert <i>Geranium robertianum</i>	(a)	regions 3, 4, 6, 7, 9, 10			(d)	Franklin County of regions 9 and 10.
(31)	houndstongue <i>Cynoglossum officinale</i>	(a)	Kittitas County of region 6			(a)	regions 1, 2, 3, 4, 7, 9, 10
		(b)	Douglas County of regions 3 and 6.			(b)	region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties
(32)	indigobush <i>Amorpha fruticosa</i>	(a)	regions 1, 2, 3, 4, 5, 6	(36)	knapweed, meadow <i>Centaurea jacea x nigra</i>	(a)	regions 1, 2, 3, 4, 7, 9, 10
		(b)	regions 7 and 10 except within 200 feet of the Snake River from Central Ferry downstream			(b)	region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties
		(c)	regions 8, 9, and 10 except within 200 feet of the Columbia River.			(c)	region 6 except Kittitas County
(33)	knapweed, black <i>Centaurea nigra</i>	(a)	regions 1, 2, 3, 4, 7, 9, 10			(d)	region 8 except Clark County.
		(b)	region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties	(37)	knapweed, Russian <i>Acropilton repens</i>	(a)	regions 1, 2, 5, 7, 8
		(c)	region 6 except Kittitas County			(b)	region 4 except that area lying within the boundaries of the Colville Indian Reservation within Ferry County
		(d)	region 8 except Clark County.			(c)	Adams County of region 6 except for the area west of Highway 17 and North of Highway 26
(34)	knapweed, brown <i>Centaurea jacea</i>	(a)	regions 1, 2, 3, 4, 7, 9, 10			(d)	Intercounty Weed District No. 52
		(b)	region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties			(e)	region 10 except Franklin County.
		(c)	region 6 except Kittitas County	(38)	knapweed, spotted <i>Centaurea biebersteinii</i>	(a)	regions 1, 2, 3, 5, 6, 9
		(d)	region 8 except Clark County.			(b)	Ferry County of region 4
(35)	knapweed, diffuse <i>Centaurea diffusa</i>	(a)	regions 1, 2, 5, 8			(c)	Adams and Whitman counties of region 7
		(b)	Grant County lying in Townships 13 through 16 North, Ranges 25 through 27 East; Townships 17 and 18 N., Ranges 25 through 30 East; Townships 19 and 20 North, Ranges 29 and 30 East; T21N, R23E, Sections 1 through 30; T21N, R26E., Sections 5, 6, 7, 8, 17, and 18; East 1/2 Township 21N, Range 27E.; T21N, Ranges 28 through 30 E; those portions of Townships 22 through 28N, Ranges 28 through 30 E.; those portions of Township 22 through 28N., Ranges 23 through 30E. lying in Grant County; all W.M.	(39)	knotweed, Bohemian <i>Polygonum bohemicum</i>	(d)	region 8, except that portion of Lewis County below the ordinary high watermark of the Tilton River from Hwy. 508 to Lake Mayfield
		(c)	region 6 except Kittitas County			(e)	region 10 except Garfield County.
		(d)	region 8 except Clark County.	(40)	knotweed, giant <i>Polygonum sachalinense</i>	(a)	Kittitas County of region 6
		(a)	regions 1, 2, 5, 8			(b)	Chelan and Douglas counties of regions 3 and 6
		(b)	Grant County lying in Townships 13 through 16 North, Ranges 25 through 27 East; Townships 17 and 18 N., Ranges 25 through 30 East; Townships 19 and 20 North, Ranges 29 and 30 East; T21N, R23E, Sections 1 through 30; T21N, R26E., Sections 5, 6, 7, 8, 17, and 18; East 1/2 Township 21N, Range 27E.; T21N, Ranges 28 through 30 E; those portions of Townships 22 through 28N, Ranges 28 through 30 E.; those portions of Township 22 through 28N., Ranges 23 through 30E. lying in Grant County; all W.M.			(c)	Pend Oreille County of region 4.

		Will be a "Class B designate" in all lands lying within:				Will be a "Class B designate" in all lands lying within:	
	Name				Name		
(41)	knotweed, Himalayan <i>Polygonum polystachyum</i>	(a)	Kittitas County of region 6			(g)	region 6 except that portion of Grant County lying northerly of the Frenchmen Hills-O'Sullivan Dam Road, southerly of Highway Interstate 90, easterly of the section line of the location of County Road J SW/NW if constructed and westerly of the section line of the location of County Road H SE/NE if constructed
		(b)	Pend Oreille County of region 4				
		(c)	Lewis County of region 8.			(h)	region 9 except Benton County
(42)	knotweed, Japanese <i>Polygonum cuspidatum</i>	(a)	Kittitas County of region 6			(i)	region 10 except Walla Walla County
		(b)	Chelan and Douglas counties of regions 3 and 6			(j)	Intercounty Weed Districts No. 51 and No. 52.
		(c)	Pend Oreille County of region 4.			(a)	regions 1, 4, 7, 8
(43)	kochia <i>Kochia scoparia</i>	(a)	Clallam County of region 1	(47)	loosestrife, wand <i>Lythrum virgatum</i>	(b)	region 2 except Snohomish County
		(b)	Skagit and Whatcom counties of region 2			(c)	region 3 except within 100 feet of the ordinary highwater mark of the Okanogan River from the Canadian border south to River-side
		(e))	<u>Regions 1, 2, 5, 8</u>			(d)	region 5 except King County
		(b)	Pend Oreille County of region 4			(e)	Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line
		((d))	King County of region 5			(f)	region 6 except that portion of Grant County lying northerly of the Frenchmen Hills-O'Sullivan Dam Road, southerly of Highway Interstate 90, easterly of the section line of the location of County Road J SW/NW if constructed and westerly of the section line of the location of County Road H SE/NE if constructed
		(e))	Kittitas County of region 6.			(g)	region 9 except Benton County
		(c)				(h)	region 10 except Walla Walla County
(44)	lepyroclis <i>Lepyroclis holosteoides</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9, 10			(i)	Intercounty Weed Districts No. 51 and No. 52.
		(b)	region 7 except an area within Whitman County east of the Pullman—Wawawai Road from Wawawai to Pullman and south of State Highway 270 from Pullman to Moscow, Idaho.			(a)	regions 1, 2, 3, 4, 6, 7, 8, 9, 10
(45)	loosestrife, garden <i>Lysimachia vulgaris</i>	(a)	regions 1, 2, 3, 4, 6, 7, 8, 9, 10			(b)	region 5 except King County
		(b)	region 5 except King County			(c)	Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line.
		(c)	Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line.			(f)	region 6 except that portion of Grant County lying northerly of the Frenchmen Hills-O'Sullivan Dam Road, southerly of Highway Interstate 90, easterly of the section line of the location of County Road J SW/NW if constructed and westerly of the section line of the location of County Road H SE/NE if constructed
(46)	loosestrife, purple <i>Lythrum salicaria</i>	(a)	regions 1, 4, 7, 8			(g)	region 9 except Benton County
		(b)	region 2 except Snohomish County			(h)	region 10 except Walla Walla County
		(c)	region 3 except within 100 feet of the ordinary highwater mark of the Okanogan River from the Canadian border south to River-side			(i)	Intercounty Weed Districts No. 51 and No. 52.
		(d)	Grays Harbor, Mason, Kitsap, and Thurston counties of region 5			(a)	regions 1, 2, 3, 4, 5, 7, 8
		(e)	Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line	(48)	nutsedge, yellow <i>Cyperus esculentus</i>	(b)	region 6 except those areas lying between State Highway 26 and State Highway 28, and westerly of Dodson Road in Grant County, and except S 1/2, Sec. 2, T20N, R25E., W.M.
		(f)	Pierce County, except those areas lying within T2D, 21, 22N, R1W and R1E, all sections			(c)	region 9 except:

		Will be a "Class B designate" in all lands lying within:				Will be a "Class B designate" in all lands lying within:	
Name				Name			
		(i)	except those areas lying within the following boundary description within Yakima County: Beginning at the intersection of Highway 12 and Parker Heights Road and continuing easterly to Konnowac Pass Road follow said road north to the intersection of Konnowac Pass Road and Nightingale Road. The northern boundary shall be the Roza Canal, continuing from the established point at Nightingale Road. The boundaries will follow the Roza Canal easterly to the County Line Road. The east boundaries will be the Yakima/Benton County Line from a point beginning at the County Line and Highway 22 (near Byron) continuing westerly along Highway 22 (to near the city of Mabton) to the intersection of Highway 22 and the Reservation Boundary (Division Road) and continuing north to the Yakima River. Then it will follow the river northwest to the Wapato-Donald Road continuing north along said road to Highway 12 then Highway 12 to Parker Heights Road.			(d)	Adams County of region 6 except for the area west of Highway 17 and north of Highway 26.
		(ii)	an area lying southerly of State Route 14 and within T2N, Ranges 13 and 14 E of Klickitat County	(52)	primrose, water <i>Ludwigia hexapetala</i>	(a)	regions 1, 2, 3, 4, 5, 6, 7, 9, 10
(49)	oxtongue, hawkweed <i>Picris hieracioides</i>	(a)	region 10 except Walla Walla County.			(b)	region 8 except T8N, R3W, S14 of Cowlitz County.
(50)	parrotfeather <i>Myriophyllum aquaticum</i>	(b)	regions 1, 2, 3, 4, 5, 6, 7, 9, 10	(53)	puncturevine <i>Tribulus terrestris</i>	(a)	Skagit County of region 2
(51)	pepperweed, perennial <i>Lepidium latifolium</i>	(a)	region 8 except Skamania County.			(b)	Kittitas County of region 6
		(b)	regions 1, 2, 3, 4, 5, 6, 7, 9, 10	(54)	ragwort, tansy <i>Senecio jacobaea</i>	(c)	Adams County
		(c)	Intercounty Weed Districts No. 51 and 52			(d)	Clallam County of region 1.
		(d)	Kittitas County of region 6	(55)	Saltcedar <i>Tamarix ramosissima</i>	(a)	regions 3, 4, 6, 7, 9, 10
						(b)	region 5, that portion of Pierce County lying south or east of a boundary beginning at the White River and State Highway 410, then west along State Highway 410 to intersection with State Highway 162 (Orting) to intersection with Orville Road, then south along Orville Road to intersection with Kapowsin Highway (304th Street East), then west following Kapowsin Highway to intersection with State Route 7, then south along State Route 7 to intersection with State Route 702, then west along State Route 702 to intersection with State Route 507, then southwest along State Route 507 to intersection with the Nisqually River.
						(c)	regions 1, 2, 3, 4, 5, 7, 8, unless intentionally established prior to 2004
				(56)	sandbur, long-spine <i>Cenchrus longispinus</i>	(b)	region 6 except Grant County, unless intentionally established prior to 2004
						(c)	region 9 except Benton and Franklin counties, unless intentionally established prior to 2004
						(d)	region 10 except Franklin County, unless intentionally established prior to 2004.
						(a)	regions 1, 2, 3, 4, 5, 7, 8
						(b)	Adams County of region 6 except for that area lying within Intercounty Weed District No. 52
						(c)	Intercounty Weed District No. 51
				(57)	skeletonweed, rush <i>Chondrilla juncea</i>	(d)	Kittitas County of region 6.
						(a)	regions 1, 2, 3, 5, 8, 9
						(b)	Franklin County except T13N, R36E; and T14N, R36E

		Will be a "Class B designate" in all lands lying within:				Will be a "Class B designate" in all lands lying within:	
Name				Name			
		(c)	Adams County except those areas lying east of a line running north from Franklin County along the western boundary of Range 36 East to State Highway 26 then north on Sage Road until it intersects Lee Road, then due north until intersection with Providence Road, then east to State Highway 261, then north along State Highway 261 to its intersection with Interstate 90, henceforth on a due north line to intersection with Bauman Road, then north along Bauman Road to its terminus, then due north to the Lincoln County line.			(ii)	T24N, R43E, Section 12, Qtr. Section 3, Parcel No. 9068 of Spokane County.
		(d)	region 6 except that portion lying within Grant County that is southerly of State Highway 28, northerly of Interstate Highway 90 and easterly of Grant County Road I Northwest	(60)	spurge, myrtle <i>Euphorbia myrsinites</i> L	(a)	Pend Oreille County of region 4.
		(e)	Stevens County north of Township 33 North of region 4	(61)	starthistle, yellow <i>Centaurea solstitialis</i>	(a)	regions 1, 2, 3, 5, 6, 8
		(f)	Ferry and Pend Oreille counties of region 4			(b)	region 4 except those areas within Stevens County bounded by a line beginning at the intersection of State Highway 20 and State Highway 25, then north to intersection with Pinkston Creek Road, then east along Pinkston Creek Road to intersection with Highland Loop Road, then south along Highland Loop Road to intersection with State Highway 20, then west along State Highway 20 to intersection with State Highway 25
		(g)	Asotin County of region 10			(c)	region 7 except those areas within Whitman County lying south of State Highway 26 from the Adams County line to Colfax and south of State Highway 195 from Colfax to Pullman and south of State Highway 270 from Pullman to the Idaho border
		(h)	Garfield County south of Highway 12			(d)	Franklin County
		(i)	Columbia County from the Walla Walla County line on Highway 12, all areas south of Turner Road; at Turner Road to the Garfield county line, all areas south and east of Turner Road			(e)	region 9 except Klickitat County
		(j)	Whitman County lying in Ranges 43 through 46 East of Townships 15 through 20 North; T14N, Ranges 44 through 46 East; and T13N, Ranges 45 and 46 East.			(f)	in all lands lying within Asotin County, Region 10, except as follows: T11N, R44E, Sections 25, 26, 27, 28, 29, 31, 32, 33, 34, and 35; T11N, R45E, Sections 21, 22, 23, and 25; T11N, R36E, Sections 19, 20, 21, 28, 29, 30, 31, 32, and 33; T10N, R44E, Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 15, and 16; T10N, R45E, Sections 23 and 24; T10N, R46E, Sections 7, 8, 17, 18, 19, 20, 21, 22, 27, 34, and 35; T9N, R46E, Sections 1, 2, 12, 13, 14, 23, 24, 25, 26, 35, and 36; T9N, R47E, Sections 18, 19, 30, and 31; T8N, R46E, Sections 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 23, and 24; T8N, R47E, Sections 8, 17, 18, 19, 20, 29, 30, 31, and 32.
(58)	sowthistle, perennial <i>Sonchus arvensis</i> ssp. <i>arvensis</i>	(a)	regions 1, 2, 3, 4, 7, 8, 9, 10				
		(b)	Adams County of region 6				
		(c)	region 5 except for sections 28, 29, 30, 31, 32, and 33 in T19N, R1E of Thurston and Pierce counties.				
(59)	spurge, leafy <i>Euphorbia esula</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9, 10				
		(b)	region 7 except as follows:				
		(i)	T27N, R37E, Sections 34, 35, 36; T27N, R38E, Sections 31, 32, 33; T26N, R37E, Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 26; T26N, R38E, Sections 5, 6, 7, 8 of Lincoln County	(62)	Swainsonpea <i>Sphaerophysa salsula</i>	(a)	regions 1, 2, 3, 4, 5, 7, 8
						(b)	Columbia, Garfield, Asotin, and Franklin counties

Name	Will be a "Class B designate" in all lands lying within:
	(c) an area beginning at the Washington—Oregon border at the southwest portion of Section 15, R32E, T6N, then north to the northwest corner of Section 3, R32E, T7N, then east to the northeast corner of Section 3, R36E, T7N, then south to the southeast portion of Section 15, R36E, T6N, at the Washington—Oregon border, then west along the Washington—Oregon border to the point of beginning
	(d) Weed District No. 3 of Grant County
	(e) Adams County of region 6.
(63) thistle, musk <i>Carduus nutans</i>	(a) regions 1, 2, 3, 5, 6, 7, 8, 9, 10 (b) Spokane and Pend Oreille counties.
(64) thistle, plumeless <i>Carduus acanthoides</i>	(a) regions 1, 2, 3, 5, 6, 7, 8, 9, 10 (b) region 4 except those areas within Stevens County lying north of State Highway 20.
(65) thistle, Scotch <i>Onopordum acanthium</i>	(a) regions 1, 2, 3, 4, 5, 6, 8, 9 (b) region 7 except for those areas within Whitman County lying south of State Highway 26 from the Adams County line to Colfax and south of State Highway 195 from Colfax to Pullman and south of State Highway 270 from Pullman to the Idaho border
	(c) Franklin County.
(66) toadflax, Dalmatian <i>Linaria dalmatica ssp. dalmatica</i>	(a) regions 1, 2, 5, 8, 10 (b) Douglas County of region 3 lying south of T25N(=) and west of R25E(=, and east of R28E))
	(c) Okanogan County lying within T 33, 34, 35N, R19, 20, 21, 22E, except the southwest, southeast, and northeast quarters of the northeast quarter of section 27, T35N, R21E; and the northeast quarter of the southeast quarter of section 27, T35N, R21E
	(d) Kittitas, Chelan, Douglas, and Adams counties of region 6
	(e) Intercounty Weed District No. 51
	(f) Weed District No. 3 of Grant County
	(g) Lincoln and Adams counties
	(h) The western two miles of Spokane County of region 7
	(i) region 9 except as follows: (i) those areas lying within Yakima County (ii) those areas lying west of the Klickitat River and within Klickitat County.

Name	Will be a "Class B designate" in all lands lying within:
(67) watermilfoil, Eurasian <i>Myriophyllum spicatum</i>	(a) regions 1, 9, 10 (b) region 7 except Spokane County (c) region 8 except within 200 feet of the Columbia River. (d) Adams County of region 6 (e) in all water bodies of public access, except the Pend Oreille River, in Pend Oreille County of region 4.

**WSR 05-24-028
PERMANENT RULES
DEPARTMENT OF REVENUE**

[Filed November 30, 2005, 10:05 a.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 84.34.065 requires the department to annually determine a rate of interest and property tax component by rule that is published in the state register by the January 1st assessment date.

Purpose: To provide county assessors with the rate of interest and property tax component used in valuing farm and agricultural land classified under chapter 84.34 RCW, the Open Space Program, during assessment year 2006.

This rule is being amended to update the interest rate and the property tax component used to value farm and agricultural land classified under chapter 84.34 RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.

Statutory Authority for Adoption: RCW 84.34.065.

Other Authority: RCW 84.34.141.

Adopted under notice filed as WSR 05-19-037 on September 13, 2005.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 30, 2005.

Janis P. Bianchi, Manager
Interpretations and
Technical Advice Unit

AMENDATORY SECTION (Amending WSR 05-01-051, filed 12/7/04, effective 1/1/05)

WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component. For assessment year (~~(2005)~~) 2006, the interest rate and the property tax component that are to be used to value classified farm and agricultural lands are as follows:

- (1) The interest rate is (~~(7.76)~~) 7.24 percent; and
- (2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	((1.36)) <u>1.32</u>	Lewis	((1.13)) <u>1.11</u>
Asotin	((1.44)) <u>1.41</u>	Lincoln	((1.36)) <u>1.32</u>
Benton	((1.39)) <u>1.32</u>	Mason	((1.27)) <u>1.28</u>
Chelan	1.33	Okanogan	((1.24)) <u>1.15</u>
Clallam	((1.11)) <u>1.10</u>	Pacific	((1.44)) <u>1.41</u>
Clark	((1.33)) <u>1.31</u>	Pend Oreille	((1.16)) <u>1.21</u>
Columbia	1.33	Pierce	((1.50)) <u>1.39</u>
Cowlitz	((1.26)) <u>1.27</u>	San Juan	((0.67)) <u>0.70</u>
Douglas	((1.37)) <u>1.38</u>	Skagit	1.20
Ferry	((0.98)) <u>0.95</u>	Skamania	((0.99)) <u>0.98</u>
Franklin	((1.57)) <u>1.49</u>	Snohomish	((1.26)) <u>1.19</u>
Garfield	((1.60)) <u>1.61</u>	Spokane	((1.50)) <u>1.51</u>
Grant	((1.44)) <u>1.41</u>	Stevens	((1.13)) <u>1.12</u>
Grays Harbor	((1.37)) <u>1.43</u>	Thurston	((1.38)) <u>1.31</u>
Island	((0.94)) <u>0.91</u>	Wahkiakum	((1.06)) <u>1.05</u>
Jefferson	((1.11)) <u>1.09</u>	Walla Walla	((1.43)) <u>1.46</u>
King	((1.09)) <u>1.08</u>	Whatcom	((1.30)) <u>1.25</u>
Kitsap	((1.28)) <u>1.21</u>	Whitman	((1.59)) <u>1.58</u>
Kittitas	((1.07)) <u>1.04</u>	Yakima	((1.28)) <u>1.27</u>
Klickitat	((1.20)) <u>1.13</u>		

WSR 05-24-029

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed November 30, 2005, 10:25 a.m., effective December 31, 2005]

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

Purpose: The proposal sets a maximum fee schedule to implement HB 1140, chapter 54, Laws of 2005. The department is required to create and adopt a maximum fee schedule to cap the amount independent review organizations can charge health plans for conducting independent reviews.

Statutory Authority for Adoption: Chapter 54, Laws of 2005.

Adopted under notice filed as WSR 05-20-103 on October 5, 2005.

Changes Other than Editing from Proposed to Adopted Version: The fee for a contract review increased from \$500 to \$600. Public comment indicated that attorneys may charge up to \$225 an hour and contract reviews typically take two hours. A \$500 fee would not allow the independent review organization to cover administrative costs and make a reasonable profit.

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.

Date Adopted: November 15, 2005.

Mary C. Selecky
Secretary

NEW SECTION

WAC 246-305-990 Maximum fee schedule. This section sets the maximum fee schedule for independent reviews, and the process of review and determination of a case referred to an independent review organization (IRO).

(1) IROs may not charge more than the following amount for each review:

Category	Amount
Contract review, interpretation of health plan coverage provisions	\$600
Standard medical review, straightforward review of medical necessity or adverse determination	\$700
Highly specialized medical review of complex conditions or experimental treatment	\$1000
Medical review with multiple reviewers	\$1100
Surcharge for expedited review	\$200

The fees in this section include all costs for time and materials associated with the review including, but not limited to:

(a) Record transmission expenses such as postage and facsimile costs; and

(b) Medical record handling and duplication.

(2) If the IRO and the health care plan agree in advance that the referral includes both a contract review and a medical review, the IRO may charge both fees.

(3) If an IRO charges more than the maximum fees allowed under this section, the department may take action described in WAC 246-305-110.

WSR 05-24-030

PERMANENT RULES

**PARKS AND RECREATION
COMMISSION**

[Filed November 30, 2005, 11:56 a.m., effective December 31, 2005]

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

Purpose: The Washington State Parks and Recreation Commission is responsible for protecting those natural resources under its jurisdiction while simultaneously facilitating and regulating appropriate public enjoyment of parks and parkways. This proposed rule-making action is intended to make necessary modifications to park rules and to accurately reflect changes to the agency's business practices and current use rules for specific park sites and the seashore conservation area.

Citation of Existing Rules Affected by this Order: Repealing WAC 352-20-060; and amending chapters 352-20, 352-32, and 352-37 WAC.

Statutory Authority for Adoption: RCW 79A.05.030, 79A.05.035, 79A.05.070, 79A.05.165, 79A.05.605, and 79A.05.610.

Adopted under notice filed as WSR 05-20-072 on October 4, 2005.

Changes Other than Editing from Proposed to Adopted Version: During the public hearing changes were made to clarify the penalty related to violation of sections; WAC 352-37-240, 352-37-290, and 352-37-320 as follows: "Any violations of this section is an infraction under chapter 7.84 RCW" was added to each section.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 12, Amended 17, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 12, Amended 17, Repealed 1.

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

Date Adopted: November 17, 2005.

Jim French
Administrator of Statewide
Recreation Programs

NEW SECTION

WAC 352-20-005 Definitions. Whenever used in this chapter, the following terms shall be defined as indicated herein:

(1) "Motor vehicle" shall mean any self-propelled device capable of being moved upon a road, and in, upon, or by which any persons or property may be transported or drawn, and shall include, but not be limited to, automobiles, trucks, motorcycles, motorbikes, motor scooters, jeeps, or similar type 4-wheel drive vehicles, and snowmobiles, whether or not they can legally be operated upon the public highways.

(2) "Trail" shall mean any path or track designed for use of pedestrians or equestrians and which is not of sufficient width, nor graded or paved with concrete, asphalt, gravel, or similar substance, so as to permit its use by standard passen-

ger automobiles; or any other right of way specifically designated and posted for nonvehicular use.

AMENDATORY SECTION (Amending WSR 96-22-018, filed 10/29/96, effective 1/1/97)

WAC 352-20-010 Stopping, standing or parking prohibited in specified areas. (1) No operator of any automobile, trailer, camper, boat trailer, or other vehicle, shall park such vehicle in any state park area, except where the operator (~~is using the area for a designated recreational purpose or possesses a state park nonrecreation~~) obtains and properly displays the required state parks' permit and the vehicle is parked either in a designated parking area, or in another area with the permission of a ranger.

(2) No person shall park, leave standing, or abandon a vehicle in any state park area after closing time, except when camping in a designated area, or with permission from the ranger.

(3) No person shall park, leave standing, or abandon a vehicle being used for commercial purposes in any state park area without written permission from the ranger.

(4) Any vehicle found parked in violation of subsection (1), (2), or (3) of this section may be towed away at the owner's or operator's expense.

(5) In any infraction involving stopping, standing or parking of vehicles, proof that the particular vehicle described in the notice of infraction was stopping, standing or parking in violation of any such provision of this section together with proof that the person named in the notice of infraction was at the time of the violation the registered owner of the vehicle, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person who parked or placed the vehicle at the point where, and for the time during which the violation occurred.

(6) Except as provided in WAC 352-20-070, any violation of this section is an infraction under chapter 7.84 RCW.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 352-20-060 Definitions.

AMENDATORY SECTION (Amending WSR 05-01-069, filed 12/9/04, effective 1/9/05)

WAC 352-32-010 Definitions. Whenever used in this chapter the following terms shall be defined as herein indicated:

"Aircraft" shall mean any machine designed to travel through the air, whether heavier or lighter than air; airplane, dirigible, balloon, helicopter, etc. The term aircraft shall not include paraglider or remote controlled aircraft.

"Aquatic facility" shall mean any structure or area within a state park designated by the director or designee for aquatic activities, including, but not limited to, swimming pools, wading pools, swimming beaches, floats, docks, ramps, piers or underwater parks.

"Bivouac" shall mean to camp overnight on a vertical rock climbing route on a ledge or in a hammock sling.

"Campfires" shall mean any open flame from a wood source.

"Camping" shall mean erecting a tent or shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Camping party" shall mean an individual or a group of people (two or more persons not to exceed eight) that is organized, equipped and capable of sustaining its own camping activity. A "camping party" is a "camping unit" for purposes of RCW 79A.05.065.

"Commercial recreation use" is a recreational activity in a state park that is packaged and sold as a service by an organization or individual, other than state parks or a state park concessionaire.

"Commercial recreation provider" is any individual or organization that packages and sells a service that meets the definition of a commercial recreation use.

"Commission" shall mean the Washington state parks and recreation commission.

"Conference center" shall mean a state park facility designated as such by the director or designee that provides specialized services, day-use and overnight accommodations available by reservation for organized group activities.

"Day area parking space" shall mean any designated parking space within any state park area designated for day-time vehicle parking.

"Director" shall mean the director of the Washington state parks and recreation commission or the director's designee.

"Disrobe" shall mean to undress so as to appear nude.

"Emergency area" is an area in the park separate from the designated overnight camping area, which the park manager decides may be used for camping when no alternative camping facilities are available within reasonable driving distances.

"Environmental interpretation" shall mean the provision of services, materials, publications and/or facilities, including environmental learning centers (ELC), for other than basic access to parks and individual camping, picnicking, and boating in parks, that enhance public understanding, appreciation and enjoyment of the state's natural and cultural heritage through agency directed or self-learning activities.

"Environmental learning centers (ELC)" shall mean those specialized facilities, designated by the director, designed to promote outdoor recreation experiences and environmental education in a range of state park settings.

"Extra vehicle" shall mean each additional unhitched vehicle in excess of the one recreational vehicle that will be parked in a designated campsite or parking area for overnight.

"Fire" shall mean any open flame from any source or device including, but not limited to, campfires, stoves, candles, torches, barbecues and charcoal.

"Fish" shall mean all marine and freshwater fish and shellfish species including all species of aquatic invertebrates.

"Group" shall mean twenty or more people engaged together in an activity.

"Group camping areas" are designated areas usually primitive with minimal utilities and site amenities and are for the use of organized groups. Facilities and extent of development vary from park to park.

"Hiker/biker campsite" shall mean a campsite that is to be used solely by visitors arriving at the park on foot or bicycle.

"Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor and a moped.

"Multiple campsite" shall mean a designated and posted camping facility encompassing two or more individual standard, utility or primitive campsites.

"Overflow area" shall mean an area in a park separate from designated overnight and emergency camping areas, designated by the park manager, for camping to accommodate peak camping demands in the geographic region.

"Overnight accommodations" shall mean any facility or site designated for overnight occupancy within a state park area.

"Paraglider" shall mean an unpowered ultralight vehicle capable of flight, consisting of a fabric, rectangular or elliptical canopy or wing connected to the pilot by suspension lines and straps, made entirely of nonrigid materials except for the pilot's harness and fasteners. The term "paraglider" shall not include hang gliders or parachutes.

"Person" shall mean all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

"Personal watercraft" means a vessel of less than sixteen feet that uses a motor powering a water jet pump, as its primary source of motive power and that is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

"Popular destination park" shall mean any state park designated by the director as a popular destination park because, it is typically occupied to capacity on Friday or Saturday night during the high use season.

"Primitive campsite" shall mean a campsite not provided with flush comfort station nearby and which may not have any of the amenities of a standard campsite.

"Public assembly" shall mean a meeting, rally, gathering, demonstration, vigil, picketing, speechmaking, march, parade, religious service, or other congregation of persons for the purpose of public expression of views of a political or religious nature for which there is a reasonable expectation that more than one hundred persons will attend based on information provided by the applicant. Public assemblies must be open to all members of the public, and are generally the subject of attendance solicitations circulated prior to the event, such as media advertising, flyers, brochures, word-of-mouth notification, or other form of prior encouragement to attend.

Alternatively, the agency director may declare an event to be a public assembly in the following cases: Where evidentiary circumstances and supporting material suggest that more than one hundred persons will attend, even where the

applicant does not indicate such an expectation; or where there is reason to expect a need for special preparations by the agency or the applicant, due to the nature or location of the event.

"Ranger" shall mean a duly appointed Washington state parks ranger who is vested with police powers under RCW 79A.05.160, and shall include the park manager in charge of any state park area.

"Recreation vehicle" shall mean a vehicle/trailer unit, van, pickup truck with camper, motor home, converted bus, or any similar type vehicle which contains sleeping and/or housekeeping accommodations.

"Remote controlled aircraft" shall mean nonpeopled model aircraft that are flown by using internal combustion, electric motors, elastic tubing, or gravity/wind for propulsion. The flight is controlled by a person on the ground using a hand held radio control transmitter.

"Residence" shall mean the long-term habitation of facilities at a given state park for purposes whose primary character is not recreational. "Residence" is characterized by one or both of the following patterns:

(1) Camping at a given park for more than thirty days within a forty-day time period April 1 through September 30; or forty days within a sixty-day time period October 1 through March 31. As provided in WAC 352-32-030(7), continuous occupancy of facilities by the same camping party shall be limited to ten consecutive nights April 1 through September 30. Provided that at the discretion of the park ranger the maximum stay may be extended to fourteen consecutive nights if the campground is not fully occupied. Campers may stay twenty consecutive nights October 1 through March 31 in one park, after which the camping unit must vacate the overnight park facilities for three consecutive nights. The time period shall begin on the date for which the first night's fee is paid.

(2) The designation of the park facility as a permanent or temporary address on official documents or applications submitted to public or private agencies or institutions.

"Seaweed" shall mean all species of marine algae and flowering sea grasses.

"Sno-park" shall mean any designated winter recreational parking area.

"Special groomed trail area" shall mean those sno-park areas designated by the director as requiring a special groomed trail permit.

"Special recreation event" shall mean a group recreation activity in a state park sponsored or organized by an individual or organization that requires reserving park areas, planning, facilities, staffing, or other services beyond the level normally provided at the state park to ensure public welfare and safety and facility and/or environmental protection.

"Standard campsite" shall mean a designated camping site which is served by nearby domestic water, sink waste, garbage disposal, and flush comfort station.

"State park area" shall mean any area under the ownership, management, or control of the commission, including trust lands which have been withdrawn from sale or lease by order of the commissioner of public lands and the management of which has been transferred to the commission, and specifically including all those areas defined in WAC 352-

16-020. State park areas do not include the seashore conservation area as defined in RCW 79A.05.605 and as regulated under chapter 352-37 WAC.

"Trailer dump station" shall mean any state park sewage disposal facility designated for the disposal of sewage waste from any recreation vehicle, other than as may be provided in a utility campsite.

"Upland" shall mean all lands lying above mean high water.

"Utility campsite" shall mean a standard campsite with the addition of electricity and which may have domestic water and/or sewer.

"Vehicle" shall include every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway. For the purposes of this chapter, this definition excludes bicycles, wheelchairs, motorized foot scooters, electric personal assistive mobility devices (EPAMDs), snowmobiles and other nonlicensed vehicles.

"Vehicle parking permit" means the permit issued on a daily, multiple day or annual basis for parking a vehicle in any state park area designated for daytime vehicle parking, excluding designated sno-park parking areas.

"Walk-in campsite" shall mean a campsite that is accessed only by walking to the site and which may or may not have vehicle parking available near by.

"Watercraft launch site" shall mean any facility located in a state park area designated for the purpose of placing or retrieving any vehicle-borne or trailer-borne watercraft into or out of the water.

"Water trail advisory committee" shall mean the twelve-member committee constituted by RCW 79A.05.420.

"Water trail camping sites" shall mean those specially designated group camp areas identified with signs, that are near water ways, and that have varying facilities and extent of development.

"Wood debris" shall mean down and dead tree material.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-130 Aircraft. (1) No aircraft shall land on or take off from any body of water or land area in a state park area not specifically designated for landing aircraft. This provision does not apply to official aircraft used in the performance of search and rescue missions, medical emergencies, law enforcement activities, emergency evacuations or fire fighting activities. It also does not apply in cases where the director or designee specifically authorizes such landings or take offs, in writing, associated with the operational, or administrative needs of the agency or state.

(2) Individuals who have complied with the registration process provided or who have obtained a special recreation event permit pursuant to WAC 352-32-047 may launch and land paragliders in state park areas specifically designated by the director or designee as available for paragliding. Prior to any such designation, the director or designee shall advertise and conduct a public meeting in the region where the park is located. The director or designee shall consider the potential impacts of paragliding in the proposed area, including but not

limited to the following factors: The degree of conflict paragliding may have with other park uses, public safety issues, and any potential damage to park resources/facilities. Any park designated for paragliding shall be conspicuously posted as such by the agency.

(3) Individuals paragliding in state parks must:

(a) Comply with the registration process provided for such purposes;

(b) Observe all applicable laws and regulations;

(c) Never destroy or disturb park facilities, natural features, or historical or archeological resources;

(d) Conduct themselves with thoughtfulness, courtesy and consideration for others, and not interfere with other recreational activities;

(e) Conduct themselves in compliance with the following basic safety regulations:

(i) Comply with specific site operational rules that are posted;

(ii) Fly in a manner consistent with the pilot rating held;

(iii) Preplanned landings should be made in areas no smaller than forty feet wide by one hundred feet long;

(iv) Make preflight checks of weather, equipment and site conditions;

(v) Observe all published traffic and right of way flight guidelines, including yielding right of way to all aircraft;

(vi) Wear protective clothing, headgear, Coast Guard approved flotation gear, reserve parachute, supplemental oxygen and communication equipment as appropriate for conditions;

(vii) Fly in a manner that does not create a hazard for other persons or property;

(viii) Fly only during daylight hours, or hours otherwise specified by posting at the site;

(ix) Do not fly over congested areas of parks or open air assembly of persons;

(x) Fly only in designated areas of parks;

(xi) Fly with visual reference to the ground surface at all times.

(xii) Do not tether paraglider to the ground or other stable nonmovable object.

(f) Not fly while under the influence of alcohol or drugs.

(4) Individuals flying remote controlled aircraft must do so only within flying areas designated by the director or designee and only when following the remote controlled aircraft management plan approved by the director or designee and posted for that designated area.

(a) Prior to any such designation, the director or designee shall advise and conduct a public meeting in the region where the park is located. The director shall consider the potential impacts of remote controlled aircraft flying in the proposed area, including, but not limited to, the following factors: The degree of conflict remote controlled aircraft flying may have with other park uses, public safety issues, and any potential damage to park resources/facilities. Any park area designated for remote controlled aircraft flying shall be conspicuously posted as such by the director or designee.

(b) The director or designee shall establish a committee (~~(of remote controlled aircraft flying)~~) to advise park staff on park management issues related to remote controlled aircraft

flying for each state park area designated as a remote controlled aircraft flying site.

(c) Each state park area with an established advisory committee (~~(of)~~), which includes remote controlled aircraft flyers will have an approved management plan which will specify remote controlled aircraft flying rules concerning types of aircraft, flying hours, identified approved flying zones, identified runways for take-offs and landings, engine muffler requirements, use of and posting of radio frequency, fuel spills and cleanup. The director or designee shall ensure that any remote controlled aircraft flying rules contained in the remote controlled aircraft flying management plan are conspicuously posted at the entrance of the affected park area.

(d) The director or designee may permanently, or for a specified period or periods of time, close any designated flying area to remote controlled aircraft flying if the director or designee concludes that a remote controlled aircraft flying closure is necessary for the protection of the health, safety, and welfare of the public, park visitors or staff, or park resources. Prior to closing any designated flying area to remote controlled aircraft flying, the director or designee shall hold a public meeting near the state park area to be closed to remote controlled aircraft flying. Prior notice of the meeting shall be published in a newspaper of general circulation in the area and at the park at least thirty days prior to the meeting. In the event that the director or designee or park manager determines that it is necessary to close a designated flying area immediately to protect against an imminent and substantial threat to the health, safety, and welfare of the public, park visitors or staff, or park resources, the director or designee or park manager may take emergency action to close a state park area to remote controlled aircraft flying without first complying with the publication and meeting requirements of this subsection. Such emergency closure may be effective for only so long as is necessary for the director or designee to comply with the publication and meeting requirements of this subsection. The director or designee shall ensure that any designated flying area closed to remote controlled aircraft flying is conspicuously posted as such at the entrance of the affected park area.

(e) Except as provided in WAC 352-32-310, any violation of this section or failure to abide by a conspicuously posted remote controlled aircraft flying rule is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 03-01-079, filed 12/13/02, effective 1/13/03)

WAC 352-32-180 Sanitation. No person shall, in any state park area:

(1) Drain or dump refuse or waste from any trailer, camper, automobile, or other vehicle, or vessel, except in designated disposal areas or receptacles.

(2) Clean fish or other food, or wash any clothing or other article for personal or household use, or any dog or other animal, except at designated areas.

(3) Clean or wash any automobile or other vehicle except in areas specifically for that use.

(4) Pollute, or in any way contaminate by dumping or otherwise depositing therein any waste or refuse of any nature, kind, or description, including human or animal bodily waste, any stream, river, lake, or other body of water running in, through, or adjacent to, any state park area.

(5) Urinate or defecate except in designated facilities.

(6) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-069, filed 12/9/04, effective 1/9/05)

WAC 352-32-251 Limited income senior citizen, disability, and disabled veteran passes. (1)(a) Persons who are senior citizens, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past twelve consecutive months shall, upon application to the commission accompanied by either a copy of a federal income tax return filed for the previous calendar year, or a senior citizen property tax exemption pursuant to RCW 84.36.381, or a notarized affidavit of income on a form provided by the commission, receive a limited income senior citizen pass at no charge, which entitles the holder's camping party to free parking at any state park, free use of trailer dump stations, watercraft launch sites, and to a 50 percent reduction in any campsite fees, or moorage fees levied by the commission. Limited income senior citizen passes shall remain valid so long as the pass holder meets eligibility requirements.

(b) Proof submitted to the commission for the return of a senior citizen pass surrendered upon request to a commission employee who has reason to believe the user does not meet the eligibility criteria shall be the same as listed in subsections (1) and (5) of this section for original pass issuance.

(2) Persons who are permanently disabled, legally blind, or profoundly deaf, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past twelve consecutive months shall, upon application to the commission, receive a five year disability pass at no charge and temporarily disabled persons who meet the eligibility requirements of RCW 79A.05.065 and have been residents of Washington state for at least the past twelve consecutive months shall, upon application to the commission, receive a one year disability pass at no charge which entitles the holder's camping party to free parking at any state park, free use of trailer dump stations, watercraft launch sites, and to a 50 percent reduction in any campsite fees, or moorage fees levied by the commission.

(3) Persons who are veterans, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past twelve consecutive months shall, upon application to the commission, receive a lifetime disabled veteran pass at no charge. Pass holders must provide proof of continued residency as determined by the director or designee. The pass entitles the holder's camping party to free parking at any state park and to free use of any state park campsite, trailer dump station, watercraft launch site, moorage facility, and reservation service.

(4) Applications for limited income senior citizen, disability, and disabled veteran passes shall be made on forms prescribed by the commission.

(5) Verification of age shall be by original or copy of a birth certificate, notarized affidavit of age, witnessed statement of age, baptismal certificate, or driver's license. Verification of residency shall be by original or copy of a Washington state driver's license, voter's registration card, or senior citizen property tax exemption.

(6) For pass holders who travel by vehicle or recreational vehicle, camping party shall include the pass holder and up to seven guests of the holder who travel with the holder and use one campsite or portion of a designated group camping or emergency area. ~~((One additional))~~ There is no additional fee for one extra vehicle without built-in sleeping accommodations ~~((may be))~~ that is part of the camping party of a pass holder at one campsite or portion of a designated group camping or emergency area, when in the judgment of a ranger, the constructed facilities so warrant, and the total number of guests of the holder do not exceed seven.

(7) For pass holders who travel by a mode of transportation other than vehicle or recreational vehicle, camping party shall include the pass holder and up to seven guests who travel with the pass holder and use one campsite or portion of a designated group camping or emergency area.

(8) If the conditions of a pass holder change or the pass holder changes residency to a place outside Washington state during the time period when a pass is valid such that a pass holder no longer meets the eligibility requirements of RCW 79A.05.065 and WAC 352-32-251, the pass becomes invalid, and the pass holder shall return the pass to the commission or surrender the pass to a state park representative.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-290 Wood debris collection (~~permit—Fee~~). (1) ~~((As used in this section "wood debris" means down and dead tree material))~~ Wood debris that may be removed without significantly adversely impacting the environment of the park at which it is located and that is surplus to the needs of such park, may be collected after obtaining a state parks' wood debris collection permit.

(2) A person may collect and remove wood debris from a designated state park area only when ~~((a park ranger has issued the person a))~~ the person obtains the required wood debris collection permit.

(3) A wood debris collection permit is valid only at the state park at which the permit is issued.

(4) Subject to availability, for each wood debris collection permit issued, a person may collect and remove from a state park area not more than five cords of wood debris. Wood debris may be collected only for personal firewood use and only from sites and during time periods designated by a park ranger.

(5) The nonrefundable fee for a wood debris collection permit shall be established by the director consistent with limitations identified in RCW 4.24.210, 79A.05.035 and 43.52.065.

(6) This section shall be implemented in compliance with chapter 352-28 WAC.

(7) All other collection of wood debris in state park areas is prohibited.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-020 Definitions. Whenever used in this chapter the following terms shall have the meanings herein defined unless the context clearly indicates otherwise:

"Aircraft" shall mean any machine designed to travel through the air, whether heavier or lighter than air; airplane, dirigible, balloon, helicopter, etc. The term aircraft shall not include paraglider or remote controlled aircraft.

"Campfires" shall mean any open flame from a wood source.

"Camping" shall mean erecting a tent or shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Commission" shall mean the Washington state parks and recreation commission.

"Director" shall mean the director of the Washington state parks and recreation commission or the director's designee.

"Driveable beach" shall mean that area of the ocean beaches lying between the upper or landward limit of the hard sand area and the clam beds.

"Dry sand area" shall mean that area lying above and to the landward side of the hard sand area as defined in this section.

"Fire" shall mean any open flame from any source or device including, but not limited to, campfires, stoves, candles, torches, barbecues and charcoal.

"Hard sand area" shall mean that area over which the tide ebbs and flows on a daily basis; and which is sufficiently hard or firm to support the weight of, and to provide unhindered traction for, an ordinary passenger vehicle.

"Hovercraft" shall mean a powered vehicle supported by a cushion of air capable of transporting persons.

"Long Beach Peninsula" shall mean that area of the ocean beaches as defined in this section lying between Cape Disappointment on the south and Leadbetter Point on the north.

"Motor vehicle" shall mean every vehicle that is self-propelled. For the purposes of this chapter, a motor vehicle must be approved for highway use in accordance with Title 46 RCW.

"North Beach" shall mean that area of the ocean beaches as defined in this section lying between Damon Point on the south and Cape Flattery on the north.

"Ocean beaches" shall mean all lands fronting on the Pacific Ocean between Cape Disappointment and Leadbetter Point; between Toke Point and the south jetty on Point Chehalis; and between Damon Point and the Makah Indian Reservation, and occupying the area between the line of ordinary high tide and the line of extreme low tide, as these lines now are or may hereafter be located, and, where applicable, between the Seashore Conservation Line, as established by survey of the Washington state parks and recreation commission and the line of extreme low tide, as these lines now are or may hereafter be located, or as defined in RCW 79A.05.-

605, provided, that the ocean beaches shall not include any lands within the established boundaries of any Indian reservation.

"Parasail" shall mean a parachute-type device attached to a rope pulled by a motor vehicle, resulting in the participant being lifted from the ground by the force of the wind.

"Person" shall mean all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

"Seashore conservation area" shall mean all lands now or hereafter under state ownership or control as defined in RCW 79A.05.605.

"South Beach" shall mean that area of the ocean beaches as defined in this section lying between Toke Point on the south and the south jetty on Point Chehalis on the north.

"Wind/sand sailer" shall mean a wheeled, wind-driven recreational conveyance.

AMENDATORY SECTION (Amending WSR 92-19-098, filed 9/17/92, effective 10/18/92)

WAC 352-37-220 ((Penalties.)) Disrobing. ~~((Any violation designated in this chapter as a civil infraction shall constitute a misdemeanor until the violation is included in a civil infraction monetary schedule adopted by rule by the state supreme court pursuant to chapter 7.84 RCW.))~~ (1) No person shall disrobe in public in the seashore conservation area.

(2) Clothing sufficient to conform to common standards shall be worn at all times.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-37-230 Firearms. (1) No person shall discharge or propel across, in, or into the seashore conservation area a firearm, except where the commission for good cause has authorized a special recreational activity upon finding that it is not inconsistent with state park use. Any violation of this section is a gross misdemeanor.

(2) The possession, display, carrying, discharge or use of a firearm is further regulated under chapter 9.41 RCW.

NEW SECTION

WAC 352-37-240 Fireworks. The possession or discharge of fireworks on or into those areas of the seashore conservation area adjacent to state park areas is prohibited, except where designated by the director or designee; provided however, that the director or designee may issue permits for fireworks displays subject to conditions established by the agency and as provided in chapter 70.77 RCW. Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-37-250 Games or activities. Playing games and/or engaging in activities in a manner and/or location which subjects people or personal property, resources or

facilities in the seashore conservation area to risk of injury or damage shall be prohibited. Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-37-260 Intoxication in the seashore conservation area. Being or remaining in, or loitering about in the seashore conservation area while in a state of intoxication shall be prohibited. Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-37-270 Peace and quiet. To ensure peace and quiet for visitors:

(1) No person shall, at any time, use amplified sound-emitting electronic equipment that emits sound beyond the person's vehicle or immediate area of use which is at a volume that may disturb other users of the seashore conservation area, without specific permission of the park ranger.

(2) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-37-280 Pets. (1) In the seashore conservation area, pets or domestic animals, except for assistance dogs for persons with disabilities, may be prohibited for the protection of wildlife, sensitive natural systems, special cultural areas, or for other purposes, if approved by the director or designee and so posted.

(2) No person shall allow his/her pet or domestic animal to bite or in any way molest or annoy wildlife or visitors to the seashore conservation area. No person shall permit his/her pet or domestic animal to bark or otherwise disturb peace and quiet.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-37-290 Rubbish. (1) No person shall leave, deposit, drop, or scatter bottles, broken glass, ashes (except human crematory ashes), waste paper, cans, or other rubbish, in the seashore conservation area, except in a garbage can or other receptacle designated for such purposes.

(2) No person shall deposit any household or commercial garbage, refuse, waste, or rubbish, which is brought as such from any private property, in any seashore conservation area garbage can or other receptacle designed for such purpose.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-37-300 Sanitation. No person shall, in the seashore conservation area:

(1) Drain or dump refuse or waste from any trailer, camper, automobile, or other vehicle, or vessel, except in designated disposal areas or receptacles.

(2) Urinate or defecate except in designated facilities.

(3) Pollute, or in any way contaminate by dumping or otherwise depositing therein any waste or refuse of any nature, kind, or description, including human or animal bodily waste, any stream, river, lake, or other body of water running in, through, or adjacent to, the seashore conservation area.

Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-37-310 Solicitation. Except as may be otherwise allowed in connection with a permit issued under WAC 352-32-165 or 352-32-047, or a cooperative agreement pursuant to RCW 79A.05.070(2), no person shall engage in solicitation, or sell or peddle any services, goods, wares, merchandise, liquids, or edibles for human consumption in the seashore conservation area, except by concession or permit granted by the commission. Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-37-320 Other weapons. No person shall display, discharge or propel across, in, or into the seashore conservation area, a bow and arrow, spear, spear gun, harpoon, or air or gas weapon, or any device capable of injuring or killing any person or animal, or damaging or destroying any public or private property, except where the commission for good cause has authorized a special recreational activity upon finding that it is not inconsistent with state park use. Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-37-330 Penalties. Any violation designated in this chapter as a civil infraction shall constitute a misdemeanor until the violation is included in a civil infraction monetary schedule adopted by rule by the state supreme court pursuant to chapter 7.84 RCW.

WSR 05-24-032

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed November 30, 2005, 1:49 p.m., effective December 31, 2005]

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

Purpose: These rules add a new section on reproductive health; define "department-approved family planning provider"; clarify who is eligible for family planning only and TAKE CHARGE; clarify provider requirements for reproductive health, family planning only, and TAKE CHARGE; clarify when services are covered under family planning only and TAKE CHARGE; clarify which services are covered under TAKE CHARGE; add definition for ECRR services; clarify billing requirements for managed care clients who self-refer out-

side their plan; clarify documentation requirements for TAKE CHARGE; and clarify when TAKE CHARGE providers are exempt from billing third party insurance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-532-001, 388-532-050, 388-532-100, 388-532-110, 388-532-120, 388-532-130, 388-532-140, 388-532-500, 388-532-510, 388-532-520, 388-532-530, 388-532-540, 388-532-550, 388-532-700, 388-532-710, 388-532-720, 388-532-730, 388-532-740, 388-532-750, 388-532-760, 388-532-780, and 388-532-790.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, and 74.09.800.

Adopted under notice filed as WSR 05-14-123 on July 1, 2005.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's Note below.

A final cost-benefit analysis is available by contacting Casey Zimmer/Maureen Considine, Division of Program Support, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1664 or (360) 725-1652, e-mail zimmecl@dshs.wa.gov or consimc@dshs.wa.gov, fax (360) 586-9727.

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 1, Amended 22, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 22, Repealed 0.

Date Adopted: November 23, 2005.

Andy Fernando, Manager
Rules and Policies Assistant Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 06-01 issue of the Register.

WSR 05-24-039
PERMANENT RULES
SECRETARY OF STATE
(Elections Division)

[Filed November 30, 2005, 3:35 p.m., effective December 31, 2005]

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

Purpose: State and federal laws mandate that a new statewide voter registration system be implemented by January 1, 2006. All voter registration records will be entered into this system and maintained. It will be screened for felons, deceased voters, and duplicate registrations. Each county will have an election management system that will exchange information with the official statewide voter registration data base. Rules for this exchange of information, entry of data

from voter registration applications, and additional related procedures are provided.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-208-100, 434-324-015, 434-324-025, 434-324-030, 434-324-035, 434-324-050, 434-324-060, 434-324-065, 434-324-110, 434-324-120 and 434-324-160; and amending WAC 434-324-010, 434-324-020, 434-324-085, 434-324-095, 434-324-130, and 434-324-140.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 05-19-063 on September 16, 2005.

Changes Other than Editing from Proposed to Adopted Version: WAC 434-253-024 is amended so that a poll book must indicate whether or not absentee voters are included in the poll book. If the absentee voters are included, a notation must be made next to each absentee voter's name.

In WAC 434-324-010, it is clarified that county auditors will check for duplicate entries of voter registrations upon entry of an applicant's information into the county election management system.

WAC 434-324-035 is repealed.

WAC 434-324-075 and 434-324-087 are combined for the reader's ease.

In WAC 434-324-106, it is clearly stated that a potential felon may request a provisional ballot if he or she believes the pending cancellation status was assigned in error.

In WAC 434-324-118, the authority to manually override data during an audit has been removed.

WAC 434-324-113(4) is amended to clarify that a county auditor will investigate whether a voter registration challenge is warranted.

In WAC 434-324-118, the authority to perform manual overrides is removed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 12, Amended 4, Repealed 10.

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 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 13, Amended 6, Repealed 11.

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

Date Adopted: November 30, 2005.

Steve Excell
Assistant Secretary of State

Chapter 434-324 WAC

~~(MAINTENANCE OF VOTER REGISTRATION
RECORDS ON ELECTRONIC DATA PROCESSING)~~

SYSTEMS)) OFFICIAL STATEWIDE VOTER REGISTRATION DATA BASE**NEW SECTION**

WAC 434-324-005 Definitions. As used in this chapter:

(1) "Active status" means a designation assigned to voters with complete voter registration records signifying that the voter is eligible to vote.

(2) "Applicant" means a person who has applied to become a registered voter in the state of Washington.

(3) "Auditor" means "county auditor" and means the county auditor in a noncharter county or the officer in a charter county, irrespective of title, having the overall responsibility to maintain voter registration to conduct state and local elections.

(4) "County election management system" means software used by auditors to manage computer files pertaining to elections and includes, but is not limited to, voter registration records.

(5) "County registration number" means a unique identifier assigned to each registered voter by the auditor.

(6) "Extraction," as used in this chapter, means the creation of an electronic list of specific information from the entire official statewide voter registration data base.

(7) "Late registration absentee ballot" means an absentee ballot cast by a voter who registered pursuant to RCW 29A.08.145 after the close of the regular registration period.

(8) "New county" means a county in Washington state that a registered voter is moving to from another county within Washington state.

(9) "Previous county" means a county in Washington state that a registered voter lived in prior to moving to a new county.

(10) "Pending status" means a voter registration record is not yet complete, and the applicant is not yet a registered voter.

(11) "Pending cancellation" means the registered voter's registration record will be canceled within a specified amount of time and he or she is not eligible to vote.

(12) "Registered voter" means any elector who has completed the statutory registration procedures established by Title 29A RCW.

(13) "Secretary" means secretary of state or any other person authorized by the secretary of state to act on his or her behalf.

(14) "State registration number" means a unique identifier assigned to each registered voter by the state, pursuant to RCW 29A.08.651.

NEW SECTION

WAC 434-324-008 Review of county election management systems. (1) Each auditor must notify the secretary of the intent to purchase or install a new county election management system. The county election management system must be approved by the secretary to ensure it meets the technical specifications promulgated by the secretary to interface with the official statewide voter registration data base. This

approval must be obtained prior to the purchase or installation of the system.

(2) A county election management system must have the capability to:

(a) Store information required in WAC 434-324-010;

(b) Generate a list of registered voters in a county and their registration statuses;

(c) Track information specific to single elections, including the issuance and return of vote by mail and absentee ballots;

(d) Scan voter registration forms; and

(e) Store and provide access to images of signatures of registered voters.

(3) A county's election management system must conform to all of the requirements of state law and of these regulations, and if it does not, the secretary must notify the auditor of the nature of the nonconformity. The auditor must correct the nonconforming aspects of the county election management system and provide to the secretary such evidence of the change or changes in the system as that office may deem appropriate.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-324-010 ((Contents of computer file of registered voters.)) County election management system—Applications for voter registration. ~~((Records containing the following information shall be maintained on each registered voter in the computer file: Name, address, registration number, sex, date of birth, date of registration, applicable district and precinct codes, and up to five dates upon which the individual has voted since establishing that registration record. The county may))~~ (1) Each auditor must enter and maintain voter registration records in a county election management system. Each record must contain at least the following information:

(a) Name;

(b) Complete residential address;

(c) Mailing address;

(d) County registration number;

(e) State registration number;

(f) Gender;

(g) Date of birth;

(h) Date of registration;

(i) Applicable district and precinct codes;

(j) Five dates upon which the individual has voted since establishing that registration record, if available;

(k) Washington state driver license number, Washington state identification card number, or the last four digits of the applicant's Social Security number if he or she does not have a Washington state driver license or Washington state identification card; and

(l) A scanned image file (format .tiff) of the applicant's signature.

(2) The auditor may also assign numeric or alphabetic codes for city names in order to facilitate economical storage of the voter's address.

(3) In the case of an applicant who applies for voter registration by mail and sends a copy of an alternative form of

identification for registration purposes, pursuant to RCW 29A.08.113, the auditor must either maintain a scanned image of the identifying document or make a notation in the registration record indicating which alternative form of identification was sent to the auditor.

(4) Upon entry of an applicant's information, the auditor must check for duplicate entries.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-324-020 County codes. All ((counties)) auditors shall use the following system of two character codes for designating the county in which the voter is registered:

Adams	- AD	Lewis	- LE
Asotin	- AS	Lincoln	- LI
Benton	- BE	Mason	- MA
Chelan	- CH	Okanogan	- OK
Clallam	- CM	Pacific	- PA
Clark	- CR	Pend Oreille	- PE
Columbia	- CU	Pierce	- PI
Cowlitz	- CZ	San Juan	- SJ
Douglas	- DG	Skagit	- SK
Ferry	- FE	Skamania	- SM
Franklin	- FR	Snohomish	- SN
Garfield	- GA	Spokane	- SP
Grant	- GR	Stevens	- ST
Grays Harbor	- GY	Thurston	- TH
Island	- IS	Wahkiakum	- WK
Jefferson	- JE	Walla Walla	- WL
King	- KI	Whatcom	- WM
Kitsap	- KP	Whitman	- WT
Kittitas	- KS	Yakima	- YA
Klickitat	- KT		

NEW SECTION

WAC 434-324-040 Data transfer to secretary and registration status. (1) Following entry into the county election management system, all information in the application for voter registration must be transferred electronically to the secretary for identity verification, outlined in RCW 29A.08.-107. The application for voter registration must remain in the county election management system in pending status until the applicant's identity has been verified.

(2) Once the secretary has verified the applicant's identity pursuant to RCW 29A.08.107, the secretary must assign a state identification number, and the auditor must change the voter's registration code in the county election management system from pending status to active. If the applicant's identity has not been verified, the secretary must notify the auditor accordingly.

NEW SECTION

WAC 434-324-055 Duplicate voter registration search conducted by secretary. Upon receipt of an applicant's electronic voter registration record from the auditor, and on a quarterly basis pursuant to WAC 434-324-113(3), the secretary must search for potential duplicate registration records in the official statewide voter registration data base, required in RCW 29A.08.651, by comparing the applicant's name and date of birth or other identifying information provided by the applicant on the voter registration form. Pursuant to RCW 29A.08.107, if a potential duplicate is identified, the secretary must work with the auditor to determine if the registration record is a transfer, update, or duplicate. If a voter is transferring his or her registration to a new county or if any other information on the application has changed, the auditor must update the registration record pursuant to RCW 29A.08.107(4). A duplicate registration record must not be entered as a new registration record.

NEW SECTION

WAC 434-324-075 Transfer of voter registration record between counties. (1) Up until thirty days prior to a primary, special election, or general election, a registered voter may transfer his or her registration record by completing and submitting a new application for voter registration pursuant to RCW 29A.08.140. Upon receipt, the auditor must process the application for voter registration in the same manner as all other applications for voter registration pursuant to WAC 434-324-010.

(2)(a) If a registered voter transfers his or her registration late, as outlined in RCW 29A.08.145 between counties, the new auditor must issue the voter a late registration absentee ballot and envelope for the next primary, special election, or general election. The late registration absentee ballot must not be counted until it is confirmed that it is a valid ballot.

(b) A late registration absentee ballot must be issued in a specially marked envelope along with an instructional notice. The notice must explain why a late registration absentee ballot is being issued, that the enclosed ballot is the correct ballot for the voter to cast, and that no other ballot submitted by the voter for that same primary, special election, or general election will be counted. The auditor's contact information must be included, and it must be stated that the voter may call the auditor regarding questions. The voter's registration status in the previous county must promptly be flagged so any returned ballots will not be counted.

(c)(i) If the new county receives a late registration absentee ballot, it must confirm that the previous county did not receive a ballot from the same voter.

(ii) If the previous county does not receive a ballot from the voter, the late registration absentee ballot received by the new county must be counted. Any subsequent ballot returned to the previous county must not be counted.

(iii) If the previous county receives a ballot from the voter, it must contact the new county. If the late registration absentee ballot was not returned to the new county, the previous county must send the absentee ballot to the new county, and the new county must count only races applicable to that county.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-324-085 Notice of new registration or transfer. ~~((Whenever an individual))~~ (1) The auditor must send notification to an individual by nonforwardable, address correction requested mail if an individual:

(a) Registers to vote ~~((or))~~;

(b) Transfers his/her registration record ~~((pursuant to RCW 29A.08.530 or whenever a change in precinct boundaries requires that the existing record of a voter be moved))~~ within the county;

(c) Transfers his or her registration record from another county within Washington state; or

(d) Changes from one precinct to another ~~((or be placed in a new precinct, the county auditor shall notify by nonforwardable, address correction requested mail, the individual or voter of such new registration, transfer, or change of precinct boundary acknowledging))~~ because of a change in precinct boundaries.

(2) The notice must acknowledge that the request of the individual ~~((or voter with respect to his record))~~ has been processed ~~((Such notices and acknowledgment shall be provided on a form containing the following information))~~ and must include:

~~((The))~~ (a) Voter's full name(:);

(b) Mailing address(:);

(c) County name(:);

(d) Precinct name and/or number~~((, voter ID))~~;

(e) State registration number(:);

(f) The date the voter registered; and

(g) A signature line for the voter.

NEW SECTION

WAC 434-324-090 Cancellation due to death—Process and notification. (1) An auditor must cancel the voter registration records of a deceased voter as authorized by RCW 29A.08.510.

(2) In addition to comparing a list of deceased persons prepared by the registrar of vital statistics with voter registration records pursuant to RCW 29A.08.510, the secretary may also compare voter registration records with deceased persons information from the Social Security Administration. For any potential matches identified through the registrar of vital statistics or Social Security Administration, the secretary must confirm that the dates of birth are identical. The secretary must generate a list of matching names, identified as potentially deceased voters, and deliver it to the auditor electronically. The auditor must review the list within five days and approve or reject the proposed cancellations. Upon the sixth day, if the auditor has failed to approve or reject the proposed cancellations, the official statewide voter registration data base must automatically send notification to the county to cancel the appropriate registrations.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-324-095 Cancellation due to death—Forms to cancel voter registration. Pursuant to RCW

29A.08.510, the ~~((county))~~ auditor ~~((shall))~~ must maintain a supply of, furnish to the public upon request, and include in the supplies sent to each precinct for use by the precinct election officials, forms for the purpose of permitting registered voters to request that the voter registration record of any person, whom they personally know to be deceased, be ~~((cancelled))~~ canceled.

NEW SECTION

WAC 434-324-100 Felony conviction—Notice from county clerk. Upon receiving official notice of a person's conviction of a felony as outlined in RCW 29A.08.520, the auditor must search his or her county election management system to determine whether the potential felon named in the official notice is a registered voter. If the auditor finds a match, he or she must confirm that the first name, last name, and date of birth on the official notice match the voter registration record before canceling the felon's voter registration. After canceling a felon's voter registration, the auditor must send a cancellation notice to the felon using the last known address and send notification to the secretary through the county election management system.

NEW SECTION

WAC 434-324-106 Felony conviction—Secretary's quarterly comparisons and pending cancellation notifications. (1) Once a quarter, the secretary must perform comparisons with the Washington state patrol, the office of the administrator for the courts, and other appropriate state agencies, as authorized in RCW 29A.08.520, to search for registration records of felons. The quarterly comparison must be performed prior to the first extraction or pull of absentee ballots for a primary, special, or general election. The secretary must create a list of matches by confirming that the first name, last name, and date of birth match.

(2) The list of matches must be compared to information provided by the office of the administrator for the courts and the clemency board to identify felons who have received certificates of discharge or gubernatorial pardons for all felony convictions.

(3) The secretary must not cancel the voter registration record of a voter who has received a certificate of discharge or gubernatorial pardon for all felony convictions. The secretary must flag the voter registration record to prevent future cancellation based on these previous felony convictions.

(4) If there is no record of a certificate of discharge or gubernatorial pardon for each felony conviction, the secretary must change the voter's registration status to "pending cancellation." This change of status must be entered prior to the first extraction or pull of absentee ballots. The official statewide voter registration data base must automatically notify the county election management system of the change. Voters with pending cancellation status must not be included in the poll book and must not receive an absentee ballot.

(5) The secretary must mail a notification letter to each felon whose status is pending cancellation. In addition to sending a copy of the notification letter to the auditor, the secretary must also send notification of the voter's pending cancellation status to the auditor through the election manage-

ment system. The notification letter must be sent to the felon's last known address indicating that his or her voter registration is about to be canceled. The form must contain language notifying the felon that if the pending cancellation status is in error, the felon may contact the auditor's office to reconcile the error and request a provisional ballot. As outlined in RCW 29A.08.520, the form must also provide information on how the right to vote may be restored, as well as how to register to vote after the right to vote has been restored. The notification letter must contain substantially the following language:

Dear,

According to the Washington state Constitution, a person who has been convicted of a felony is disqualified from voting until the right has been restored. State law requires that the right be restored only after all conditions of all felony sentences have been fulfilled as outlined in the last paragraph of this letter or by a certificate of restoration issued by the governor.

Based on name and date of birth information maintained in state voter registration records and felony conviction records, you have been found ineligible to vote due to a felony conviction. The felony conviction record information includes:

- Felon's name
- Felon's date of birth
- County of conviction
- Date of conviction
- Case/cause number

Your voter registration is pending cancellation. If you would like to dispute this finding, you have thirty days from the postmark date on the envelope to request a hearing by contacting:

- County auditor
- County auditor's address
- County auditor's phone number
- County auditor's e-mail address

You may also request a provisional ballot.

If you do not dispute this finding within thirty days, your voter registration will be canceled.

Voting before the rights are restored is a class C felony (RCW 29A.84.660). The right to vote may be restored by proof of one of the following for each felony conviction:

1. A certificate of discharge, issued by the sentencing court (RCW 9.94A.637);
2. A court order restoring civil right, issued by the sentencing court (RCW 9.92.066);
3. A final order of discharge, issued by the indeterminate sentence review board (RCW 9.96.050); or
4. A certificate of restoration, issued by the governor (RCW 9.96.020).

Further information about how to get the right to vote restored may be found at www.secstate.wa.gov/elections/restoring.aspx.

Sincerely,

. Secretary of State

If the felon fails to contact the auditor within thirty days, the felon's voter registration must be canceled.

NEW SECTION

WAC 434-324-111 Voluntary cancellation of voter registration. A voter may cancel his or her own voter registration by submitting a signed written notification to the auditor for the county in which he or she is registered to vote. Prior to cancellation of such a registration record, the auditor must ensure the signature on the notification matches the signature in the voter registration file by utilizing criteria outlined in WAC 434-379-020.

NEW SECTION

WAC 434-324-113 Voter registration list maintenance. (1) Each even-numbered year, maintenance of the voter registration list, as required by RCW 29A.08.605, must be completed ninety days prior to the date of the primary in that year. The voter registration list maintenance program is complete upon mailing the required notices. Counties have discretion to also run the voter registration list maintenance program in odd-numbered years.

(2) In addition to conducting quarterly comparisons to identify felons as required in WAC 434-324-106, the secretary must search the official statewide voter registration data base on a quarterly basis to ensure there are no duplicate voter registration records or deceased voter registration records maintained. Duplicate voter registration records must be processed in accordance with WAC 434-324-050, felon registration records in accordance with WAC 434-324-106, and deceased voter registration records in accordance with WAC 434-324-090.

(3) If, at any time, the secretary finds that a registered voter does not possess the qualifications required by state law to exercise his or her right to vote for reasons not listed in this chapter, the secretary must refer such information to the appropriate county auditor to determine whether a voter registration challenge is warranted, pursuant to RCW 29A.08.-810. The county prosecutor must be copied on the notification.

NEW SECTION

WAC 434-324-118 Data auditing of county voter election management system with the official statewide voter registration data base. Each auditor must perform data audits of its county election management system to ensure all of its data matches data in the official statewide voter registration data base. The data audits must be performed on a periodic basis and must be performed within a reasonable amount of time prior to an election.

During data auditing, the auditor must transfer voter registration records from the county election management system to the official statewide voter registration data base for verification of voter status. The official statewide voter reg-

istration data base must verify that the voter status provided by the county election management system matches the voter status in the official statewide voter registration data base. Upon completion of this verification process, the voter's registration status is either:

(1) Confirmed, and the county is authorized to issue a ballot to the voter; or

(2) Denied because the official statewide voter registration data base indicates the voter's registration record is in pending or canceled status. The auditor must update the county election management system with the appropriate voter status. The voter is not authorized to vote.

In addition, the county election management system must update the statewide voter registration data base with the appropriate voter information.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-324-130 Contents of list of registered voters for the public. Pursuant to the provisions of RCW 29A.08.710, 29A.08.720 and 29A.08.740, the ((county)) auditor ((shall)) or secretary must furnish to any person, upon request, current lists of registered voters at actual reproduction cost. The ((county)) auditor ((shall)) must, upon request, select names and addresses from the voter registration records on the basis of the precinct code, the district code, date of registration, or voting history of each individual voter in that portion of the voter registration file. Such lists may contain ((any)) the information ((maintained on the computer file except the date of birth of)) prescribed in RCW 29A.08.-710 for each registered voter and may be in the form of computer printouts, ((computer prepared labels,)) microfilm duplicates, or ((magnetic tape)) electronic media copies of such information. Such voter registration lists ((shall)) must be used only for political purposes; commercial use of this information ((shall be)) is punishable as provided in RCW 29A.08.740 ((as now or hereafter amended)).

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-324-140 Requests for list of registered voters. The ((county)) auditor ((shall)) or secretary may require each person who requests a list of registered voters under the authority of RCW 29A.08.720 and WAC 434-324-130 to sign a request ((on a form substantially similar to the sample included below)) which includes penalty requirements as set forth in RCW 29A.08.720 and 29A.08.740.

((REQUEST FOR LIST OF REGISTERED VOTERS

_____ County Auditor _____ Date

I request a listing of registered voters for the following precinct and/or taxing districts:

- computer printed list
- mailing labels
- magnetic tape

I understand that the County Auditor is required by law to furnish copies of current registration lists of registered voters in his possession to any person, upon request, PROVIDED: That such lists be used only for political purposes and shall not be used for commercial purposes. (RCW 29A.08.720)

I further understand that any violation of RCW 29A.08.720 relating to the use of lists of registered voters is a felony and shall be punished by imprisonment in the state penitentiary for a period of not more than five years or a fine of not more than five thousand dollars, or both such fine and imprisonment, in addition to possible civil penalties.

_____ (Name of Requester (please print)	_____ (Witness)
_____ (Address)	_____ (Approved by)
_____ (Signature))	

NEW SECTION

WAC 434-324-150 Retaining voter registration records. On an annual basis, the secretary must copy all voter registration records after the general election. By December 31st of each year, the secretary must transfer the copy to the state archives division for permanent retention.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 434-324-015 Uniform control number.
- WAC 434-324-025 Precinct codes.
- WAC 434-324-030 Taxing district codes.
- WAC 434-324-035 Maintenance of recent voting record.
- WAC 434-324-050 Basic voter registration form.
- WAC 434-324-060 Transmittal of signature cards to the secretary of state.
- WAC 434-324-065 Exemption of transmittal of signature cards to the secretary of state.
- WAC 434-324-110 Transmittal of cancellations to the secretary of state.
- WAC 434-324-120 Contents of precinct list of registered voters.
- WAC 434-324-160 Review of automated voter registration systems.

NEW SECTION

WAC 434-253-024 Contents of poll book of registered voters. Poll books must be printed utilizing information from the official statewide voter registration data base.

The poll book of registered voters must contain the name, residence address, sex, month and day of birth, and county voter registration number of each voter in the precinct, a listing of the districts in which that voter resides, and a designation of the applicable county, legislative district, and precinct, or a ballot code identifying this information. The names must be listed alphabetically by last name. The list must contain a space for each voter to sign his/her name and to verify his/her current address and a space for the inspector or judge to credit the voter with having participated in a particular election. The auditor may eliminate from poll books ongoing absentee voters and voters requesting absentee ballots for that election. The poll book must clearly indicate whether or not absentee voters are included on the list. If they are included, a notation must be made next to each absentee voter's name.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-208-100 Registering to vote—Nontraditional address.

WSR 05-24-040

PERMANENT RULES

SECRETARY OF STATE

(Elections Division)

[Filed November 30, 2005, 3:37 p.m., effective December 31, 2005]

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

Purpose: Direct recording electronic (DRE) devices must produce a paper record for each ballot prior to the casting of a ballot. The rules outline specific procedures for printing, maintaining, transferring, and auditing paper records. Additional rules are provided for recounts utilizing DRE devices and for a situation where a voter has left the DRE device without casting a ballot.

Citation of Existing Rules Affected by this Order: Amending WAC 434-253-080 and 434-253-110.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 05-19-143 on September 21, 2005.

Changes Other than Editing from Proposed to Adopted Version: WAC 434-253-080 is amended to include a provision requiring the precinct election officer to make a mark on the paper ballot noting the ballot was canceled and in the poll book to indicate which DRE was used to cancel the ballot.

WAC 434-253-110 is amended to clarify that both the DRE and paper printer must be removed and both devices are to be transferred pursuant to WAC 434-253-115 (1)(b).

WAC 434-253-115 is amended to clarify that both the DRE and paper printer must be removed from service while the problem is being corrected. The DRE may not be removed from the pollsite and must remain in sight of election officers while the problem is being corrected. Additionally, it includes procedures for transporting a DRE that has been removed from service. In subsection (2), the word "image" has been pluralized.

WAC 434-253-225 is amended to clarify that paper records from the VVPAT are to be transferred in a manner that is consistent with the transfer of ballots.

WAC 434-262-105 is amended to state that only DRE devices used in the election may be audited. Language in subsection (1)(b)(ii) is also clarified.

WAC 434-262-108 is amended to clarify language in subsection (1)(b).

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 6, Amended 2, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 6, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 30, 2005.

Steve Excell

Assistant Secretary of State

NEW SECTION

WAC 434-253-023 Voter verified paper audit trail—Duties prior to opening of the polls. If a direct recording electronic device is used at a poll site, before a device may be used by a voter, an inspector and at least one judge must verify:

- (1) The paper printer is secured so that the paper record may not be removed from the device by anyone other than an election officer;
- (2) Only a blank portion of the paper record is visible to the voter as he or she approaches the device; and
- (3) The paper printer is sealed with a numbered seal to ensure the interior of the machine cannot be accessed.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-253-080 Voter leaving polling place without voting. Whenever it is noted by a precinct election officer that a voter has been issued a ballot and leaves a polling place without returning the ballot, a notation shall be made in the poll book or list along with the ballot stub number of the ballot issued. If a ballot on a direct recording electronic device has not been cast, the precinct election officer must:

- (1) Cancel the ballot to ensure the ballot is not counted;
- (2) Make a mark on the paper record to indicate the ballot has been canceled; and
- (3) Make a notation in the poll book to indicate which direct recording electronic device was used to cancel the ballot.

AMENDATORY SECTION (Amending WSR 98-03-033, filed 1/13/98, effective 2/13/98)

WAC 434-253-110 Examination of voting devices. ~~At least once every hour while the poll booths are open, precinct election officers shall examine the voting devices ((~~☒~~)), poll booths, printed materials within the poll booths, and paper printers attached to direct recording electronic devices to ensure that they have not been tampered with ((~~at least once every hour while the polls are open~~)) and are in proper working condition.~~

~~(1) If any seal or lock on a direct recording electronic device or paper printer has been broken or tampered with, the direct recording electronic device and paper printer must be removed from service for the remainder of the election. The direct recording electronic device and paper printer must be transferred pursuant to WAC 434-253-115 (1)(b). A written report regarding the circumstances of the removal from service must be sent to the county canvassing board.~~

~~(2) Precinct election officers must replace any printed materials that were to remain in the poll booth if they have been defaced, removed, or destroyed.~~

~~(3) If a paper printer for a direct recording electronic device has malfunctioned or run out of paper, it must be handled pursuant to WAC 434-253-115.~~

NEW SECTION

WAC 434-253-115 Direct recording electronic device paper printer malfunction. (1) The following must occur if a paper printer for a direct recording electronic device has malfunctioned or run out of paper at any time:

(a) If the precinct election officer has confirmed that no ballots have been cast after the printer ran out of paper or malfunctioned, he or she must remove the direct recording electronic device and paper printer from service, document the problem, and correct the problem. While the problem is being corrected, the direct recording electronic device and paper printer must not be removed from the poll site and must remain in sight of election officers. The direct recording electronic device and paper printer may be returned to service once the problem has been corrected.

(b) If the precinct election officer cannot confirm that no ballots were cast after the printer ran out of paper or malfunctioned, or if the problem cannot be corrected, the direct recording electronic device and paper printer must be removed from service for the remainder of the election. At the direction of the county auditor, a team or teams composed of one representative from each major political party must pick up the direct recording electronic device and paper printer for delivery to the counting center or other location, as designated by the county auditor. The paper printer must be prepared for transfer pursuant to WAC 434-253-225. A precinct election official representing each major political party must seal the direct recording electronic device with a uniquely prenumbered seal. Upon delivery, the county auditor must receive the sealed direct recording electronic device and paper printer and record the time, date, precinct name or number, and seal numbers. A written report regarding the circumstances of the removal from service must be sent to the county canvassing board.

(2) In any case where an electronic ballot has been cast without a corresponding paper record, the county may print the ballot image stored on the device for use as a paper record for that device.

NEW SECTION

WAC 434-253-225 Preparation for transfer of direct recording electronic device paper records. (1) In preparation for transfer to a counting center, paper records from direct recording electronic devices must be either:

(a) Placed in transfer containers; or

(b) Transferred in the paper printer if the paper printer is sealed so the paper record cannot be removed without breaking the seal.

(2) Paper records must be accompanied by a transmittal sheet which must include at a minimum:

(a) Name or other identifier of the polling place in which the digital recording electronic device was utilized;

(b) The seal number from the paper printer; and

(c) The serial number or other identifier of the digital recording electronic device if distinctly unique from the seal number on the paper record printer.

(3) The inspector and one judge from each political party must sign the transmittal sheet attesting to the number of paper record tapes included in the container and the seal number. If paper records are transferred in a container, the container must be locked. The seal must also be applied, if available.

(4) The paper records must be transferred in a manner that is consistent with the transfer of ballots.

NEW SECTION

WAC 434-262-105 Audit of results of votes cast on direct recording electronic device. (1) The audits required by RCW 29A.60.185 must use the same three races or issues, randomly selected by lot, for every direct recording electronic device subject to the audit and utilized in the election. If there are not three countywide races or issues on the ballot, the county must select the maximum number of contests available but no more than three contests from each of the devices randomly selected for the audit.

(2) Written procedures to perform audits of direct recording electronic devices as outlined in RCW 29A.60.185 must be promulgated by the county auditor.

(a) The procedures must provide for a process of randomly selecting by lot the direct recording electronic devices that will be audited.

(b) The procedures for manually tabulating results must be conducted using a process that includes the following elements:

(i) A continuous paper record must be utilized in the audit; the paper record must not be cut into separate individual records; and

(ii) If a paper record indicates a ballot has been canceled, that ballot must be exempt from the audit;

(3) The county auditor must compare the paper records with the electronic records. The county auditor may take any necessary actions to investigate and resolve discrepancies.

(4) Prior to certification, and in time to resolve any discrepancies, the county auditor must alert the county canvassing board of discrepancies identified during the audit.

NEW SECTION

WAC 434-262-106 Machine recount of votes cast on direct recording electronic devices. Machine recounts must be conducted by reloading individual ballot data packs or cartridges. The county auditor must verify all data packs or cartridges have been loaded.

NEW SECTION

WAC 434-262-108 Manual recount of votes cast on direct recording electronic devices. (1) Written procedures to perform manual recounts of direct recording electronic devices must be promulgated by the county auditor. The procedures for manually tabulating results must be conducted using a process that includes the following elements:

(a) A continuous paper record must be utilized in the audit; the paper record must not be cut into separate individual records; and

(b) If a paper record indicates a ballot has been canceled, the ballot must be exempt from the recount.

(2) The county auditor must compare the hand recount results with the original results. The county auditor may take any necessary actions to investigate and resolve discrepancies.

allows up to two years of debits to be eliminated instead of being offset with future credits. The proposed phase in requirements were intended to allow manufacturers to build up credits in order to avoid any penalties during the start up of this program in Washington. The changed provisions achieve this same effect while preserving a degree of compliance pressure during this period.

A final cost-benefit analysis is available by contacting Bob Saunders, P.O. Box 47600, Olympia, WA 98507-7600, phone (360) 407-6888, fax (360) 407-7534, e-mail rsau461@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 2, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 16, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: November 30, 2005.

Jay J. Manning

Director

Christine Gregoire

Governor

WSR 05-24-044

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Filed November 30, 2005, 4:32 p.m., effective December 31, 2005]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: ESHB 1397 specified that this rule be signed by the governor, that ecology convene an advisory committee of industry and consumer group representatives, and that the rule is only effective for years in which Oregon has adopted the California emission standards. These actions were done or provided for in rule.

Purpose: This new chapter of the Washington Administrative Code implements ESHB 1397 by adopting specific California emission standards by reference, establishing that the requirements begin in the 2009 model year, establishing certain exemptions, providing for a phase-in of the requirements, and establishing reporting, compliance and enforcement procedures that affect automobile manufacturers and dealers.

Statutory Authority for Adoption: ESHB 1397 codified as RCW 70.120A.010.

Adopted under notice filed as WSR 05-20-099 on October 5, 2005.

Changes Other than Editing from Proposed to Adopted Version: The phase-in period for the fleet average NMOG standard was reduced from four years to three years and now

Chapter 173-423 WAC

LOW EMISSION VEHICLES

NEW SECTION

WAC 173-423-010 Purpose. The purpose of this chapter is to establish rules implementing the California motor vehicle emission standards adopted by the 2005 legislature and codified in chapters 70.120A and 46.16 RCW.

NEW SECTION

WAC 173-423-020 Applicability. This chapter applies to all 2009 and subsequent model year passenger cars, light duty trucks and medium duty passenger vehicles registered, leased, rented or sold for use in the state of Washington, except as provided in WAC 173-423-060, Exemptions.

NEW SECTION

WAC 173-423-025 Effective date. This chapter is effective on January 1, 2006, provided the state of Oregon has adopted the California motor vehicle emission standards as provided in RCW 70.120A.010.

NEW SECTION**WAC 173-423-030 Incorporation by reference.** (1)

This chapter incorporates by reference certain sections of the California Code of Regulations, Title 13, relating to implementing the California motor vehicle emission standards in the state of Washington. Table 070(1) found in WAC 173-423-070 lists the sections of the California Code of Regulations, Title 13 incorporated by reference and the California effective date for each section.

(2) Copies of the relevant sections of the California Code of Regulations, Title 13 incorporated by reference in this chapter are available on ecology's web site or by contacting:

Washington State Department of Ecology
Air Quality Program
300 Desmond Drive
Lacey, Washington 98503
360-407-6800

(3) For purposes of applying the incorporated sections of the California Code of Regulations, Title 13 in Washington, "California" means "Washington" unless otherwise specified in this chapter or clearly inappropriate.

NEW SECTION**WAC 173-423-040 Definitions and abbreviations.**

The following definitions apply to the administration of this chapter. Any term that is not defined in this section shall be as defined or described in the California Code of Regulations, Title 13, section 1900. Definitions in the California Code of Regulations, Title 13, section 1900 will prevail if any discrepancy arises between them and those set forth in this section.

(1) "Emission credits" are earned when a manufacturer's reported fleet average is less than the required fleet average. Credits are calculated according to formulas contained in the California Code of Regulations, Title 13, section 1961(c) and 1961.1(b).

(2) "Emission debits" are earned when a manufacturer's reported fleet average exceeds the required fleet average. Debits are calculated according to formulas contained in the California Code of Regulations, Title 13, section 1961(c) and 1961.1(b).

(3) "Fleet average greenhouse gas emission requirements" are generally referred to as limitations on greenhouse gas exhaust mass emission values from passenger cars, light-duty trucks and medium-duty passenger vehicles. The fleet average greenhouse gas emission requirements are set forth in CCR, Title 13, section 1961.1, and incorporated herein by reference.

(4) "Gross vehicle weight rating" or "GVWR" is the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

(5) "Independent low volume manufacturer" is defined in the California Code of Regulations, Title 13, section 1900 and incorporated herein by reference.

(6) "Intermediate volume manufacturer" is defined in the California Code of Regulations, Title 13, section 1900 and incorporated herein by reference.

(7) "Large volume manufacturer" is defined in the California Code of Regulations, Title 13, section 1900 and incorporated herein by reference.

(8) "Light duty truck" is any 2000 and subsequent model motor vehicle certified to the standards in Title 13, CCR, section 1961 (a)(1) rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle rated at 6,000 pounds gross vehicle weight or less, which is designed primarily for the purposes of transportation of property or is a derivative of such vehicle, or is available with special features enabling off-street or off-highway operation and use.

(9) "Medium duty passenger vehicle" (MDPV) is any medium-duty vehicle with a gross vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The medium-duty passenger vehicle definition does not include any vehicle which:

(a) Is an "incomplete truck," i.e., is a truck that does not have the primary load carrying device or container attached; or

(b) Has a seating capacity of more than twelve persons; or

(c) Is designed for more than nine persons in seating rearward of the driver's seat; or

(d) Is equipped with an open cargo area of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for the purpose of this definition.

(10) "Model year" is the manufacturer's annual production period which includes January 1 of a calendar year. If the manufacturer has no annual production period, "model year" is the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

(11) "Nonmethane organic gas" or "NMOG" is the sum of nonoxygenated and oxygenated hydrocarbons contained in a gas sample as measured in accordance with the "California Non-Methane Organic Gas Test Procedures," and incorporated herein by reference.

(12) "NMOG fleet average emissions" is a motor vehicle manufacturer's average vehicle emissions of all nonmethane organic gases from passenger cars and light duty trucks in any model year delivered in Washington that are subject to this regulation.

(13) "Passenger car" is any motor vehicle designed primarily for transportation of persons and having a design capacity of twelve persons or less.

(14) "Small volume manufacturer" is defined as set forth in the California Code of Regulations, Title 13, section 1900 and incorporated herein by reference.

NEW SECTION

WAC 173-423-050 Requirement to meet California vehicle emission standards. (1) Starting with the 2009 model year, no vehicle shall be registered, leased, rented, licensed or sold for use in the state of Washington unless such vehicle is certified to California emission standards, except as provided in WAC 173-423-060, Exemptions.

(2) The state of Washington will use the vehicle emission standards used by California including:

(a) The exhaust emission standards set forth in the California Code of Regulations, Title 13, section 1961;

(b) The emission control label or smog index label requirements set forth in the California Code of Regulations, Title 13, section 1965;

(c) The evaporative emission standards set forth in the California Code of Regulations, Title 13, section 1976;

(d) The refueling emissions standards set forth in the California Code of Regulations, Title 13, section 1978;

(e) The malfunction and diagnostic system requirements set forth in the California Code of Regulations, Title 13, 1968.2;

(f) The specifications for fill pipes and openings of motor vehicle fuel tanks set forth in the California Code of Regulations, Title 13, section 2235; and

(g) The greenhouse gas emission standards as set forth in the California Code of Regulations, Title 13, section 1961.1.

(3) All vehicle manufacturers shall comply with the fleet average emission requirement, and the warranty, recall and other applicable requirements set forth in this chapter.

NEW SECTION

WAC 173-423-060 Exemptions. The following vehicles are not subject to this chapter:

- (1) Military tactical vehicles;
- (2) Vehicles sold for registration and use out-of-state;
- (3) Previously registered vehicles where the mileage at the time of sale exceeds seven thousand five hundred miles, provided that for vehicle dealers, the mileage at the time of sales is determined by the odometer statement at the time the vehicle dealer acquired the vehicle;
- (4) Vehicles which are only available for rent to a final destination outside of Washington;
- (5) Vehicles purchased by a nonresident prior to establishing residency in the state of Washington, regardless of the mileage on the vehicle;
- (6) Vehicles transferred by inheritance or as a result of divorce, dissolution or legal separation; and
- (7) An emergency vehicle when a public safety agency has demonstrated to the department of ecology's satisfaction that a vehicle that will meet said agency's needs is not otherwise reasonably available.

NEW SECTION

WAC 173-423-070 Emission standards, warranty, recall and other California provisions adopted by reference. Each manufacturer and each new 2009 and subsequent model year passenger car, light duty truck and medium duty passenger vehicle subject to this chapter shall comply with each applicable standard set forth in Table 070(1) and incorporated by reference:

**Table 070(1)
California Code of Regulations (CCR)
Title 13
Provisions Incorporated by Reference
Effective in Washington January 1, 2006**

Title 13 CCR	Title	California Effective Date
Chapter 1 Motor Vehicle Pollution Control Devices		
Article 1 General Provisions		
Section 1900	Definitions	1/01/06
Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles)		
Section 1956.8 (g) and (h)	Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy Duty Engines and Vehicles	1/31/05
Section 1960.1	Exhaust Emission Standards and Test Procedures - 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles	3/26/04
Section 1961	Exhaust Emission Standards and Test Procedures - 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	1/01/06
Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures - 2009 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	1/01/06
Section 1965	Emission Control and Smog Index Labels - 1979 and Subsequent Model Year Vehicles	12/04/03
Section 1968.2	Malfunction and Diagnostic System Requirements - 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	4/21/03

Table 070(1)
California Code of Regulations (CCR)
Title 13
Provisions Incorporated by Reference
Effective in Washington January 1, 2006

Title 13 CCR	Title	California Effective Date
Section 1968.5	Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	4/21/03
Section 1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	11/27/99
Section 1978	Standards and Test Procedures for Vehicle Refueling Emissions	12/04/03
Article 6 Emission Control System Warranty		
Section 2035	Purpose, Applicability and Definitions	12/26/90
Section 2037	Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	11/27/99
Section 2038	Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	11/27/99
Section 2039	Emission Control System Warranty Statement	12/26/90
Section 2040	Vehicle Owner Obligations	12/26/90
Section 2046	Defective Catalyst	1/16/79

Table 070(1)
California Code of Regulations (CCR)
Title 13
Provisions Incorporated by Reference
Effective in Washington January 1, 2006

Title 13 CCR	Title	California Effective Date
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing		
Article 2 Enforcement of New and In-Use Vehicle Standards		
Section 2109	New Vehicle Recall Provisions	11/30/83
Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls		
Section 2111	Applicability	8/21/02
Section 2112	Definitions	11/15/03
	Appendix A to Article 2.1	11/15/03
Section 2113	Initiation and Approval of Voluntary and Influenced Recalls	1/26/95
Section 2114	Voluntary and Influenced Recall Plans	11/27/99
Section 2115	Eligibility for Repair	1/26/95
Section 2116	Repair Label	1/26/95
Section 2117	Proof of Correction Certificate	1/26/95
Section 2118	Notification	1/26/95
Section 2119	Recordkeeping and Reporting Requirements	11/27/99
Section 2120	Other Requirements Not Waived	1/26/95
Article 2.2 Procedures for In-Use Vehicle Ordered Recalls		
Section 2122	General Provisions	1/26/95
Section 2123	Initiation and Notification of Ordered Emission-Related Recalls	1/26/95
Section 2124	Availability of Public Hearing	1/26/95
Section 2125	Ordered Recall Plan	1/26/95
Section 2126	Approval and Implementation of Recall Plan	1/26/95
Section 2127	Notification of Owners	1/26/95
Section 2128	Repair Label	1/26/95
Section 2129	Proof of Correction Certificate	1/26/95

Table 070(1)
California Code of Regulations (CCR)
Title 13
Provisions Incorporated by Reference
Effective in Washington January 1, 2006

Title 13 CCR	Title	California Effective Date
Section 2130	Capture Rates and Alternative Measures	11/27/99
Section 2131	Preliminary Tests	1/26/95
Section 2132	Communication with Repair Personnel	1/26/95
Section 2133	Recordkeeping and Reporting Requirements	1/26/95
Section 2135	Extension of Time	1/26/95
Article 2.4 Procedures for Reporting Failure of Emission-Related Components		
Section 2141	General Provisions	12/28/00
Section 2142	Alternative Procedures	2/23/90
Section 2143	Failure Levels Triggering Recall	11/27/99
Section 2144	Emission Warranty Information Report	11/27/99
Section 2145	Field Information Report	11/27/99
Section 2146	Emissions Information Report	11/27/99
Section 2147	Demonstration of Compliance with Emission Standards	8/21/02
Section 2148	Evaluation of Need for Recall	11/27/99
Section 2149	Notification of Subsequent Action	2/23/90
Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks		
Section 2235	Requirements	9/17/91

NEW SECTION

WAC 173-423-080 Fleet average nonmethane organic gas (NMOG) exhaust emission requirements, reporting and compliance. (1) Fleet average requirement. Effective model year 2009, each motor vehicle manufacturer's NMOG fleet average emissions from passenger cars and light duty trucks delivered for sale in Washington shall not exceed the Fleet Average NMOG Exhaust Emission Requirement set forth in the California Code of Regulations, Title 13, section 1961. Compliance shall be based on the number of vehicles, subject to this regulation, delivered for sale in the state of Washington.

(2) Fleet average NMOG exhaust emission credits and debits. Effective model year 2009, each vehicle manufacturer can accrue NMOG emission credits and debits and use credits in accordance with the procedures in the California Code of Regulations, Title 13, section 1961. Debits and credits accrued and used shall be based on the number of vehicles, subject to this chapter, produced and delivered for sale by each manufacturer, in the state of Washington.

(3) Reporting. Commencing with the 2009 model year, each manufacturer shall submit by March 1 a report to the department of ecology that shall include:

(a) Premodel year data which projects the fleet average NMOG exhaust emissions for vehicles expected to be delivered for sale in Washington.

(b) End-of-model year data which calculates the fleet average NMOG exhaust emissions for the model year just ended.

The report shall follow the procedures in the California Code of Regulations, Title 13, section 1961 and shall be in the same format used to report such information to the California Air Resources Board.

(4) Compliance with fleet average NMOG requirement. Beginning in model year 2012, if a report submitted by the manufacturer under subsection (3) of this section demonstrates that the manufacturer is not in compliance with the fleet average emission standard, the manufacturer must submit to the department of ecology within sixty days a Fleet Average Enforcement Report. The Fleet Average Enforcement Report shall:

(a) Describe how the manufacturer intends to equalize any accrued debits, as required in the California Code of Regulations, Title 13, section 1961, and in accordance with subsection (2) of this section.

(b) Identify all vehicle models delivered for sale in Washington, their corresponding certification standards, and the percentage of each model delivered for sale in Washington and California in relation to total fleet sales in the respective state.

(c) Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

For model years 2009 through 2011 the Fleet Average Enforcement Report, if needed, must be submitted to the department of ecology by March 1, 2012. If debits are accrued in all three years, one year of debits must be equalized by the end of the 2012 model year.

NEW SECTION

WAC 173-423-090 Fleet average greenhouse gas exhaust emission requirements, reporting and compliance. (1) Each manufacturer subject to the greenhouse gas provisions of this regulation shall comply with emissions standards, fleet average greenhouse gas exhaust mass emission requirements for passenger car, light duty truck, medium duty passenger vehicle weight classes, and other requirements of the California Code of Regulations, Title 13, section 1961.1.

(2) Large volume manufacturer. The fleet average greenhouse gas exhaust emission levels for passenger cars, light-duty trucks, and medium-duty passenger vehicles pro-

duced and delivered for sale in the state of Washington by a large volume manufacturer for each 2009 and subsequent model year are established in the California Code of Regulations, Title 13, section 1961.1.

(3) Small, intermediate and independent manufacturers. The fleet average greenhouse gas exhaust emission requirements for passenger cars, light-duty trucks, and medium-duty passenger vehicles delivered for sale in the state of Washington by small volume, intermediate volume and independent low volume manufacturers are set forth in the California Code of Regulations, Title 13, section 1961.1, which specifies that requirements for these manufacturers are waived prior to the 2016 model year.

(4) Greenhouse gas credits and debits. Greenhouse gas credits and debits may be accrued and used based on each manufacturer's sale of vehicles in Washington in accordance with the California Code of Regulations, Title 13, section 1961.1.

(5) Optional alternative compliance with greenhouse gas emission standards. Greenhouse gas vehicle test groups that are certified pursuant to the California Code of Regulations, Title 13, section 1961.1 (a)(1)(B)2.a in the state of California may receive equivalent credit if delivered for sale and use in the state of Washington.

(6) Alternative compliance credit. A manufacturer shall submit to the department of ecology the data set forth in the California Code of Regulations, Title 13, section 1961.1 (a)(1)(B)2.a.i for Washington specific sale and use in order to receive the credit identified in subsection (5) of this section.

(7) Reporting on greenhouse gas requirements. Beginning with the 2009 model year, each manufacturer shall submit by March 1 a report to the department of ecology that shall include:

(a) Premodel year data which projects the fleet average greenhouse gas emissions for vehicles expected to be delivered for sale in Washington.

(b) End-of-model year data which calculates the fleet average greenhouse gas emissions for the model year just ended. The report shall include the number of greenhouse gas vehicle test groups, delineated by model type, certified pursuant to the California Code of Regulations, Title 13, section 1961.1.

The report shall follow the procedures in the California Code of Regulations, Title 13, section 1961.1 and shall be in the same format used to report such information to the California Air Resources Board.

(8) Compliance with fleet average greenhouse gas requirements. Beginning in model year 2009, if the report submitted by the manufacturer under subsection (7) of this section demonstrates that the manufacturer is not in compliance with the fleet average emission standards, the manufacturer must submit to the department of ecology within sixty days a Fleet Average Enforcement Report. The Fleet Average Enforcement Report shall:

(a) Describe how the manufacturer intends to equalize any accrued debits, as required in the California Code of Regulations, Title 13, section 1961.1.

(b) Identify all vehicle models delivered for sale in Washington, their corresponding certification standards, and the percentage of each model delivered for sale in Washing-

ton and California in relation to total fleet sales in the respective state.

(c) Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

NEW SECTION

WAC 173-423-100 Manufacturer delivery reporting requirements. (1) The manufacturer shall submit to the department of ecology one copy of the California Executive Order and Certificate of Conformity for certification of new motor vehicles for each engine family to be sold in the state of Washington within thirty days of receiving the Executive Order from the California Air Resources Board. If such reports are available electronically, the manufacturer shall send the record in an electronic format acceptable to the department of ecology. Manufacturers may discontinue submitting these reports if so notified by the department of ecology.

(2) Commencing with the 2009 model year and prior to the beginning of each model year, upon request, each manufacturer shall submit to the department of ecology a list of all models of medium duty vehicles and medium duty passenger vehicles that will be delivered to Washington dealers. Medium duty vehicles are those with a GVWR of 8,501 to 14,000 pounds.

(3) Upon request, each manufacturer shall report to the department of ecology the vehicle identification numbers (VIN) of each passenger car, light duty truck and medium duty passenger vehicle delivered to each Washington dealer that is not certified to California emission standards.

(4) For the purposes of determining compliance with this chapter, the department of ecology may require any vehicle manufacturer to submit any documentation the department of ecology deems necessary to the effective administration and enforcement of this chapter, including all certification materials submitted to the California Air Resources Board.

NEW SECTION

WAC 173-423-110 Warranty requirements. (1) For all 2009 and subsequent model year vehicles subject to the provisions of this chapter, each manufacturer shall provide, to the ultimate purchaser and each subsequent purchaser, a warranty that complies with the requirements set forth in the California Code of Regulations, Title 13, sections 2035 through 2038, 2040, and 2046.

(2) For all 2009 and subsequent model year vehicles subject to the provisions of this chapter, each manufacturer shall include the emission control system warranty statement that complies with the requirements in the California Code of Regulations, Title 13, section 2039. Manufacturers may modify this statement as necessary to inform Washington vehicle owners of the applicability of the warranty. The manufacturer shall provide a telephone number appropriate for Washington residents.

(3) All manufacturers shall submit to the department of ecology Failure of Emission-Related Components reports as defined in the California Code of Regulations, Title 13, section 2144 for vehicles subject to this regulation. For purposes of compliance with this requirement, manufacturers may sub-

mit copies of the Failure of Emission-Related Components reports that are submitted to the California Air Resources Board, in lieu of submitting reports for vehicles subject to this chapter. Manufacturers may discontinue submitting these reports if so notified by the department of ecology.

NEW SECTION

WAC 173-423-120 Recalls. (1) Any order or enforcement action taken by the California Air Resources Board to correct noncompliance with any section of Title 13, which results in the recall of any vehicle pursuant to the California Code of Regulations, Title 13, sections 2109 through 2135, shall be applicable to vehicles registered in the state of Washington. If the manufacturer can demonstrate to the department of ecology's satisfaction that the action is not applicable to vehicles registered in Washington, the action shall not apply in Washington.

(2) Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to the California Code of Regulations, Title 13, sections 2113 through 2121 shall extend to all applicable vehicles registered in Washington. If the manufacturer can demonstrate to the department of ecology's satisfaction that said campaign is not applicable to vehicles registered in Washington, the campaign shall not apply in Washington.

(3) For vehicles subject to an action pursuant to subsection (1) of this section, each manufacturer shall send to owners of vehicles registered in the state of Washington a notice that complies with the requirements in the California Code of Regulations, Title 13, sections 2118 or 2127. Such notice shall contain a telephone number appropriate for Washington residents.

NEW SECTION

WAC 173-423-130 Surveillance. (1) The department of ecology may inspect new and used motor vehicles and related records for the purposes of determining compliance with the requirements of this chapter. Department of ecology inspections shall occur during regular business hours and on any premises owned, operated or used by any dealer or rental car agency.

(2) For the purposes of determining compliance with this chapter, the department of ecology may require any vehicle dealer or rental car agency to submit any documentation the department of ecology deems necessary to the effective administration and enforcement of this chapter. This provision does not require creation of new records.

NEW SECTION

WAC 173-423-140 Enforcement. Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed five thousand dollars per vehicle. Penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

NEW SECTION

WAC 173-423-150 Severability. Each section of this regulation shall be deemed severable, and in the event that any section of this regulation is held invalid, the remainder shall continue in full force and effect.

**WSR 05-24-050
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS**

[Filed December 1, 2005, 8:16 a.m., effective January 1, 2006]

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

Purpose: To explain the types of annuities that Plan 3 members may purchase at the time of retirement and the requirements and process for purchasing the annuities.

Citation of Existing Rules Affected by this Order:
Amending WAC 415-111-310.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: RCW 41.50.088.

Adopted under notice filed as WSR 05-21-064 on October 14, 2005.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.

Date Adopted: November 23, 2005.

S. J. Matheson
Director

AMENDATORY SECTION (Amending WSR 03-19-120, filed 9/17/03, effective 11/1/03)

WAC 415-111-310 Defined contribution account distribution (withdrawal). (1) **How do I request a distribution (withdrawal) of funds from my defined contribution account?**

(a) You must separate from all eligible employment;

(b) The department must receive the notice of separation from your employer(s) through the retirement transmittal system; and

(c) You must submit the appropriate, completed form requesting a defined contribution distribution to the department's designated recordkeeper as directed on the form. See WAC 415-111-110.

(2) Can I receive an expedited distribution?

(a) If you are terminally ill and eligible, the department will arrange for payment to you within ten workdays. To be eligible for an expedited payment:

- (i) You must separate from all eligible employment;
- (ii) The department must receive the notice of separation from your employer(s);
- (iii) You or your beneficiaries must submit documentation to the department verifying your terminal illness; and
- (iv) You must submit the appropriate, completed form requesting a defined contribution distribution to the department's designated recordkeeper as directed on the form (see WAC 415-111-110).

(b) If you have an emergency, the department will consider your request for expedited payment and arrange for expedited payment to you whenever possible. To be eligible for consideration:

- (i) You must separate from all eligible employment;
- (ii) The department must receive the notice of separation from your employer(s);
- (iii) You must submit the appropriate, completed form requesting a defined contribution distribution to the department's designated recordkeeper as directed on the form (see WAC 415-111-110); and

(iv) You or your beneficiaries must submit documentation to the department verifying and explaining your emergency. The department will consider only unforeseeable emergencies or serious illnesses or death of you or a close family or household member.

(c) If you are invested in a self-directed option, the Plan 3 recordkeeper will distribute your entire self-directed account balance, less any applicable tax withholding.

(d) If you are invested in the Total Asset Portfolio (TAP), the Plan 3 recordkeeper will distribute 80% of your estimated TAP account balance, less any applicable tax withholding. You will be paid the balance of your account after the final valuation has been made.

(3) Can I still receive my defined contribution distribution if I have returned to work before receiving my funds? If you return to work in an eligible position after all the criteria in subsection (1) of this section are met, you may receive distribution from your defined contribution account.

(4) What are my options for distributing my defined contribution funds? You have the following options for distributions from your Plan 3 defined contribution account. Options for both the WSIB and the ((SELF)) self-directed investment programs are combined where applicable.

(a) **Lump sum cash distribution. In either program,** you may request the entire amount of your funds in a single lump-sum payment.

(b) **Direct rollover. In either program,** you may have some or all of your funds rolled over to an eligible retirement plan or individual retirement account (IRA). If you choose a partial rollover, the remaining funds that were not rolled over will be distributed to you as a lump sum, unless you create a personal payment schedule under (d) of this subsection.

(c) **Scheduled payments. In either program,** subject to the distribution requirements of IRC section 401 (a)(9), you may request that your funds be distributed in equal payments over a specified period of time, or that a specific dollar

amount be paid on a monthly basis until the account is exhausted. You may also request equal payments over your lifetime or the lifetimes of you and your beneficiary. Scheduled payments for the WSIB program are made monthly only. Scheduled payments for the ((SELF)) self-directed program ((are)) may be made monthly, quarterly, semiannually ((and)) or annually. Both programs have a minimum payment requirement of one hundred dollars per month.

(d) **Personalized payment plan. In either program,** you may create a personalized payment plan using any part of one or more of the distribution options provided in (a), (b), and (c) of this subsection (see examples below).

(e) **Annuity purchase. ((For the SELF-directed program only)) In either program,** you may request to have your funds used to purchase an annuity ((from an insurance company which)) that pays a benefit for your lifetime or the lifetimes of you and your ((beneficiary)) joint annuitant. See WAC 415-111-320 for information about purchasing an annuity and descriptions of the various annuity contracts.

(5) **Market fluctuations.** Your defined contribution account is subject to actual investment earnings (both gains and losses). These gains or losses will be used to adjust the value of your account. The defined contribution payment plans are subject to the same market fluctuations. As a result, the funding of your selected payment plan may last longer than anticipated due to market gains, or end earlier than anticipated due to market losses.

EXAMPLE (WSIB - Partial rollover with payments until account exhausted):

Pat has \$10,000 in the WSIB investment program. Pat wants to rollover \$2,000 of the total to an IRA, but does not want to receive the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Pat selects the personalized payment schedule option and requests to do a partial rollover of \$2,000 and receive the remaining \$8,000 in equal monthly payments of \$125 until the account is exhausted (approximately 64 months).

EXAMPLE (Self - Partial rollover with payments for fixed period):

Chris has \$10,000 in the self-directed investment program. Chris wants to rollover \$3,000 of the total to an IRA, but does not want to receive the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Chris selects the personalized payment schedule option and requests to do a partial rollover of \$3,000 and receive the remaining \$7,000 in quarterly payments of \$250 over the next 7 years (28 quarters).

Summary of Distribution Options	
SELF	WSIB
Lump Sum Cash Distribution or Direct Rollover	Lump Sum Cash Distribution or Direct Rollover
– entire account	– entire account
– partial amount	– partial amount
– remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below).	– remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below).

Scheduled Payments	Scheduled Payments
– equal payments – monthly, quarterly, semi-annual or annual – specified period of time, or – until the account is exhausted – payments can be combined life expectancy of you and a beneficiary.	– equal payments – monthly payments only – specified period of time, or – until the account is exhausted – payments can be combined life expectancy of you and a beneficiary.
Annuity Purchase	((Not available for WSIB program)) Annuity Purchase
– purchase an annuity from an insurance company – set up to pay benefits for – your lifetime, or – lifetimes of you and your ((beneficiary)) joint annuitant.	– purchase an annuity, administered by the state of Washington – set up to pay benefits for – your lifetime, or – lifetimes of you and your joint annuitant.
In addition to the above, you may set up:	In addition to the above, you may set up:
Personalized Payment Plan	Personalized Payment Plan
– customized for your needs – available for options above.	– customized for your needs – available for options above.

(6) **Minimum required distribution.** Beginning on April 1 of the calendar year following the year in which you turn age 70 1/2, you are required to withdraw a minimum amount from your defined contributions annually. If you are still working at age 70 1/2, distribution ~~((will be))~~ **is** required to begin immediately upon retirement.

(7) See RCW 41.34.070 for additional information.

NEW SECTION

WAC 415-111-320 May I purchase a life annuity with my Plan 3 defined contribution account? Any time after you become eligible to withdraw funds from your Plan 3 account, you may use part or all of your funds to purchase a life annuity according to this section. To purchase a Total Allocation Portfolio (TAP) Annuity that is administered by the state of Washington you must use funds that are in the Washington state investment board (WSIB) investment program. To purchase an annuity through an insurance company that is offered by the self-directed investment program, you must use funds that are in the self-directed investment program.

(1) **What is a life annuity?** A life annuity is a contract that provides a guaranteed income for the rest of your life in exchange for a lump-sum dollar amount you pay up front. The contract specifies the amount you pay to purchase the

annuity, the amount you will receive each month, and any other terms and conditions.

(a) **A single life annuity** is based on your lifetime. It provides guaranteed payments for as long as you live. The payments stop upon your death.

(b) **A joint life annuity** is based on two lifetimes, yours and another person that you choose (referred to as your joint annuitant). It provides guaranteed payments for as long as you live, and then for as long as your joint annuitant lives. The payments stop when both you and your joint annuitant die.

(c) **A term certain—Single life annuity** is based on your lifetime. It provides you with regular payments for as long as you live. It also guarantees the payments for a specific, predetermined period of time (term certain). If you die before the specified period of time, payments will continue to your beneficiary for the balance of the specified period.

(d) **A term certain—Joint life annuity** is based on two lifetimes, yours and your joint annuitant's. It provides regular payments for as long as you or your joint annuitant live. It also guarantees those payments for a specific, predetermined period of time (term certain). If you and your joint annuitant should both die before the specified period of time, payments will continue to your beneficiary for the balance of the specified period.

Example (Term certain—Joint life annuity):

John purchased a 20-year term certain joint life annuity. He received monthly payments until his death 10 years later. Upon John's death, Mary, John's joint annuitant, will receive payments for the duration of her life.

- If Mary lives for 5 years after John's death, upon her death the annuity will make payments to John's beneficiary for 5 years, the remainder of the 20-year term.
- If Mary lives for 15 years after John's death, upon her death the annuity will cease. The annuity will have paid benefits for 25 years, five years beyond the 20-year guaranteed period.

(2) **Are the life annuities offered by each investment program different?** The life annuities offered through the WSIB investment program and the self-directed investment program have distinct features and options. Each program may offer some or all of the annuities described in subsection (1) of this section. Minimum purchase price, payment frequency, survivorship percentages, length of term certain annuities, and other optional features differ between programs as well.

(3) **How are the annuity payments calculated?** Your annuity payment amount is based on:

- (a) The original purchase price;
- (b) Your age;
- (c) The age of your joint annuitant, if any;
- (d) Assumptions about life expectancy;
- (e) The survivorship percentage you select on a joint annuity;
- (f) Anticipated investment returns; and
- (g) The specific features of the annuity you select, such as, but not limited to, COLAs or refunds of any undistributed balance upon death.

(4) **May I change my mind after I purchase an annuity?** Your contract will specify a period of time in which you can rescind your decision to purchase the annuity. Once the rescission period expires, your decision is irrevocable.

(5) **May I change the terms of the annuity after the rescission period expires?** You may not make any changes after the rescission period unless your annuity contract explicitly states otherwise. Some policies allow you to make changes in specific circumstances. For instance, you may make changes to an annuity purchased through the Washington state investment board investment program only as follows:

(a) If you name someone other than your spouse as the joint annuitant, you may convert to a single life annuity at any time after your payments begin. This option may only be used once and is irrevocable.

(b) If you marry after purchasing a single life annuity, you may convert to a joint life annuity and name your new spouse as survivor, provided that:

(i) Your monthly benefit is not subject to a property settlement agreement from a court decree of dissolution or legal separation;

(ii) The selection is made during a one-year window on or after the date of the first anniversary and before the second anniversary of your marriage; and

(iii) You provide satisfactory proof of your new marriage and your new spouse's birth date. This option may only be used once and is irrevocable.

(6) **What are the tax consequences of a life annuity?**

(a) You, your joint annuitant or your beneficiary may be liable for federal and/or state taxes on payments from your annuity in the year in which they are received. You will receive an annual statement indicating the taxable portion of your annuity payments.

(b) If you do not submit a tax withholding Form W-4P to the department before your first payment, taxes will be withheld according to Internal Revenue Service requirements, using a filing status of married with three exemptions.

(c) The department does not:

(i) Guarantee that payments should or should not be designated as exempt from federal income tax;

(ii) Guarantee that it was correct in withholding or not withholding taxes from benefit payments to you;

(iii) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(iv) Assume any liability for your compliance with the Internal Revenue Code.

(7) **How do I purchase a life annuity?**

(a) The forms required to purchase an annuity and the applicable directions are available on the department's website or upon request from the department, and include:

(i) Plan 3 Request for Payment of Defined Contributions Funds Form;

(ii) Plan 3 Annuity Payment Request Form;

(iii) Spousal consent form, if married;

(iv) Proof of your birth date;

(v) Proof of your joint annuitant's birth date, if applicable; and

(vi) Tax withholding Form W-4P.

(b) You may transfer funds from one investment program to the other in order to have sufficient funds in the appropriate investment program to cover the cost of the annuity purchase.

(8) **What if there is an error in my contract?** Carefully examine your contract upon receipt. If there is an error or omission, you must report the error or omission immediately according to the instructions in your contract.

WSR 05-24-051

PERMANENT RULES

STATE BOARD FOR

COMMUNITY AND TECHNICAL COLLEGES

[Filed December 1, 2005, 11:08 a.m., effective January 1, 2006]

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

Purpose: This WAC change provides for the expansion of investment options for participants in the retirement plan sponsored by the State Board for Community and Technical Colleges under RCW 28B.10.400. The state board is expanding the investment options to include an array of market-targeted mutual funds which will be added to the annuity investment options currently available. Additional changes are being made to allow plan participants to transfer retirement funds in accordance with IRS regulations and to ensure consistent use of language.

Citation of Existing Rules Affected by this Order: Amending chapter 131-16 WAC.

Statutory Authority for Adoption: RCW 28B.10.400.

Adopted under notice filed as WSR 05-21-040 on October 13, 2005.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 14, Repealed 0.

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

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

Date Adopted: December 1, 2005.

DelRae Oderman
Executive Assistant
and Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-14-033, filed 6/23/98, effective 7/24/98)

WAC 131-16-010 Designation of community and technical college system retirement plan. There is hereby established for the eligible employees of the community and

technical colleges of the state of Washington and the state board, a retirement plan which shall provide such employees with ~~((an employer))~~ a state board sponsored retirement plan through the Teachers' Insurance Annuity Association (TIAA) and the College Retirement Equities Fund (CREF), hereafter called ~~((TIAA/CREF))~~ TIAA-CREF, subject to the provisions of WAC 131-16-011 through 131-16-066 and the plan document. On and after January 1, ~~((1998))~~ 2006, this retirement plan is intended to comply with the requirements of a qualified plan under Section ~~((403))~~ 401(a) of the Internal Revenue Code of 1986, as amended and the provisions of the plan document ~~((filed with the Internal Revenue Service on October 29, 1997. Prior to January 1, 1998, the plan was intended to comply with the requirements of Section 403(b) of the Internal Revenue Code of 1986, as amended))~~ approved by the state board on December 1, 2005.

AMENDATORY SECTION (Amending WSR 98-14-033, filed 6/23/98, effective 7/24/98)

WAC 131-16-011 Definitions. For the purpose of WAC 131-16-010 through 131-16-066, the following definitions shall apply:

(1) "Participant" means any employee who is eligible to ~~((purchase retirement annuities through))~~ participate in the ~~((TIAA/CREF))~~ plan and who, as a condition of employment, on and after January 1, 1997, shall participate in the ~~((TIAA/CREF))~~ plan upon initial eligibility.

(2) "Supplemental retirement benefit" means payments, as calculated in accordance with WAC 131-16-061, made by the state board to an eligible retired participant or designated beneficiary whose retirement benefits provided by the ~~((TIAA/CREF))~~ plan do not attain the level of the retirement benefit goal established by WAC 131-16-015.

(3) "Year of full-time service" means retirement credit based on full-time employment or the equivalent thereof based on part-time employment in an eligible position for a period of not less than five months in any fiscal year during which ~~((TIAA/CREF))~~ contributions to TIAA-CREF were made by both the participant and a Washington public higher education institution or the state board or any year or fractional year of prior service in a Washington public retirement system while employed at a Washington public higher education institution: Provided, That the participant will receive a pension benefit from such other retirement system and that not more than one year of full-time service will be credited for service in any one fiscal year.

(4) "Fiscal year" means the period beginning on July 1 of any calendar year and ending on June 30 of the succeeding calendar year.

(5) "Average annual salary" means the amount derived when the salary received during the two consecutive highest salaried fiscal years of full-time service for which ~~((TIAA/CREF))~~ contributions to TIAA-CREF were made by both the participant and a Washington public higher education institution is divided by two.

(6) "~~((TIAA/CREF))~~ Plan retirement benefit" means the amount of annual retirement income derived from a participant's accumulated ~~((annuities))~~ balances including dividends at the time of retirement: Provided, That solely for the

purpose of calculating a potential supplemental retirement benefit, such amount shall be adjusted to meet the assumptions set forth in WAC 131-16-061(2).

(7) "Salary" means all remuneration received by the participant from the employing college district or the state board, including summer quarter compensation, extra duty pay, leave stipends, and grants made by or through the college district or state board; but not including any severance pay, early retirement incentive payment, remuneration for unused sick or personal leave, or remuneration for unused annual or vacation leave in excess of the amount payable for thirty days or two hundred forty hours of service.

(8) "Designated beneficiary" means the surviving spouse of the retiree or, with the consent of such spouse, if any, such other person or persons as shall have an insurable interest in the retiree's life and shall have been nominated by written designation duly executed and filed with the retiree's institution of higher education or the state board.

(9) "State board" means the state board for community and technical colleges as created in RCW 28B.50.050.

(10) "Appointing authority" means a college district board of trustees or the state board or the designees of such boards.

(11) "Plan" means the retirement plan sponsored by the state board and funded by TIAA-CREF.

AMENDATORY SECTION (Amending Resolution No. 91-20, Order 129, filed 6/14/91, effective 7/15/91)

WAC 131-16-015 Retirement benefit goal established. Subject to the provisions of WAC 131-16-061, the retirement benefit goal for participants in the ~~((TIAA/CREF))~~ plan is to provide participants at age sixty-five having twenty-five years of full-time service a minimum annual retirement income, exclusive of Federal Old Age Survivors Insurance benefits, equivalent to fifty percent of their average annual salary.

AMENDATORY SECTION (Amending WSR 00-14-017, filed 6/28/00, effective 7/29/00)

WAC 131-16-021 Employees eligible to participate in the retirement ~~((annuity purchase))~~ plan. (1) Eligibility to participate in the ~~((TIAA/CREF))~~ plan is limited to persons who hold appointments to college district or state board staff positions as full-time or part-time faculty members or administrators exempt from the provisions of chapter 28B.16 RCW and, effective July 1, 1999, are assigned a cumulative total of at least fifty percent of full-time workload as defined by the collective bargaining agreement and/or the appointing authority at one or more college districts or the state board for at least two consecutive college quarters. (Part-time faculty workload is calculated in accordance with RCW 28B.50.489 and 28B.50.4891.)

(2) Participation in the plan is also permitted for current and former employees of college districts or the state board who are on leave of absence or who have terminated employment by reason of permanent disability and who are receiving a salary continuation insurance benefit through a plan made available by the state of Washington: Provided, That such noncontributory participation shall not be creditable toward

the number of years of full-time service utilized in calculating eligibility for supplemental retirement benefits pursuant to WAC 131-16-061.

(3) Optional participation in tax-deferred annuities other than this qualified plan as offered by individual colleges is permitted consistent with the Internal Revenue Code: Provided, That the provisions of WAC 131-16-015, 131-16-050, and 131-16-061 shall not apply in such cases. Optional tax-deferred annuities are provided through a salary reduction agreement between the employee and employer. There is no employer contribution for optional tax-deferred annuities.

(4) An employee who moves from an ineligible to an eligible position for the same appointing authority may become a participant by so electing in writing within six months following such move.

(5) A participant who moves from an eligible position to an ineligible position for the same appointing authority may continue to be a participant by so electing within six months following such move.

(6) Participants shall continue participation regardless of the proportion of full-time duties assigned, except as otherwise provided in this section, as long as continuously employed within the community and technical college system. The community and technical college or state board employer shall notify, in writing, all newly hired employees of their potential right to participate. A participating employee, who changes employers without a break in service, shall have the responsibility to notify in writing the new college or state board employer of his or her eligibility. In no case will there be a requirement for retroactive contributions if an employee fails to inform his or her college or state board employer about eligibility previously established with another community and technical college system employer. For the purposes of this section, spring and fall quarters shall be considered as consecutive periods of employment.

(7) As a condition of employment, all employees who become eligible on and after January 1, 1997, shall participate in this plan upon initial eligibility. Notwithstanding this provision, all eligible new employees who at the time of employment are members of the Washington state teachers retirement system or the Washington public employees retirement system may participate as provided in WAC 131-16-031.

AMENDATORY SECTION (Amending WSR 00-14-017, filed 6/28/00, effective 7/29/00)

WAC 131-16-031 Participation in the plan. (1) Except as provided in subsections (2) and (3) of this section, participation in the ((TIAA/CREF)) plan is required of all otherwise eligible new employees: Provided, That any such new employee, who at the time of employment is a member of the Washington state teachers retirement system or the Washington public employees retirement system, and whose college or state board employment meets the requirements of an "eligible position" as defined by such plan, may irrevocably elect to retain such membership or, if not vested in that system, retain membership until vesting occurs and then irrevocably elect to participate in the ((TIAA/CREF)) plan.

(2) Employees who establish ((TIAA/CREF)) plan eligibility in accordance with WAC 131-16-021 and who, through concurrent employment with another employer, are active Washington public employee retirement system (PERS) members are required to so advise the college or state board employer and shall be given the following options:

(a) To participate in the state board's ((TIAA/CREF)) retirement plan in accordance with chapter 131-16 WAC, forgoing active PERS membership (contributions and service credit) with their other employer; or

(b) To continue active participation in PERS based upon their employment with the other public employer; forgoing participation in the state board's ((TIAA/CREF)) retirement plan.

Failure to make an election within thirty days of notification results in the employee being placed in the ((TIAA/CREF)) plan. The college or state board employer is required to advise the department of retirement systems (DRS) of a PERS member's participation in the ((TIAA/CREF)) plan, whether through election or default. It shall be the employee's responsibility to notify the other employer if he or she elects to participate in the ((TIAA/CREF)) plan. The employee will notify his or her college or state board employer should the employee cease to be an active PERS member. This irrevocable election remains in effect as long as the employee is actively participating in a PERS plan and is required because RCW 41.40.023(4) prohibits PERS members from simultaneously participating in two state retirement plans.

(3) Any current active participant of ((TIAA/CREF)) the plan who becomes an active member of PERS based on employment with another PERS employer is required to notify his or her college or state board employer. The employee will be provided the options listed in subsection (2) of this section and the college or state board employer will follow through accordingly.

AMENDATORY SECTION (Amending Resolution No. 91-20, Order 129, filed 6/14/91, effective 7/15/91)

WAC 131-16-040 Disability retirement provisions for ((TIAA/CREF)) plan participants. The board of trustees of any college district or the state board may approve the retirement of any participant for reasons of health or permanent disability either upon the request of the appointing authority or the participant: Provided, That reasonable consideration is first given to the written recommendations of the employee's personal physician or, if requested by either the employee or the appointing authority, a review of such recommendations by another physician appointed by mutual agreement for that purpose.

AMENDATORY SECTION (Amending WSR 98-14-033, filed 6/23/98, effective 7/24/98)

WAC 131-16-045 Transfers to and from other plans ((other than TIAA/CREF)). (1) A participant employed in a Washington state community or technical college or the state board for community and technical colleges may directly transfer into his or her ((TIAA/CREF)) plan account any ((~~account~~)) balances from other employers' retirement plans in accordance with Internal Revenue Code and the plan doc-

ument: Provided, That such other employers' plans permit transfers out of their plans (~~and such other employers' plans are covered by the same sections of the Internal Revenue Code as this plan~~).

(2) A participant who leaves the employment of all Washington state community and technical colleges and the state board for community and technical colleges, may choose to transfer his or her existing (~~TIAA/CREF~~) plan account balances, subject to the rules established by (~~TIAA/CREF~~) TIAA-CREF for transfers, to any other employer's retirement plan in accordance with Internal Revenue Code and the plan document: Provided, That such other employer's plans will accept the transferred balances (~~and such other employers' plans are covered by the same sections of the Internal Revenue Code as this plan~~).

AMENDATORY SECTION (Amending WSR 98-14-033, filed 6/23/98, effective 7/24/98)

WAC 131-16-055 Options for self-directed investment of retirement plan contributions and accumulations. While actively employed, participants may (~~exercise any or a combination of the following options for allocation of~~) allocate current premiums or transfer (~~of accumulated TIAA or CREF fund~~) plan accumulated balances to any of the investment options approved by the state board, subject to procedures established by TIAA-CREF.

~~((1) Current premiums may be allocated among the TIAA account and the CREF accounts in any whole percentage proportions:~~

~~(2) CREF account and TIAA real estate account accumulations resulting from previously contributed premiums may be transferred in whole or in part among any of the CREF and TIAA real estate accounts or to the TIAA traditional annuity account, subject to procedures established by TIAA/CREF.~~

~~(3) TIAA traditional annuity accumulations resulting from previously contributed premiums or from transfers from other accounts may be transferred to any CREF accounts on the basis of an irrevocable ten-year schedule of payments, subject to procedures established by TIAA/CREF.)~~

AMENDATORY SECTION (Amending WSR 98-14-033, filed 6/23/98, effective 7/24/98)

WAC 131-16-056 Hardship withdrawals. (1) In the event of a financial hardship consistent with requirements of subsection (2) of this section and Section 403 (b)(11) of the Internal Revenue Code, a participant may withdraw all or part of the following plan funds:

- (a) Pre-1998 employee contributions;
- (b) Any pre-1989 earnings on employee contributions;
- (c) Any Section 414(h) employer pick-up contributions;

and

(d) Any contributions transferred to this plan from another employer's plan. Such funds may be withdrawn from the participant's Washington community and technical college system (~~TIAA/CREF~~) plan retirement account while actively employed. Hardship withdrawals may not be larger than the amount necessary to meet the immediate and heavy financial need defined in subsection (2) of this section plus taxes on withdrawn funds and early withdrawal penalties.

Employer contributions (other than Section 414(h) pick-up contributions) and earnings on the employer contributions may not be withdrawn as a hardship withdrawal.

(2) To enable hardship withdrawal of funds, the Internal Revenue Code (Section 1.401(k)-1 (d)(2)) requires that the college president or designee shall verify that the participant has certified in writing that:

(a) The participant has an immediate and heavy financial need; and

(b) The participant has no other resources reasonably available to meet the need.

Withdrawals shall be deemed to be for "an immediate and heavy financial need" only if they are for:

(i) Payments to prevent eviction from or foreclosure on the principal residence of the participant;

(ii) Payments to prevent the participant's impending bankruptcy; and/or

(iii) Unreimbursable medical expenses incurred by the participant, spouse, dependent children, and/or dependent parents.

The participant shall be deemed to have "no other resources reasonably available to meet the need" if the participant certifies that he/she cannot meet the need through:

(A) Reimbursement or compensation by insurance or another source;

(B) Reasonable liquidation of assets;

(C) Borrowing from supplemental retirement accounts, life insurance values, or commercial sources; and/or

(D) Stopping any voluntary employee contributions to tax deferral or savings plans made available by the employer. Contributions to the employer-sponsored retirement plan must continue while the employee remains eligible for the plan.

(3) Hardship withdrawals from the community and technical college (~~TIAA/CREF~~) plan are taxable income in the year received. Taxes, early withdrawal penalties, and any other consequences of hardship withdrawals shall be the sole responsibility of the participant. Withdrawals from this qualified (~~TIAA/CREF~~) plan may not be replaced at a later date.

AMENDATORY SECTION (Amending WSR 97-10-069, filed 5/5/97, effective 7/8/97)

WAC 131-16-060 Cashability. Notwithstanding WAC 131-16-062(1), upon termination of employment at all community and technical college districts and the state board for at least one hundred eighty consecutive calendar days, a participant may elect to receive a lump sum payment of his or her (~~TIAA/CREF~~) plan account pursuant to the settlement options being made available by (~~TIAA/CREF~~) TIAA-CREF at that time.

AMENDATORY SECTION (Amending WSR 98-14-033, filed 6/23/98, effective 7/24/98)

WAC 131-16-061 Supplemental retirement benefits.

(1) A participant is eligible to receive supplemental retirement benefit payments if at the time of retirement the participant is age sixty-two or over and has at least ten years of full-time service in the (~~TIAA/CREF~~) plan at a Washington public institution of higher education: Provided, That the

amount of the supplemental retirement benefit, as calculated in accordance with the provisions of this section, is a positive amount.

(2) Subject to the provisions of subdivisions (c), (d), and (e) of this subsection, the annual amount of supplemental retirement benefit payable to a participant upon retirement is the excess, if any, when the value determined in subdivision (b) is subtracted from the value determined in subdivision (a), as follows:

(a) The lesser of fifty percent of the participant's average annual salary or two percent of the average annual salary multiplied by the number of years of full-time service; provided that if the participant did not elect to contribute ten percent of salary beginning July 1, 1974, or if later, after attainment of age fifty, service for such periods shall be calculated at the rate of one and one-half percent instead of two percent.

(b) The combined retirement benefit from the ~~((TIAA/CREF))~~ TIAA-CREF annuity and any other Washington state public retirement system as a result of service while employed by a Washington public higher education institution that the participant would receive in the first month of retirement multiplied by twelve: Provided, That the ~~((TIAA/CREF))~~ TIAA-CREF benefit shall be calculated on the following assumptions:

(i) After July 1, 1974, fifty percent of the combined contributions were made to the TIAA traditional annuity and fifty percent to the CREF stock account during each year of full-time service: Provided, That benefit calculations related to contributions made prior to July 1, 1974, shall be computed on the basis of actual allocations between TIAA and CREF; and

(ii) The full ~~((TIAA/CREF))~~ TIAA-CREF annuity accumulations, including all dividends payable by TIAA Traditional Annuity and further including the amounts, if any, paid in a single sum under the retirement transition benefit option, were fully settled on a joint and two-thirds survivorship option with a ten-year guarantee, using actual ages of retiree and spouse, but not exceeding a five-year difference; except that for unmarried participants the TIAA Traditional Annuity accumulations, including dividends, were settled on an installment refund option and the CREF Stock Account accumulations were settled on a life annuity with ten-year guarantee option, all to be based on ~~((TIAA/CREF))~~ TIAA-CREF estimates at the time of retirement; and

(iii) Annuity benefits purchased by premiums paid other than as a participant in a Washington public institution of higher education ~~((TIAA/CREF))~~ retirement plan shall be excluded.

(iv) For the purposes of this calculation, the assumptions applied to the ~~((TIAA/CREF))~~ plan accumulation settlement shall also apply to settlement of the benefit from any other retirement plan.

(c) The amount of supplemental retirement benefit for a participant who has not attained age sixty-five at retirement is the amount calculated in subsection (2) of this section reduced by one-half of one percent for each calendar month remaining until age sixty-five: Provided, That the supplemental retirement benefit for an otherwise qualified participant retired for reason of health or permanent disability shall not be so reduced.

(d) Any portion of participant's ~~((TIAA and/or CREF annuity))~~ plan accumulation paid to a participant's spouse upon dissolution of a marriage shall be included in any subsequent calculation of supplemental retirement benefits just as if these funds had remained in the participant's ~~((TIAA and/or CREF annuity))~~ plan account.

(e) The selection of a ~~((TIAA/CREF))~~ retirement option other than the joint and two-thirds survivorship with ten-year guarantee shall not alter the method of calculating the supplemental retirement benefit; however, if the participant's combined ~~((TIAA/CREF))~~ plan retirement benefit and calculated supplemental retirement benefit exceeds fifty percent of the participant's average annual salary, the supplemental retirement benefit shall be reduced so that the total combined benefits do not exceed fifty percent of average annual salary.

(3) The payment of supplemental retirement benefits shall be consistent with the following provisions:

(a) Supplemental retirement benefits shall be paid in equal monthly installments, except that if such monthly installments should be less than ten dollars, such benefit payments may be paid at longer intervals as determined by the state board.

(b) Supplemental retirement benefit payments will continue for the lifetime of the retired participant; however, prior to retirement, a participant may choose to provide for the continuation of supplemental retirement benefit payments, on an actuarially equivalent reduced basis, to his or her spouse or designated beneficiary after the retiree's death. Notification of such choice shall be filed in writing with the state board and shall be irrevocable after retirement. If such option is chosen, the supplemental retirement benefit payments shall be in the same proportion as any ~~((TIAA/CREF))~~ plan survivor annuity option potentially payable to and elected by the participant. If a designation of a survivor's option is not made and the participant dies after attaining age sixty-two but prior to retirement, any supplemental benefit payable shall be based on the two-thirds benefit to survivor option.

(c) Prior to making any supplemental benefit payments, the state board shall obtain a document signed by the participant and spouse, if any, or designated beneficiary acknowledging the supplemental retirement benefit option chosen by the participant.

(4) A retired participant who is reemployed shall continue to be eligible to receive retirement income benefits, except that the supplemental retirement benefit shall not continue during periods of employment for more than forty percent of full-time or seventy hours per month or five months duration in any fiscal year. Retirement contributions shall not be made from the salary for such employment, unless the individual once again becomes eligible to participate under the provisions of WAC 131-16-021.

AMENDATORY SECTION (Amending Order 137, Resolution 92-05-23, filed 10/28/92, effective 11/28/92)

WAC 131-16-062 Benefit options after termination of employment. (1) After termination of employment, participants who have attained age fifty-five, or who have completed thirty years of full-time service in this plan or any combination of Washington state sponsored retirement plans,

or who have retired due to disability in accordance with WAC 131-16-040 may exercise any settlement option for receipt of retirement benefits being made available by ~~((TIAA/CREF))~~ TIAA-CREF at that time.

(2) The federal income tax consequences resulting from the exercise of any options of elections provided by this section shall be the sole responsibility of the individual participant, and all federal tax regulations related to the receipt of retirement income benefits shall apply.

(3) The provisions of this section shall apply only to ~~((TIAA and CREF))~~ plan account accumulations attributable to contributions made as a result of employment in institutions or agencies subject to the provisions of WAC 131-16-005 through 131-16-066.

AMENDATORY SECTION (Amending Resolution No. 91-20, Order 129, filed 6/14/91, effective 7/15/91)

WAC 131-16-065 Optional retirement transition benefit. Participants may choose the optional retirement transition benefit that at the time of their retirement permits receipt of not more than ten percent of the accumulated value in each annuity in a lump-sum payment, provided that annuity benefits commence after the participant's fifty-fifth birthday. Benefits from the remainder of the combined annuity value shall be paid in the form of other retirement options then available to the annuitant as now or hereafter permitted by ~~((TIAA/CREF))~~ TIAA-CREF. Selection of the option to receive the retirement transition benefit shall be made immediately prior to retirement in such manner as now or hereafter permitted by ~~((TIAA/CREF))~~ TIAA-CREF.

AMENDATORY SECTION (Amending Resolution No. 91-20, Order 129, filed 6/14/91, effective 7/15/91)

WAC 131-16-066 Single sum death benefit to spouse beneficiaries. Unless previously indicated to the contrary by the participating employee in writing directly to ~~((TIAA/CREF))~~ TIAA-CREF, the surviving spouse or other beneficiary, if applicable, of any ~~((TIAA/CREF))~~ plan participant who dies before retirement shall be entitled to receive a single sum death benefit in the amount of the then current value of the annuity accumulation.

WSR 05-24-054

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 1, 2005, 1:56 p.m., effective January 1, 2006]

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

Purpose: WAC 458-20-194 (Rule 194) explains the tax-ability of persons doing business both within and outside Washington. Because the apportionment principles for persons engaging in activities subject to the service and other activities B&O tax (RCW 82.04.460(1)) are discussed in very general terms only, most of the department's specific guidance on apportionment has been by Washington tax decision (WTD).

The department is amending this rule to provide more detailed and specific guidance on cost apportionment for businesses engaged in activities taxable under RCW 82.04.-290 Service and other activities B&O tax and 82.04.2908 Boarding homes B&O tax. Historically, the department has issued specific guidance concerning cost apportionment and separate accounting through published determinations (Washington tax decisions) as authorized by RCW 82.32.-410. This has proved to be less than satisfactory for both the businesses and the department, because the determinations address only the facts before the department in a particular appeal.

The amended rule provides clearer guidance on apportionment principles that is consistent with statute (RCW 82.04.460(1)) and, to the extent possible, based on records that businesses generally retain for other purposes and fairly measures the Washington activity of businesses. The rule also provides clearer guidance on when a business should use separate accounting or the cost apportionment method for determining the business' Washington B&O tax liability. Examples have been added to clarify when a business is subject to Washington B&O tax because it has nexus with Washington and the standards the department will use to determine if the business has nexus with another state.

The department anticipates canceling Excise Tax Advisories (ETAs) 019.04.194, 269.04.194, 270.04.194, and 324.04.194/224 when an amended Rule 194 becomes effective.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-194 Doing business inside and outside the state.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 05-20-078 on October 4, 2005.

Changes Other than Editing from Proposed to Adopted Version: The term "rule" has been replaced with "section" throughout this rule.

Subsection (1)(b)(v) Introduction, a cross-reference to WAC 458-20-236 Baseball clubs and other sports organizations, has been added.

Subsection (2)(b)(x) Examples, this subsection has been changed as follows (struck-out language removed and underlined language added):

~~These above~~ The examples in this subsection (2) apply equally to situations where the Washington activities and out-of-state activities are reversed. For example, in example (b)(ix) of this subsection, if the locations were reversed, the sales representative would have nexus with Washington, but not in Oregon.

Subsection (3) Multiple lines of business of proposed rule, this subsection of the proposed rule was removed with following subsections and cross-references modified accordingly.

The remaining changes refer to renumbered subsections.

Subsection (3)(a) Separate accounting, the term "activities" is substituted for "transactions" in the first sentence.

Subsection (3)(b) Separate accounting, the term "directly" was added so that the third sentence reads "The result is inaccurate when services directly supporting these activities occur in different jurisdictions." The following language has been added:

For example, if a taxpayer provides investment advice to clients in Washington, but performs all of its research and due diligence activities in another state, then separate accounting would not be accurate. However, if instead of research and due diligence, only the client billing activity is performed in another state, then separate accounting would be allowed.

Subsection (3)(c)(ii) Approved methods of separate accounting, this subsection has been further divided into subsections (A), (B), and (C). The phrase "for another business" has been added to the language in subsection (3)(c)(ii) (C), which now reads:

If a business contracts to distribute advertisements for another business within the state of Washington, the gross amount received for this action should be reported as Washington income.

Subsection (3)(c)(iii)(E) Other reasonable and accurate methods—Notice to the department, the term "imposing" has been moved and the phrase "of separate accounting" has been added so that the subsection now reads:

The taxpayer or the department, in requesting or imposing an alternative method of separate accounting, must demonstrate by clear and convincing evidence that the separate accounting methods in (c) of this subsection do not fairly represent the extent of the taxpayer's business activity in Washington.

Subsection (4)(a) Apportionment ratio, the proposed language was moved to subsection (4)(a)(ii), with the second and third sentences removed. These sentences had read:

A different ratio must be used for each line of business described in subsection (3) of this section. Costs may not be included in more than one ratio.

Subsection (4)(a) Apportionment ratio, language has been added in a new subsection (i), which reads:

Each cost must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. Persons should refer to WAC 458-20-197 When tax liability arises and 458-20-199 Accounting methods, for further guidance on the requirements of each accounting method. Taxpayers must file returns using costs calculated based on the taxpayer's most recent fiscal year for which information is available, unless there is a significant change in business operations during the current period. A significant change in business operations includes commencement, expansion, or termination of business activities in or out of Washington, formation of a new business entity, merger, consolidation, creation of a subsidiary, or similar change. If there is a significant change in business operations, then the taxpayer must estimate its cost apportionment formula based on the

best records available and then make the appropriate adjustments when the final data is available.

Subsection (4)(c) Noncost expenditures, the fourth sentence of this subsection has been changed as follows (struck-out language removed and underlined language added):

Costs of ~~another line of business under subsection (3) of this section~~ an activity taxable under another B&O tax classification are also excluded from ~~an individual~~ the apportionment ratio.

Subsection (4)(c) Noncost expenditures, language has been added in a new subsection (iv), which reads:

Costs of doing a business activity subject to the B&O tax under a classification other than RCW 82.04.290 or 82.04.2908. For example, if a taxpayer were subject to manufacturing, wholesaling and service and other activities B&O tax, the costs associated with a warehouse and a manufacturing plant (property and employee costs) are excluded from the cost apportionment formula. But if costs support both the service activity and either manufacturing or wholesaling (for example, costs associated with headquarters or joint operating centers), then those costs must be included [in] the cost apportionment formula without segregating the service portion of the costs.

Subsection (4)(e)(i)(A) Definitions, additional language has been added. This subsection now reads (additional language underlined):

Depreciation as reported on the taxpayer's books and records according to GAAP, provided that if a taxpayer does not maintain its books and records in accordance with GAAP, it may use tax reporting depreciation. A taxpayer may not change its method of calculating depreciation costs without approval of the department.

Subsection (4)(e)(i)(B) Property costs, the phrase "and warranty" has been added. The subsection now reads: "Maintenance and warranty costs for specific property;"

Subsection (4)(e)(ii) Assignment of costs, the terms "warranty services" and "relative" have been added to the last sentence, which now reads:

Where a business contracts for the maintenance, warranty services, or insurance of multiple properties, the relative rental or depreciation expense may be used to assign these costs.

Subsection (4)(f)(ii) Allocation method, language has been added to the first sentence. This sentence now reads (additional language underlined):

Employee costs include all compensation paid to employees and all employment based taxes and other fees, for example, amounts paid related to unemployment compensation, labor and industries insurance premiums, and the employer's share of social security and medicare taxes.

Subsection (4)(h)(i) Costs assigned by formula, a reference to (a) of the subsection has been removed from the first sentence. The last two sentences of this subsection have

been changed and combined as follows (struck-out language removed and underlined language added):

For example, ~~travel costs are not specifically assigned.~~ if a business has one thousand dollars in ~~travel~~ other unassigned costs and sales of ten thousand dollars in each of the four states in which it has nexus under Washington standards (including Washington), twenty-five percent (\$10,000/\$40,000), or two hundred fifty dollars of the ~~travel~~ other costs are assigned to Washington.

Subsection (4)(h)(iii) Costs assigned by formula, additional language has been added to the second to last sentence of this subsection as follows (additional language underlined):

For the purposes of this calculation only, the department will presume a taxpayer has nexus anywhere the taxpayer has employees or real property, or where the taxpayer reports business and occupation, franchise, value added income or other business activity taxes in the state.

Subsection (4)(i)(iv) Alternative methods, the term "imposing" has been moved in the first sentence as follows:

The taxpayer or the department, in ~~imposing or~~ requesting or imposing an alternate method....

A final cost-benefit analysis is available by contacting Chris Coffman, 1025 Union Avenue S.E., Suite #544, Olympia, WA 98504-7453, phone (360) 570-6150, fax (360) 586-5543, e-mail ChrisC@dor.wa.gov. The analysis is also available under WAC 458-20-194 on the Department of Revenue's web page at http://dor.wa.gov/content/laws/draft/excise_tax.htm#103.

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 1, Repealed 0.

Date Adopted: December 1, 2005.

Janis P. Bianchi, Manager
Interpretations and
Technical Advice Unit

AMENDATORY SECTION (Amending Order ET 83-1, filed 3/30/83)

WAC 458-20-194 Doing business inside and outside the state. (~~Persons domiciled outside this state who (1) sell or lease personal property to buyers or lessees in this state, or (2) perform construction or installation contracts in this state,~~

~~or (3) render services to others herein, are doing business in this state, irrespective of the domicile of such persons and irrespective of whether or not such persons maintain a permanent place of business in this state.~~

~~Persons domiciled in and having a place of business in this state, who (1) sell or lease personal property to buyers or lessees outside this state, or (2) perform construction or installation contracts outside this state, or (3) render services to others outside this state, are doing business both inside and outside this state. Whether or not such persons are subject to business tax under the law depends upon the kind of business and the manner in which it is transacted. The following general principles govern in determining tax liability or tax immunity.~~

Business and Occupation Tax

~~When the business involves a transaction in or related to interstate or foreign commerce, see WAC 458-20-193.~~

~~When the business involves a construction or installation contract in this state, no deduction from the measure of the tax is permitted, even though the contractor is domiciled outside this state and maintains a place of business outside this state which may contribute to the contract performed in this state. See WAC 458-20-137, 458-20-170, 458-20-171 and 458-20-172.~~

~~When the business involves a construction or installation contract outside this state, the tax does not apply to any part of the income derived therefrom (except such part of the income as may be applicable to the manufacture in this state by the contractor of articles used or incorporated in such construction or installation), even though the contractor is domiciled in this state and maintains a place of business herein which may contribute to the contract performed outside this state. See WAC 458-20-136.~~

~~When the business involves a transaction taxable under the classification service and other business activities, the tax does not apply upon any part of the gross income received for services incidentally rendered to persons in this state by a person who does not maintain a place of business in this state and who is not domiciled herein. However, the tax applies upon the income received for services incidentally rendered to persons outside this state by a person domiciled herein who does not maintain a place of business within the jurisdiction of the place of domicile of the person to whom the service is rendered.~~

~~For example, persons domiciled herein, but having no place of business outside this state, are taxable upon the following types of income:~~

~~(1) An insurance agency upon commissions received for insurance placed without the state.~~

~~(2) An attorney upon fees received from persons without the state, even though a portion of his services were necessarily performed without the state.~~

~~(3) A collection agency upon income received from clients without the state or with respect to collections made from persons without the state.~~

~~(4) An accountant upon income received from persons for services performed without the state.~~

~~(5) A financial business upon income received from loans placed without the state.~~

~~(6) A commodity broker upon commissions received from persons without the state.~~

~~(7) An advertising agency upon income received from advertising solicited and secured from firms without the state.~~

~~(8) An employment agency upon income received for securing employees for firms without the state.~~

~~(9) A physician upon income received from the treatment of patients without the state.~~

~~(10) A purchasing agency upon commissions received from clients without the state or with respect to purchases made without the state.~~

~~Persons engaged in a business taxable under the service and other business activities classification and who maintain places of business both inside and outside this state which contribute to the performance of a service, shall apportion to this state that portion of gross income derived from services rendered by them in this state. Where it is not practical to determine such apportionment by separate accounting methods, the taxpayer shall apportion to this state that proportion of total income which the cost of doing business within this state bears to the total cost of doing business both within and without this state.~~

~~For purposes of apportionment under RCW 82.04.460 and this rule the term "place of business" generally means a location at which regular business of the taxpayer is conducted and which is either owned by the taxpayer or over which the taxpayer exercises legal dominion and control. The term does not include locations or facilities at which the taxpayer acquires merely transient lodging nor does it include mere telephone number listings or telephone answering services.~~

Public Utility Tax

~~Persons engaged in a public service business in this state are not taxable with respect to gross income derived from conducting business outside this state, nor in respect to conducting business in interstate or foreign commerce.) (1)~~

Introduction.

~~(a) This section applies to persons entitled to apportion income under RCW 82.04.460(1). Specifically this section applies to taxpayers who maintain places of business both within and without the state that contribute to the rendition of services and who are taxable under RCW 82.04.290, 82.04.-2908, or any other statute that provides for apportionment under RCW 82.04.460(1). Persons subject to the service and other activities, international investment income, licensed boarding home, and low-level radioactive waste disposal business and occupation (B&O) tax classifications, and who are not required to apportion their income under another statute or rule, should use this section. In addition, this section describes Washington nexus standards for business activities subject to apportionment under RCW 82.04.460(1). Nexus is described in subsection (2) of this section; separate accounting in subsection (3) of this section; and cost apportionment in subsection (4) of this section.~~

~~(b) Readers may also find helpful information in the following rules:~~

~~(i) WAC 458-20-14601 (Financial institutions—Income apportionment).~~

~~(ii) WAC 458-20-170 (Constructing and repairing of new or existing buildings or other structures upon real property).~~

~~(iii) WAC 458-20-179 (Public utility tax).~~

~~(iv) WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).~~

~~(v) WAC 458-20-236 (Baseball clubs and other sport organizations).~~

~~(c) The examples included in this section identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.~~

(2) Nexus.

~~(a) **Place of business - minimum presence necessary for tax.** The following discussion of nexus applies only to gross income from activities subject to apportionment under this rule. A place of business exists in a state when a taxpayer engages in activities in the state that are sufficient to create nexus. Nexus is that minimum level of business activity or connection with the state of Washington which subjects the business to the taxing jurisdiction of this state. Nexus is created when a taxpayer is engaged in activities in the state, either directly or through a representative, for the purpose of performing a business activity. It is not necessary that a taxpayer have a permanent place of business within a state to create nexus.~~

~~(b) **Examples.** The following examples demonstrate Washington's nexus principles.~~

~~(i) Assume an attorney licensed to practice only in Washington performs services for clients located in both Washington and Florida. All of the services are performed within Washington. The attorney does not have nexus with any state other than Washington.~~

~~(ii) Assume the same facts as the example in (b)(i) of this subsection, plus the attorney attends continuing education classes in Florida related to the subject matter for which his Florida clients hired him. The attorney's presence in Florida for the continuing education classes does not create nexus because he is not engaging in business in Florida.~~

~~(iii) Assume the same facts as the example in (b)(ii) of this subsection, plus the attorney is licensed to practice law in Florida and frequently travels to Florida for the purpose of conducting discovery and trial work. Even though the attorney does not maintain an office in Florida, the attorney has nexus with both Washington and Florida.~~

~~(iv) Assume an architectural firm maintains physical offices in both Washington and Idaho. The architectural firm has nexus with both Washington and Idaho.~~

~~(v) Assume an architectural firm maintains its only physical office in Washington, and when the firm needs a presence in Idaho, it contracts with nonemployee architects in Idaho instead of maintaining a physical office in Idaho. Employees of the Washington firm do not travel to Idaho. Instead, the contract architects interact directly with the clients in Idaho, and perform the services the firm contracted to perform in Idaho. The architectural firm has nexus with both Washington and Idaho.~~

~~(vi) Assume the same facts as the example in (b)(v) of this subsection except the contracted architects never meet~~

with the firm's clients and instead forward all work products to the firm's Washington office, which then submits that work product to the client. In this case, the architectural firm does not have nexus with Idaho. The mere purchase of services from a subcontractor located in another state that does not act as the business' representative to customers does not create nexus.

(vii) Assume that an accounting firm maintains its only office in Washington. The accounting firm enters into contracts with individual accountants to perform services for the firm in Oregon and Idaho. The contracted accountants represent the firm when they perform services for the firm's clients. The firm has nexus with Washington, Oregon, and Idaho.

(viii) Assume that an accounting firm maintains its only office in Washington and has clients located in Washington, Oregon, and Idaho. The accounting firm's employees frequently travel to Oregon to meet with clients, review client's records, and present their findings, but do not travel to Idaho. The accounting firm has nexus with Washington and Oregon, but does not have nexus with Idaho.

(ix) Assume that a sales representative earns commissions from the sale of tangible personal property. The sales representative is located in Oregon and does not enter Washington for any business purpose. The sales representative contacts Washington customers only by telephone and earns commissions on sales of tangible personal property to Washington customers. The sales representative does not have nexus with Washington and the commissions earned on sales to Washington customers are not subject to Washington's business and occupation tax.

(x) The examples in this subsection (2) apply equally to situations where the Washington activities and out-of-state activities are reversed. For example, in example (b)(ix) of this subsection, if the locations were reversed, the sales representative would have nexus with Washington, but not in Oregon.

(3) Separate accounting.

(a) In general. "Separate accounting" refers to a method of accounting that segregates and identifies sources or activities which account for the generation of income within the state of Washington. Separate accounting is distinct from cost apportionment, which assigns a formula portion of total worldwide income to Washington. A separate accounting method must be used by a business entitled to apportion its income under RCW 82.04.460(1) if this use results in an accurate description of gross income attributable to its Washington activities.

(b) Accuracy. Separate accounting is accurate only when the activities that significantly contribute, directly or indirectly, to the production of income can be identified and segregated geographically. Separate accounting thus links taxable income to activities occurring in a discrete jurisdiction. The result is inaccurate when services directly supporting these activities occur in different jurisdictions. For example, if a taxpayer provides investment advice to clients in Washington, but performs all of its research and due diligence activities in another state, then separate accounting would not be accurate. However, if instead of research and

due diligence, only the client billing activity is performed in another state, then separate accounting would be allowed.

(c) **Approved methods of separate accounting.** The following methods of separate accounting are acceptable to the department, if accurate:

(i) **Billable hours of employees or representative third parties performing services in Washington.** If a business charges clients an hourly rate for the performance of services, and the place of performance of the employee, contractor, or other individual whose time is billed is reasonably ascertainable, then the billable hours may be used as a basis for separate accounting. The gross amount received from hours billed for services performed in Washington should be reported.

(ii) **Specific projects or contracts.** A business may assign the revenue from specific projects or contracts in or out of Washington by the primary place of performance. For example:

(A) A consulting business with no other presence in Washington that agrees to provide on-site management consulting services for a Washington business and receives five hundred thousand dollars in payment for the project must report five hundred thousand dollars in gross income to Washington.

(B) If the same business gets another Washington client for on-site management consulting, and receives another payment of five hundred thousand dollars, the business must report an additional five hundred thousand dollars in gross income to Washington.

(C) If a business contracts to distribute advertisements for another business within the state of Washington, the gross amount received for this action should be reported as Washington income.

(iii) **Other reasonable and accurate methods—Notice to the department.**

(A) A taxpayer may report with, or the department may require, the use of one of the alternative methods of separate accounting.

(B) A taxpayer reporting under this subsection must notify the department at the time of filing that it is using an alternative method and provide a brief description of the method employed. If a taxpayer reports using an alternate method, the same method must be used for all subsequent tax reporting periods unless it is demonstrated another method is necessary under the standard in (c)(iii)(E) of this subsection.

(C) If on review of a taxpayer's return(s) the department determines another method is necessary to fairly represent the extent of a taxpayer's business activity in Washington, then the department may impose the method for all returns within the statute of limitations. Statutory interest applies to both balances due and refund or credit claims arising under this section. Further, applicable penalties will be imposed on balances due arising under this section. However, if the taxpayer reported using the separate accounting method in (c)(i) or (ii) of this subsection or cost apportionment under subsection (4)(a) through (h) of this section, the department may impose the alternate method for future periods only.

(D) A taxpayer may request that the department approve an alternative method of separate accounting by submitting a request for prior ruling pursuant to WAC 458-20-100. Such

letter ruling may be subject to audit verification before issuance.

(E) The taxpayer or the department, in requesting or imposing an alternate method of separate accounting, must demonstrate by clear and convincing evidence that the separate accounting methods in (c) of this subsection do not fairly represent the extent of the taxpayer's business activity in Washington.

(4) Cost apportionment.

(a) Apportionment ratio.

(i) Each cost must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. Persons should refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for further guidance on the requirements of each accounting method. Taxpayers must file returns using costs calculated based on the taxpayer's most recent fiscal year for which information is available, unless there is a significant change in business operations during the current period. A significant change in business operations includes commencement, expansion, or termination of business activities in or out of Washington, formation of a new business entity, merger, consolidation, creation of a subsidiary, or similar change. If there is a significant change in business operations, then the taxpayer must estimate its cost apportionment formula based on the best records available and then make the appropriate adjustments when the final data is available.

(ii) The apportionment ratio is the cost of doing business in Washington divided by the total cost of doing business as described in RCW 82.04.460(1). The apportionment ratio is calculated under this section as follows. The denominator of the apportionment ratio is the worldwide costs of the apportionable activity and the numerator is all costs specifically assigned to Washington plus all costs assigned to Washington by formula, as described below. Costs are calculated on a worldwide basis for the tax reporting period in question. The tax due to Washington is calculated by multiplying total income times the apportionment ratio times the tax rate. Available tax credits may be applied against the result. Statutory interest and penalties apply to underreported income. For the purposes of this rule, "total income" means gross income under the tax classification in question, less deductions, calculated as if the B&O tax classification applied on a worldwide basis.

(b) **Place of business requirement.** A taxpayer must maintain places of business within and without Washington that contribute to the rendition of its services in order to apportion its income. This "place of business" requirement, however, does not mean that the taxpayer must maintain a physical location as a place of business in another taxing jurisdiction in order to apportion its income. If a taxpayer has activities in a jurisdiction sufficient to create nexus under Washington standards, then the taxpayer is deemed to have a "place of business" in that jurisdiction for apportionment purposes. See subsection (2) of this section.

(c) **Noncost expenditures.** The following is a list of expenditures that are not costs of doing business within the meaning of RCW 82.04.460 and are therefore excluded from both the numerator and the denominator of the apportionment

ratio. Expenditures that are not costs of doing business include expenditures that exchange one business asset for another; that reflect a revaluation of an asset not consumed in the course of business; or federal, state, or local taxes measured by gross or net business income. This list is not exclusive. Costs of an activity taxable under another B&O tax classification are also excluded from the apportionment ratio. Similarly, the costs of acquiring a business by merger or otherwise, including the financing costs, are not the costs of doing the apportioned business activity and must be excluded from the cost apportionment calculation.

(i) The cost of acquiring assets that are not depreciated, amortized, or otherwise expensed on the taxpayer's books and records on the basis of generally accepted accounting principles (GAAP), or a loss incurred on the sale of such assets. For example, expenditures for land and investments are excluded from the cost apportionment formula.

(ii) Taxes (other than taxes specifically related to items of property such as retail sales or use taxes and real and personal property taxes).

(iii) Asset revaluations such as stock impairment or goodwill impairment.

(iv) Costs of doing a business activity subject to the B&O tax under a classification other than RCW 82.04.290 or 82.04.2908. For example, if a taxpayer were subject to manufacturing, wholesaling and service and other activities B&O tax, the costs associated with a warehouse and a manufacturing plant (property and employee costs) are excluded from the cost apportionment formula. But if costs support both the service activity and either manufacturing or wholesaling (for example, costs associated with headquarters or joint operating centers), then those costs must be included in the cost apportionment formula without segregating the service portion of the costs.

(d) **Specifically assigned costs.** Real or tangible personal property costs, employee costs, and certain payments to third parties are specifically assigned under (e) through (g) of this subsection.

(e) Property costs.

(i) **Definitions.** Real or tangible personal property costs are defined to include:

(A) Depreciation as reported on the taxpayer's books and records according to GAAP, provided that if a taxpayer does not maintain its books and records in accordance with GAAP, it may use tax reporting depreciation. A taxpayer may not change its method of calculating depreciation costs without approval of the department;

(B) Maintenance and warranty costs for specific property;

(C) Insurance costs for specific property;

(D) Utility costs for specific property;

(E) Lease or rental payments for specific property;

(F) Interest costs for specific property; and

(G) Taxes for specific property.

(ii) **Assignment of costs.** Real or tangible personal property costs are assigned to the location of the property. Property in transit between locations of the taxpayer to which it belongs is assigned to the destination state. Property in transit between a buyer and seller and included by a taxpayer in the denominator of the apportionment ratio in accordance

with its regular accounting practices is assigned to the destination state. Mobile or movable property located both within and without Washington during the measuring period is assigned in proportion to the total time within Washington during the measuring period. An automobile assigned to a traveling employee is assigned to the state to which the employee's compensation is assigned below or to the state in which the automobile is licensed. Where a business contracts for the maintenance, warranty services, or insurance of multiple properties, the relative rental or depreciation expense may be used to assign these costs.

(f) Employee costs.

(i) Definitions. For the purposes of this subsection:

(A) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to or accrued to employees for personal services. Employer contributions under a qualified cash plan, deferred arrangement plan, and nonqualified deferred compensation plan are considered compensation. Stock based compensation is considered compensation under this rule to the extent included in gross income for federal income tax purposes.

(B) "Employee" means any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee, but does not include corporate officers.

(ii) Allocation method. Employee costs include all compensation paid to employees and all employment based taxes and other fees, for example, amounts paid related to unemployment compensation, labor and industries insurance premiums, and the employer's share of Social Security and Medicare taxes. An employee's compensation is assigned to Washington if the taxpayer reports the employee's wages to Washington for unemployment compensation purposes. Employee wages reported for federal income tax purposes may be used to assign the remaining compensation costs.

(g) Representative third-party costs.

(i) Definitions. For the purposes of this section:

"Representative third party" includes an agent, independent contractor, or other representative of the taxpayer who provides services on behalf of the taxpayer directly to customers. The term includes leased employees who meet the standards under (g) of this subsection.

(ii) Allocation method. Payments to a representative third party are assigned to the third party's place of performance. For example, if a business subcontracts with a representative third party who provides services on behalf of the taxpayer from a California location, the cost of compensating the representative third party is assigned to California. This is true even if the third party provides services to Washington customers. Conversely, the cost of compensating a representative third party providing services to California customers from a Washington location is assigned to Washington.

(iii) Examples.

(A) X, a Washington business, hires Taxpayer to design and write custom software for a document management system. Taxpayer subcontracts with Z, whose employees determine the needs of X, negotiate a statement of work, write the custom software, and install the software. Z's employees perform all of these services on-site at the X business location.

Taxpayer's payments to Z are representative third-party costs and specifically assigned to Washington.

(B) Taxpayer, a service provider, subcontracts with X, who agrees to maintain a customer service center where staff will answer telephone inquiries about Taxpayer's services. X in turn subcontracts with Z, whose employees actually respond to questions from a phone center located in California. The payments by taxpayer to X are representative third-party costs with respect to Taxpayer because X is responsible for providing the staff of the service center. The payments to X are specifically assigned to California.

(C) Taxpayer sells various manufacturers' products at wholesale on a commission basis. Taxpayer subcontracts with X, who agrees to act as Taxpayer's sales representative on the West Coast. Taxpayer has various other sales representatives working on as independent contractors, who are assigned territories, but may make sales from an office or through in-person visits, or a combination of both. Taxpayer does not maintain records sufficient to show the representatives' places of performance. Taxpayer may use sales records and the standards under (h) of this subsection to assign commissions by each subcontractor.

(h) Costs assigned by formula.

(i) Costs not specifically assigned under (e) through (g) of this subsection and not excluded from consideration by (c) of this subsection are assigned to Washington by formula. These costs are multiplied by the ratio of sales in Washington over sales everywhere. For example, if a business has one thousand dollars in other unassigned costs and sales of ten thousand dollars in each of the four states in which it has nexus under Washington standards (including Washington), twenty-five percent (\$10,000/\$40,000), or two hundred fifty dollars of the other costs are assigned to Washington.

(ii) Sales are assigned to where the customer receives the benefit of the service. If the location where the services are received is not readily determinable, the services are attributed to the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be determined, the services are attributed to the office of the customer to which the services are billed.

(iii) If under the method described above a sale is attributed to a location where the taxpayer does not have nexus under Washington standards, the sale must be excluded from both the numerator and denominator of the sales ratio. For the purposes of this calculation only, the department will presume a taxpayer has nexus anywhere the taxpayer has employees or real property, or where the taxpayer reports business and occupation, franchise, value added, income or other business activity taxes in the state. The burden is on the taxpayer to demonstrate nexus exists in other states.

(i) Alternative methods.

(i) A taxpayer may report with, or the department may require, the use of one of the alternative methods of cost apportionment described below:

(A) The exclusion of one or more categories of costs from consideration;

(B) The specific allocation of one or more categories of costs which will fairly represent the taxpayer's business activity in Washington; or

(C) The employment of another method of cost apportionment that will effectuate an equitable apportionment of the taxpayer's gross income.

(ii) A taxpayer reporting under (i) of this subsection must notify the department at the time of filing that it is using an alternative method and provide a brief description of the method employed. If a taxpayer reports using an alternate method, the same method must be used for all subsequent tax reporting periods unless it is demonstrated another method is necessary under the standard in (i)(v) of this subsection.

(iii) If on review of a taxpayer's return(s) the department determines another method is necessary to fairly represent the extent of a taxpayer's business activity in Washington, the department may impose the method for all returns within the statute of limitations. Statutory interest applies to both balances due and refund or credit claims arising under this section. Further, applicable penalties will be imposed on balances due arising under this section. However, if the taxpayer reported using the cost apportionment method in (a) through (h) of this subsection and separate accounting is unavailable, the department may impose the alternate method for future periods only.

(iv) A taxpayer may request that the department approve an alternative method of cost apportionment by submitting a request for prior ruling pursuant to WAC 458-20-100. Such letter ruling may be subject to audit verification before issuance.

(v) The taxpayer or the department, in requesting or imposing an alternate method, must demonstrate by clear and convincing evidence that the cost apportionment method in (a) through (h) of this subsection does not fairly represent the extent of the taxpayer's business activity in Washington.

(5) Effective date. This amended rule shall be effective for tax reporting periods beginning on January 1, 2006, and thereafter.

WSR 05-24-059

PERMANENT RULES

SKAGIT VALLEY COLLEGE

[Filed December 2, 2005, 10:36 a.m., effective January 2, 2006]

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

Purpose: This change to the Skagit Valley College policy on student grievances would clarify grievance procedures and timelines, updates, language in policy and procedures, and corrects position titles referenced in the code.

Citation of Existing Rules Affected by this Order: Amending WAC 132D-120-230, 132D-120-240, 132D-120-250, 132D-120-260, 132D-120-270, 132D-120-280, 132D-120-290, 132D-120-320, 132D-120-330, and 132D-120-350.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 05-17-166 on August 23, 2005

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 9, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, 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 9, Repealed 0.

Date Adopted: December 1, 2005.

Lisa Radeleff

Executive Assistant

AMENDATORY SECTION (Amending WSR 94-01-028, filed 12/6/93, effective 1/6/94)

WAC 132D-120-230 Student grievances. The purpose of this section is to protect each student's freedom of expression in the classroom; to protect each student against improper disclosure of the students' views, beliefs and political associations; to protect each student from improper, arbitrary or capricious academic evaluation as evidenced by the student's ((final)) course grade; and to afford each student reasonable protection against arbitrary or capricious actions taken outside the classroom by other members of the college community.

Skagit Valley College is committed to protecting the rights and dignity of each individual in the campus community. Therefore, the college will not tolerate discrimination of any kind, at any level.

~~((Further, it is the policy of Skagit Valley College to provide an environment in which students can work and study free from sexual harassment or sexual intimidation. Sexual harassment is a form of sexual discrimination. As such, it is a violation of Title VII of the 1964 Civil Rights Act and Title IX of the 1972 Education Amendments.~~

Sexual harassment of a student is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when: (a) Submission to the conduct is either explicitly or implicitly a term or condition of an individual's academic standing; and/or (b) submission to or rejection of such conduct by an individual is used as the basis for academic decisions affecting that individual; and/or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive environment.)) Students may follow ((procedures found at WAC 132D-300-040)) the college policy on sexual harassment and/or may file complaints with outside agencies, as referenced in WAC 132D-300-040(9). Students should determine the time deadlines that apply to the filing of complaints with such outside agencies, as the college's internal processing of student complaints may not recognize such time periods.

AMENDATORY SECTION (Amending Order 88-01, filed 12/1/88, effective 1/1/89)

WAC 132D-120-240 Grievances excluded from this section. (1) A student may not use the provisions of this section as the basis for filing a grievance based on the outcome of summary or other disciplinary proceedings described in ~~((earlier))~~ sections of the code of student ((rights and responsibilities code)) conduct.

(2) Federal and state laws, rules and regulations, in addition to policies, regulations and procedures adopted by the state board for community ~~((college education))~~ and technical colleges or the board of trustees of Community College District No. 4 shall not be grievable matters. College personnel actions are considered confidential. Results may not be made available for review.

AMENDATORY SECTION (Amending Order 88-01, filed 12/1/88, effective 1/1/89)

WAC 132D-120-250 Grievance ~~((procedures—Generally))~~. If a student believes he or she has been unfairly treated by an officer of the college, faculty member or a member of the college staff, the student may ~~((pursue the matter on two levels. First, the student may follow an informal procedure. Second, if the informal procedure fails to satisfy the grievant, he or she may file an official grievance and request a hearing before the grievance review committee. The student may waive his or her right to have the matter resolved informally. In either case,))~~ follow the grievance procedures in the order outlined below. The student must initiate proceedings with the college within ~~((twenty))~~ thirty working days of the occurrence ((which)) that gave rise to the grievance. The college may choose to take appropriate corrective action at any time based on a student report whether or not the student chooses to pursue the grievance process.

AMENDATORY SECTION (Amending WSR 94-01-028, filed 12/6/93, effective 1/6/94)

WAC 132D-120-260 ~~((Informal))~~ Grievance procedure. (1) The grievance procedures set forth in this section concern only those grievances that do not involve violation of Title IX of the Education Amendments of 1972 (sex discrimination) or section 504 of the Rehabilitation Act of 1973 (disability discrimination).

(2) A student wishing to pursue ~~((an informal))~~ a resolution to his or her ~~((grievance))~~ concern may ~~((first))~~ contact the ((student activities)) office where counseling services are provided. That office will serve as a source of information and direction for grievants ~~((and shall advise students as to the most effective means of resolving their grievance. This service is optional)).~~

~~((2))~~ (3) A student ~~((may instead, as a first step in the informal grievance procedure,))~~ shall contact the faculty or staff member with whom he or she has a ((grievance)) concern and attempt to resolve the matter through direct discussion. A student may ask a support person to accompany him or her in this discussion.

~~((3))~~ (4) If direct discussion does not resolve the ~~((grievance))~~ concern to the student's satisfaction, the student

shall take the matter to the faculty/staff member's immediate supervisor. The supervisor shall ~~((serve as a mediator and will))~~ attempt to resolve the matter promptly and fairly.

~~((4))~~ (5) If the ~~((efforts of the supervisor also fail to satisfy the grievant))~~ issue is not resolved, the supervisor shall forward the complaint to the appropriate ~~((associate dean))~~ administrator who shall meet with the student and, within three working days, ~~((decide how best to resolve the grievance. The associate dean shall issue a written opinion))~~ write a letter to the student involved, copied to the faculty or staff member involved that details the resolution proposed.

~~((5))~~ ~~The student shall be notified of this decision and shall also be informed of his or her right to file a petition to have the grievance heard before the grievance review committee.~~

(6) The ~~((informal grievance))~~ procedure outlined in steps one through four shall be completed in ((fifteen)) twenty working days unless all parties agree to more time.

(7) The student shall be notified of this decision and shall also be informed of his or her right to file a petition to have the grievance heard before the grievance review committee. The student must submit this request to the office of the registrar within five days of his/her receipt of the administrator's letter. Any student alleging a violation of Title IX of the 1972 Education Amendments concerning sexual harassment may avail himself or herself of the ~~((procedures in chapter 132D-300 WAC))~~ college's sexual harassment policy.

AMENDATORY SECTION (Amending WSR 94-01-028, filed 12/6/93, effective 1/6/94)

WAC 132D-120-270 ~~((Informal))~~ Grievance procedure—Sex and ~~((handicapped))~~ disability discrimination.

(1) Any student alleging a violation of Title IX of the Education Amendments of 1972 (sex discrimination) ~~((or section 504 of the Rehabilitation Act of 1973 ((handicapped)) disability discrimination))~~ shall, as a first step in the ~~((informal))~~ grievance procedure, contact the Title IX ~~((See 504))~~ officer or disabled student services coordinator. The student may contact the ~~((student activities))~~ office where counseling services are provided for the name and location of the Title IX ~~((See 504))~~ officer or disabled student services coordinator. Any student alleging a violation of Title IX of the 1972 Education Amendments concerning sexual harassment by a college faculty or staff member may avail himself or herself of the college's sexual harassment complaint procedures ((chapter 132D-300 WAC)).

(2) The Title IX ~~((See 504))~~ officer or disabled student services coordinator shall:

(a) Provide information about informal and formal options within and outside the college.

(b) Intervene, if requested by either party, in order to resolve the problem to the satisfaction of all.

(3) If the Title IX ~~((See 504))~~ officer or disabled student services coordinator is unable to resolve the grievance, the student may ~~((file an official grievance requesting))~~ request a hearing before the grievance review committee and is entitled to all appeals beyond that committee.

(4) Consultations with the Title IX ~~((See 504))~~ officer and the disabled student services coordinator shall be strictly

confidential (~~until the Title IX/Sec. 504 officer begins to act as mediator~~)).

AMENDATORY SECTION (Amending Order 88-01, filed 12/1/88, effective 1/1/89)

WAC 132D-120-280 Grievance review committee procedures. (1) Any grievance not resolved (~~(informally)~~) by an administrator or the Title IX officer or disabled student services coordinator may be appealed to the grievance review committee for a hearing. The grievant or respondent shall petition the committee by obtaining an official grievance form from the (~~(student activities)~~) office where counseling services are provided. That petition shall be made within five working days of the notice of decision in the (~~(informal)~~) previous proceedings.

(2) When a petition for review is filed, the student shall either:

(a) Be assigned (~~(an advocate,)~~) a process advisor by the college or choose an advisor of his/her own; or

(b) Waive his or her right to an (~~(advocate,)~~) advisor; or

(c) Notify the college of his or her retention of an attorney at least one week prior to a scheduled grievance hearing. Where the student is (~~(represented)~~) accompanied by an attorney, the college may be represented by an assistant attorney general.

(3) The student's completed official grievance form shall be distributed to all members of the grievance review committee.

(4) The registrar shall chair the grievance review committee and its members shall be chosen as follows:

(a) Two faculty members appointed by the (~~(executive dean)~~) vice-president of educational services; and

(b) Two students appointed by the president of the associated students of Skagit Valley College; and

(c) Two classified staff members appointed by the classified staff (~~(training committee)~~) designated leadership.

(5) The grievance review committee may call any witnesses and hear any testimony needed to reach a prompt, fair resolution of the grievance. The proceedings before the committee shall not be considered a formal(~~(;)~~) trial-type hearing. (~~(However, where requested by the student and approved by the president, or where required by RCW 28B.19.110, a formal hearing (to be conducted in accordance with WAC 132D-120-120) may be granted.)~~)

(6) Within three working days of the conclusion of the hearing, the committee shall issue a written recommendation. All parties shall receive a copy of this recommendation.

(7) In the case of instructional grievances, the committee's recommendations shall be sent to the (~~(executive dean)~~) vice-president of educational services. In all other cases, the committee's recommendations shall be forwarded to the (~~(dean of administrative and student services)~~) vice-president responsible for the area in which the faculty or staff member is employed. The appropriate (~~(dean)~~) vice-president shall, within (~~(three)~~) five working days, accept, modify, or reject the recommendations of the grievance review committee and notify all parties.

(~~(8) All parties shall be notified of the dean's decision within five working days.~~)

AMENDATORY SECTION (Amending Order 88-01, filed 12/1/88, effective 1/1/89)

WAC 132D-120-290 Final decision regarding the appeal procedure—Extra-institutional appeals. (1) Where the student is not satisfied by the (~~(dean's)~~) vice-president's decision, he or she may appeal that decision to the president of the college provided that such appeal is made within five working days of the student's receipt of notice of the decision.

(2) The president will review the record of the case prepared by the committee together with any appeal statement and will deliver a written acceptance of the (~~(registrar's)~~) vice-president's decision or directions as to what other course of action shall be taken, within ten instructional days after receiving the appeal.

(~~(2))~~ (3) This decision shall constitute final agency action by the college.

(~~(3))~~ (4) A student who (~~(was granted a formal hearing by the president of the college and who)~~) feels aggrieved by the institution's final decision, may petition for judicial review of that decision according to the provisions of RCW 28B.19.150.

(~~(4))~~ (5) For further review in sexual or (~~(handi-capped)~~) disability discrimination cases, the grievant may send appeals or inquiries to:

(~~(a) Regional Director, Office of Civil Rights, HEW; 29011 3rd Avenue, M.S. 510, Seattle, WA 98121;~~

(~~(b) The Equal Opportunity Commission; 1321 2nd Avenue, Seattle, WA 98101;~~

(~~(c) Human Rights Commission; 402 Evergreen Plaza Building, 7th and Capitol Way, Olympia, WA 98504.)~~)

(a) U.S. Department of Education

Office for Civil Rights Region X

915 Second Avenue, Room 3310

Seattle, WA 98174

206-220-7900

(b) Washington State Human Rights Commission

Third Avenue

Seattle, Washington 98101

206-464-6500

(c) Department of Justice Civil Rights Division

1424 New York Avenue, Room 5041

Washington, D.C. 20005

202-307-0818 (TTD), or 800-514-0383 (voice)

AMENDATORY SECTION (Amending Order 88-01, filed 12/1/88, effective 1/1/89)

WAC 132D-120-320 Administrative, faculty and staff grievances. Any administrator, faculty member or staff member who is the subject of a student's grievance and who is dissatisfied with the results of any level of the student grievance proceedings (~~(shall)~~) may file a grievance under the appropriate grievance procedure established by Skagit Valley College.

AMENDATORY SECTION (Amending Order 88-01, filed 12/1/88, effective 1/1/89)

WAC 132D-120-330 Prior rules. The rules contained within this chapter supersede all former rules relating to ~~((student conduct and))~~ student grievances.

AMENDATORY SECTION (Amending Order 88-01, filed 12/1/88, effective 1/1/89)

WAC 132D-120-350 Effective date of the rules of conduct. The rules contained within this chapter shall become effective ~~((January 1, 1989))~~ July 1, 2005.

WSR 05-24-062
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed December 2, 2005, 3:25 p.m., effective January 3, 2006]

Effective Date of Rule: January 3, 2006.

Purpose: The current rules were last updated in 1982. Since implementation, related statutory changes have been enacted. The proposed changes are intended to update the rules to ensure consistency with the current banking and agency practices, informational systems availability and current state and federal statutory requirements, as well as to make technical adjustments and clarifications as needed.

Citation of Existing Rules Affected by this Order: Repealing WAC 82-20-020, 82-20-030, 82-20-040, 82-20-060 and 82-20-070; and amending WAC 82-20-010 and 82-20-050.

Statutory Authority for Adoption: RCW 43.41.180 and 43.41.110(14).

Adopted under notice filed as WSR 05-21-078 on October 17, 2005.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 2, Repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 2, Repealed 5.

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 3, Amended 2, Repealed 5.

Date Adopted: December 1, 2005.

Roselyn Marcus
Director of Legal Affairs
Rule Making Coordinator

Chapter 82-20 WAC

ELECTRONIC (~~(DEPOSIT OF SALARIES AND STATE FUNDED BENEFITS)) ACCEPTANCE AND DISBURSEMENT OF FUNDS~~

AMENDATORY SECTION (Amending Order 53, filed 2/11/82)

WAC 82-20-010 Purpose. ~~((1) RCW 43.08.085, as amended, makes provisions for the electronic deposit of salaries and state funded benefit payments into financial institutions subject to regulations adopted by))~~ The rules adopted in chapter 82-20 WAC further define and clarify the application of RCW 43.41.180, which authorizes the office of financial management to approve the use of electronic and other technological means to transfer funds whenever economically feasible.

~~((2) The policies and procedures contained in chapter 82-20 WAC for the deposit of salaries are consistent with the statutory authority cited in WAC 82-20-010(1).~~

~~((3) The term "recipient" means any state employee or any person to whom state funded public employees' retirement benefits, industrial insurance benefits, or state public assistance benefits are being paid)).~~

NEW SECTION

WAC 82-20-025 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

(1) "Agency" means and includes every state agency, office, board, commission, department, state institution, or state institution of higher education, which includes all state universities, regional universities, and community and technical colleges.

(2) An "economic feasibility study" is a package of information that includes a cover letter, a business case and analytical information. It documents the cost/benefit analysis of an agency's proposed electronic payment project and demonstrates the net benefit of the proposed project.

(3) "Economic feasibility" and "economically feasible" mean that over a reasonable period of time, an application's cumulative benefits outweigh or are equivalent to the application's cumulative costs.

(4) "Electronic and other technological means" and "electronic payments" include, but are not limited to, credit cards, debit cards, electronic fund transfers utilizing the automated clearing house network, electronic benefit transfers, wire transfers, lock boxes, electronic checks, smart cards, and stored value cards.

(5) "Financial institution" means any state or federally chartered commercial bank, trust company, mutual savings bank, savings and loan association, or credit union.

(6) "Funds" means any moneys either received or disbursed by a state agency, and applies to all cash types including treasury funds, treasury trust funds, and local funds.

NEW SECTION

WAC 82-20-035 Is an economic feasibility study required? In order for the office of financial management to determine whether or not an application is economically feasible, agencies are required to prepare and submit an economic feasibility study for approval. Agencies must file an economic feasibility study for all new applications to accept or disburse funds by electronic and other technological means and the application must be approved by the office of financial management prior to implementation. This applies to both pilot and permanent applications, and includes, but is not limited to, internet and retail applications. An economic feasibility study is also required for expansions to existing applications. The office of financial management can grant exceptions to the requirement to file an economic feasibility study, for example:

(1) Very small applications and limited expansions to existing approved electronic payment processes may only require a cover letter that incorporates the business case and analytical information. The office of financial management should be contacted to determine if this is an option for a particular application.

(2) Electronic funds transfers into treasury or treasury trust accounts through the automated clearing house network may only require a cover letter to be submitted to the office of financial management that incorporates the business case and analytical information. The office of financial management and the office of the state treasurer should be contacted to determine if this is an option for a particular application.

(3) Applications involving electronic transfers that are limited to information only do not require an economic feasibility study to be submitted. These would include, but are not limited to, bill presentment, employee earnings statements, and remittance advices.

(4) Wire transfers are usually needed immediately and are singular in nature, therefore they do not require an economic feasibility study. However, the agency must work with the office of the state treasurer to ensure that there is not a less expensive alternative available.

NEW SECTION

WAC 82-20-045 Agency requirements. (1) The agency is to establish controls to prevent loss of funds. Controls are to include a positive system of validating the amounts to be transferred and verifying that the amounts to be transferred for a recipient are actually due for goods or services received, work performed, benefits due or other purpose as authorized by law.

(2) The agency is to comply with state administrative and accounting policies established by the office of financial management.

(3) The agency is to work with the office of the state treasurer regarding the banking arrangements related to accepting or disbursing funds via electronic and other technological means.

AMENDATORY SECTION (Amending Order 53, filed 2/11/82)

WAC 82-20-050 Financial institution requirements. ~~((+))~~ Each participating financial institution ~~((must be a member of an automated clearinghouse, and observe all automated clearinghouse rules and regulations))~~ is responsible for adherence to federal and state statutes and regulations related to the transfer of funds via electronic and other technological means. The state reserves the right to refuse to do business with any financial institution that fails to comply with federal and state statutes and regulations related to the transfer of funds via electronic and other technological means.

~~((2))~~ Each participating financial institution must observe the requirements of Regulation E of the Federal Reserve System.

~~(3)~~ Each participating financial institution must provide, when requested by the participating payroll system, positive confirmations on all prenotification requests transmitted for verification of a recipient's account number. If a positive means of confirmation is not required, the financial institution must provide a means by which the payroll system is notified of discrepancies on a timely basis. Deposits are not to be processed without a valid account number.

~~(4)~~ Each participating financial institution is to complete the lower portion of the standard authorization form SF 6952, "Electronic funds transfer of salary authorization," or other form approved by the office of financial management when presented by a recipient. The form is to be returned to the recipient or agency payroll office upon completion.

~~(5)~~ If a financial institution is presented an SF 6952 "Electronic funds transfer of salary authorization," or other form approved by the office of financial management by a recipient for processing, and the institution is not a member of an automated clearinghouse or is otherwise ineligible to participate in this program, it is the responsibility of the financial institution to notify the recipient of this fact.

~~(6)~~ Subject to the approval of the office of financial management, a financial institution may reproduce form SF 6952, "Electronic funds transfer of salary authorization" for the sole purpose of preprinting the institution's name, address, and transit routing indicator. Any other alterations to the format or content of the form are not allowed and will not be honored by state agencies.

~~(7)~~ Each participating financial institution is responsible for adherence to the applicable federal and state statutes and regulations regarding the electronic transfer of funds.

~~(8)~~ Financial institutions serving as a "payable through" bank will be considered the receiving institution for electronic fund transfers of the recipient's salaries or benefits if their American Bankers Association Transit Routing Indicator is used as part of the recipient's account code.

~~(9)~~ Financial institutions are to provide each participating recipient with a notice of initial disclosure as required by Regulation E. This notice is to include the mechanism to be used by the recipient for verification that the deposit by electronic funds transfer has been made.)

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 82-20-020	Payroll system requirements.
WAC 82-20-030	Agency requirements.
WAC 82-20-040	Recipient requirements.
WAC 82-20-060	Subsequent transactions.
WAC 82-20-070	Failure to comply.

WSR 05-24-070**PERMANENT RULES****BUILDING CODE COUNCIL**

[Filed December 5, 2005, 8:42 a.m., effective July 1, 2006]

Effective Date of Rule: July 1, 2006.

Purpose: To amend the Washington state amendments to the 2003 International Building Code and ICC A117.1-2003 *Accessible and Usable Buildings and Facilities*; to enact the requirements of chapter 148, Laws of 2005, requiring automatic fire sprinklers in existing nightclubs; to clarify special inspection requirements for elevator shaft pressurization; provide an exception to allow manually operated sliding doors in spaces with an occupant load less than ten; deletes the requirement for elevator button labeling to conform with the ICC/ANSI A117.1; and requires that wired glass installed in hazardous locations meet the same safety requirements as other types of glass.

Citation of Existing Rules Affected by this Order: Amending WAC 51-50-0200, 51-50-0903, 51-50-0909, 51-50-1008, 51-50-1101, and 51-50-2406.

Statutory Authority for Adoption: RCW 19.27.020, 19.27.031, and 19.27.074.

Other Authority: Chapters 19.27 and 34.05 RCW.

Adopted under notice filed as WSR 05-17-009 on August 4, 2005.

Changes Other than Editing from Proposed to Adopted Version: The definition of nightclub was amended to include clarification of the term "paid performing artists" and allows the fire code official to determine the occupant load for application of the automatic sprinkler requirement.

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 2, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 4, 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-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: November 4, 2005.

John Neff
Council Chair

AMENDATORY SECTION (Amending WSR 04-01-108, filed 12/17/03, effective 7/1/04)

WAC 51-50-0200 Chapter 2—Definitions.**SECTION 202—DEFINITIONS.**

ADULT FAMILY HOME. See Section 310.2.

CHILD DAY CARE. See Section 310.2.

CHILD DAY CARE HOME, FAMILY. See Section 310.2.

NIGHTCLUB. An establishment, other than a theater with fixed seating, which includes all of the following:

1. Provides live entertainment by paid performing artists or by way of recorded music conducted by a person employed or engaged to do so;

2. Has as its primary source of revenue the sale of beverages of any kind for consumption on the premises and/or cover charges;

3. Has an occupant load of 100 or more as determined by the fire code official; and

4. Includes assembly space without fixed seats considered concentrated or standing space per Table 1004.1.2.

Paid performing artists are those entertainers engaged to perform in a for-profit business establishment.

PORTABLE SCHOOL CLASSROOM. See Section 902.1.

RESIDENTIAL CARE/ASSISTED LIVING FACILITIES. See Section 310.2.

AMENDATORY SECTION (Amending WSR 04-01-108, filed 12/17/03, effective 7/1/04)

WAC 51-50-0903 Section 903—Automatic sprinkler systems.

903.2.1.2 Group A-2. An automatic sprinkler system shall be provided for Group A-2 Occupancies where one of the following conditions exists:

1. The fire area exceeds 5,000 square feet (464.5 m²).

2. The fire area has an occupant load of 100 or more.

3. The fire area is located on a floor other than the level of exit discharge.

903.2.1.6 Nightclub. An automatic sprinkler system shall be provided throughout an occupancy with a nightclub. Existing nightclubs constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2007. The fire code official, for the application of this rule, may establish an occupant load based on the observed use of the occupancy in accordance with Table 1004.1.2.

903.2.2 Group E. An automatic sprinkler system shall be provided for Group E Occupancies as follows:

1. Throughout all Group E fire areas greater than 20,000 square feet (1858 m²) in area.

2. Throughout every portion of educational buildings below the level of exit discharge.

EXCEPTION: An automatic sprinkler system is not required in any fire area or area below the level of exit discharge where every classroom throughout the building has at least one exterior exit door at ground level.

3. Throughout all newly constructed Group E Occupancies having an occupant load of 50 or more for more than 12 hours per week or four hours in any one day. A minimum water supply meeting the requirements of NFPA 13 shall be required. The fire code official may reduce fire flow requirements for buildings protected by an approved automatic sprinkler system.

For the purpose of this section, additions exceeding 60 percent of the value of such building or structure, or alterations and repairs to any portion of a building or structure within a twelve-month period that exceeds 100 percent of the value of such building or structure shall be considered new construction. In the case of additions, fire walls shall define separate buildings.

EXCEPTIONS: 1. Portable school classrooms, provided aggregate area of clusters of portable school classrooms does not exceed 5,000 square feet (1465 m²); and clusters of portable school classrooms shall be separated as required in Chapter 5 of the building code.
2. Group E day care.

When not required by other provisions of this chapter, a fire-extinguishing system installed in accordance with NFPA 13 may be used for increases and substitutions allowed in Section 504.2, 506.3, and Table 601 of the building code.

903.2.10.3 Buildings over 75 feet in height. An automatic sprinkler system shall be installed throughout buildings with a floor level having an occupant load of 30 or more that is located 75 feet (22 860 mm) or more above the lowest level of fire department vehicle access.

EXCEPTIONS: 1. Airport control towers.
2. Open parking structures.
3. Occupancies in Group F-2.

AMENDATORY SECTION (Amending WSR 04-01-108, filed 12/17/03, effective 7/1/04)

WAC 51-50-0909 Section 909—Smoke control systems.

909.6.3 Elevator shaft pressurization. Where elevator shaft pressurization is required to comply with Exception 5 of Section 707.14.1, the pressurization system shall comply with the following.

909.6.3.1 Standards and testing. Elevator shafts shall be pressurized to not less than 0.10 inch water column relative to atmospheric pressure. Elevator pressurization shall be measured with the elevator cars at the designated primary recall level with the doors in the open position. The test shall be conducted at the location of the calculated maximum positive stack effect in the elevator shaft. The measured pressure shall be sufficient to provide 0.10 inch of water column as well as accounting for the stack and wind effect expected on the mean low temperature January day.

909.6.3.2 Activation. The elevator shaft pressurization system shall be activated by a fire alarm system which shall include smoke detectors or other approved detectors located near the elevator shaft on each floor as approved by the building official and fire chief. If the building has a fire alarm panel, detectors shall be connected to, with power supplied by, the fire alarm panel.

909.6.3.3 Separation. Elevator shaft pressurization equipment and its ductwork located within the building shall be separated from other portions of the building by construction equal to that required for the elevator shaft.

909.6.3.4 Location of intakes. Elevator shaft pressurization air intakes shall be located in accordance with Section 909.10.3. Such intakes shall be provided with smoke detectors which upon detection of smoke, shall deactivate the pressurization fan supplied by that air intake.

909.6.3.5 Power system. The power source for the fire alarm system and the elevator shaft pressurization system shall be in accordance with Section 909.11.

909.6.3.6 Hoistway venting. Hoistway venting required by Section 3004 need not be provided for pressurized elevator shafts.

909.6.3.7 Machine rooms. Elevator machine rooms required to be pressurized by Section 3006.3 need not be pressurized where separated from the hoistway shaft by construction in accordance with Section 707.

909.6.3.8 Special inspection. Special inspection for performance shall be required in accordance with Section 909.18.8 (~~(3 and Section 1704)~~). System acceptance shall be in accordance with Section 909.19.

AMENDATORY SECTION (Amending WSR 04-01-108, filed 12/17/03, effective 7/1/04)

WAC 51-50-1008 Section 1008—Doors, gates and turnstiles.

1008.1.2 Door swing. Egress doors shall be side-hinged swinging.

EXCEPTIONS: 1. Private garages, office areas, factory and storage areas with an occupant load of 10 or less.
2. Group I-3 Occupancies used as a place of detention.
3. Doors within or serving a single dwelling unit in Groups R-2 and R-3 as applicable in Section 101.2.
4. In other than Group H Occupancies, revolving doors complying with Section 1008.1.3.1.
5. In other than Group H Occupancies, horizontal sliding doors complying with Section 1008.1.3.3 are permitted as a means of egress.
6. Power-operated doors in accordance with Section 1008.1.3.1.
7. In other than Group H Occupancies, manually operated horizontal sliding doors are permitted in a means of egress from occupied spaces with an occupant load of 10 or less.

Doors shall swing in the direction of egress travel where serving an occupant load of 50 or more persons or a Group H Occupancy.

The opening force for interior side-swinging doors without closers shall not exceed a 5-pound force. For other side-

swinging, sliding, and folding doors, the door latch shall release when subjected to a 15-pound force. The door shall be set in motion when subjected to a 30-pound force. The door shall swing to a full-open position when subjected to a 15-pound force. Forces shall be applied to the latch side. Within an accessible route, at exterior doors where environmental conditions require a closing pressure greater than 8.5 pounds, power operated doors shall be used within the accessible route of travel.

AMENDATORY SECTION (Amending WSR 05-01-014, filed 12/2/04, effective 7/1/05)

WAC 51-50-1101 Section 1101—General.

1101.2 Design. Buildings and facilities shall be designed and constructed to be accessible in accordance with this code and ICC A117.1, except those portions of ICC A117.1 amended by this section.

1101.2.1 (ICC A117.1 Section 403) Landings for walking surfaces. The maximum rise for any run is 30 inches (762 mm). Landings shall be provided at the top and bottom of any run. Landings shall be level and have a minimum dimension measured in the direction of travel of not less than 60 inches (1525 mm).

1101.2.2 (ICC A117.1 Section 403.5) Clear width of accessible route. Clear width of an accessible route shall comply with ICC A117.1 Table 403.5. For exterior routes of travel, the minimum clear width shall be 44 inches (1118 mm).

1101.2.3 (ICC A117.1 Section 404.2.9) Door-opening force. Fire doors shall have the minimum opening force allowable by the appropriate administrative authority. The maximum force for pushing open or pulling open doors other than fire doors shall be as follows:

1. Interior hinged door: 5.0 pounds (22.2 N)
2. Sliding or folding doors: 5.0 pounds (22.2 N)

At exterior doors where environmental conditions require a closing pressure greater than 8.5 pounds, power operated doors shall be used within the accessible route of travel.

These forces do not apply to the force required to retract latch bolts or disengage other devices that hold the door in a closed position.

1101.2.4 (ICC A117.1 Section 407.4.6.2.2) Arrangement. This section is not adopted.

1101.2.5 (ICC A117.1 Sections 603.4 and 604.11) Coat hooks, shelves, dispensers, and other fixtures. Coat hooks provided shall accommodate a forward reach or side reach complying with ICC A117.1 Section 308. Where provided, shelves shall be installed so that the top of the shelf is 40 inches (1015 mm) maximum above the floor or ground. Drying equipment, towel or other dispensers, and disposal fixtures shall be located 40 inches (1015 mm) maximum above the floor or ground to any rack, operating controls, receptacle or dispenser.

1101.2.6 (ICC A117.1 Section 604.6) Flush controls. Hand operated flush controls for water closets shall be mounted not more than 44 inches (1118 mm) above the floor.

1101.2.9 (ICC A117.1 Section 703.6.3.1) International Symbol of Accessibility. Where the International Symbol of Accessibility is required, it shall be proportioned complying with ICC A117.1 Figure 703.7.2.1. All interior and exterior signs depicting the International Symbol of Accessibility shall be white on a blue background.

1101.2.11 (ICC A117.1 Section 404.3.5) Control switches. Control switches shall be mounted 32 to 40 inches above the floor and not less than 18 inches nor more than 36 inches horizontally from the nearest point of travel of the moving doors.

NEW SECTION

WAC 51-50-2406 Section 2406—Safety glazing.

2406.1.2 Wired glass. This section is not adopted.

WSR 05-24-071

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed December 5, 2005, 8:43 a.m., effective July 1, 2006]

Effective Date of Rule: July 1, 2006.

Purpose: To amend chapter 51-54 WAC to enact chapter 148, Laws of 2005, requiring automatic sprinkler systems in all buildings containing a nightclub as defined in the bill. These is also a change to 909.6.3.8 clarifying the requirements for special inspection of elevator shaft pressurization to coordinate with the building code.

Citation of Existing Rules Affected by this Order: Amending WAC 51-54-0200 and 51-54-0900.

Statutory Authority for Adoption: RCW 19.27.020, 19.27.031, and 19.27.074.

Other Authority: Chapters 19.27 and 34.05 RCW.

Adopted under notice filed as WSR 05-17-010 on August 4, 2005.

Changes Other than Editing from Proposed to Adopted Version: The definition of nightclub was amended to include clarification of the term "paid performing artists" and allows the fire code official to determine the occupant load for application of the automatic sprinkler requirement.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: November 4, 2005.

John Neff
Council Chair

AMENDATORY SECTION (Amending WSR 04-01-105, filed 12/17/03, effective 7/1/04)

WAC 51-54-0200 Chapter 2—Definitions.

SECTION 202 GENERAL DEFINITIONS.

ADULT FAMILY HOME means a dwelling in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

CHILD DAY CARE, shall, for the purposes of these regulations, mean the care of children during any period of a 24-hour day.

ELECTRICAL CODE is the National Electrical Code, promulgated by the National Fire Protection Association, as adopted in chapter 296-46 WAC, or the locally adopted Electrical Code.

FAMILY CHILD DAY CARE HOME is a child day care facility, licensed by the state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home.

NIGHTCLUB. An establishment, other than a theater with fixed seating, which includes all of the following:

1. Provides live entertainment by paid performing artists or by way of recorded music conducted by a person employed or engaged to do so;

2. Has as its primary source of revenue the sale of beverages of any kind for consumption on the premises and/or cover charges;

3. Has an occupant load of 100 or more as determined by the fire code official; and

4. Includes assembly space without fixed seats considered concentrated or standing space per Table 1004.1.2.

Paid performing artists are those entertainers engaged to perform in a for-profit business establishment.

EDUCATIONAL GROUP E. Educational Group E Occupancy includes, among others, the use of a building or structure, or a portion thereof, by six or more persons at any one time for educational purposes through the 12th grade. Religious educational rooms and religious auditoriums, which are accessory to churches in accordance with Section 302.2 of the IBC and have occupant loads of less than 100, shall be classified as Group A-3 Occupancies.

Day Care. The use of a building or structure, or portion thereof, for educational, supervision or personal care services for more than five children older than 2 1/2 years of age, shall be classified as a Group E Occupancy.

EXCEPTION: Family child day care homes licensed by the Washington state department of social and health services for the care of twelve or fewer children shall be classified as Group R3.

INSTITUTIONAL GROUP I. Institutional Group I Occupancy includes, among others, the use of a building or structure, or

a portion thereof, in which people, cared for or living in a supervised environment and having physical limitations because of health or age, are harbored for medical treatment or other care or treatment, or in which people are detained for penal or correctional purposes or in which the liberty of the occupants is restricted. Institutional occupancies shall be classified as Group I-1, I-2, I-3 or I-4.

Group I-1. This occupancy shall include buildings, structures or parts thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following:

- Residential board and care facilities
- Assisted living facilities
- Halfway houses
- Group homes
- Congregate care facilities
- Social rehabilitation facilities
- Alcohol and drug centers
- Convalescent facilities

A facility such as the above with five or fewer persons and adult family homes licensed by the Washington state department of social and health services shall be classified as a Group R-3 or shall comply with the *International Residential Code* in accordance with Section 101.2. A facility such as above, housing at least six and not more than 16 persons, shall be classified as Group R-4.

A facility such as the above providing licensed care to clients in one of the categories listed in Section 313.1 regulated by either the Washington department of health or the department of social and health services shall be classified as Licensed Care Group LC.

Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of more than five persons who are not capable of self-preservation. This group shall include, but not be limited to, the following:

- Hospitals
- Nursing homes (both intermediate-care facilities and skilled nursing facilities)
- Mental hospitals
- Detoxification facilities

A facility such as the above with five or fewer persons shall be classified as Group R-3 or shall comply with the *International Residential Code* in accordance with Section 101.2.

A facility such as the above providing licensed care to clients in one of the categories listed in Section 313.1 regulated by either the Washington department of health or the department of social and health services shall be classified as Licensed Care Group LC.

Group I-3. (Remains as printed in the IFC.)

Group I-4. Day care facilities. This group shall include buildings and structures occupied by persons of any age who receive custodial care for less than 24 hours by individuals other than parents or guardians, relatives by blood marriage, or adoption, and in a place other than the home of the person

cared for. A facility such as the above with five or fewer persons shall be classified as Group R-3 or shall comply with the *International Residential Code*. Places of worship during religious functions are not included.

Adult care facility. A facility that provides accommodations for less than 24 hours for more than five unrelated adults and provides supervision and personal care services shall be classified as Group I-4.

EXCEPTION: Where the occupants are capable of responding to an emergency situation without physical assistance from the staff, the facility shall be classified as Group A-3.

Child care facility. A facility that provides supervision and personal care on a less than 24-hour basis for more than five children 2 1/2 years of age or less shall be classified as Group I-4.

EXCEPTIONS: 1. A child day care facility that provides care for more than five but no more than 100 children 2 1/2 years or less of age, when the rooms where such children are cared for are located on the level of exit discharge and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.
2. Family child day care homes licensed by the Washington state department of social and health services for the care of 12 or fewer children shall be classified as Group R3.

RESIDENTIAL GROUP R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or Licensed Care Group LC. Residential occupancies shall include the following:

R-1 Residential occupancies where the occupants are primarily transient in nature, including:

- Boarding houses (transient)
- Hotels (transient)
- Motels (transient)

R-2 Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including:

- Apartment houses
- Boarding houses (not transient)
- Convents
- Dormitories
- Fraternities and sororities
- Monasteries
- Vacation timeshare properties
- Hotels (nontransient)
- Motels (nontransient)

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4 or I and where buildings do not contain more than two dwelling units as applicable in Section 101.2, including adult family homes and family child day care homes for the care of 12 or fewer children, licensed by the Washington state department of social and health services, or adult and child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours. Adult family homes and family child day care homes, or adult and child care facilities that are within a single-family home are permitted to comply with the *International Residential Code* in accordance with Section 101.2.

Foster family care homes licensed by the Washington state department of social and health services shall be permitted,

as an accessory use to a dwelling, for six or fewer children including those of the resident family.

R-4 Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living facilities including more than five but not more than 16 occupants, excluding staff.

EXCEPTION: Adult family homes, family child day care homes and foster family care homes shall be classified as Group R-3.

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3 except as otherwise provided for in this code or shall comply with the *International Residential Code* in accordance with Section 101.2.

LICENSED CARE GROUP LC. Licensed Care Group LC includes the use of a building, structure, or portion thereof, for the business of providing licensed care to clients in one of the following categories regulated by either the Washington department of health or the department of social and health services:

1. Adult residential rehabilitation facility.
2. Alcoholism intensive inpatient treatment service.
3. Alcoholism detoxification service.
4. Alcoholism long-term treatment service.
5. Alcoholism recovery house service.
6. Boarding home.
7. Group care facility.
8. Group care facility for severely and multiple handicapped children.
9. Residential treatment facility for psychiatrically impaired children and youth.

EXCEPTION: Where the care provided at an alcoholism detoxification service is acute care similar to that provided in a hospital, the facility shall be classified as a Group I-2 Occupancy.

AMENDATORY SECTION (Amending WSR 04-01-105, filed 12/17/03, effective 7/1/04)

WAC 51-54-0900 Chapter 9—Fire protection systems.

902.1 Definitions.

PORTABLE SCHOOL CLASSROOM. A structure, transportable in one or more sections, which requires a chassis to be transported, and is designed to be used as an educational space with or without a permanent foundation. The structure shall be trailerable and capable of being demounted and relocated to other locations as needs arise.

903.2.1.2 Group A-2. An automatic sprinkler system shall be provided for Group A-2 Occupancies where one of the following conditions exists:

1. The fire area exceeds 5,000 square feet (464.5 m²).
2. The fire area has an occupant load of 100 or more.
3. The fire area is located on a floor other than the level of exit discharge.

903.2.1.6 Nightclub. An automatic sprinkler system shall be provided throughout an occupancy with a nightclub. Existing nightclubs constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2007. The fire code official, for the application of this rule,

may establish an occupant load based on the observed use of the occupancy in accordance with Table 1004.1.2.

903.2.2 Group E. An automatic sprinkler system shall be provided for Group E Occupancies as follows:

1. Throughout all Group E fire areas greater than 20,000 square feet (1858 m²) in area.
2. Throughout every portion of educational buildings below the level of exit discharge.

EXCEPTION: An automatic sprinkler system is not required in any fire area or area below the level of exit discharge where every classroom throughout the building has at least one exterior exit door at ground level.

3. Throughout all newly constructed Group E Occupancies having an occupant load of 50 or more for more than 12 hours per week or four hours in any one day. A minimum water supply meeting the requirements of NFPA 13 shall be required. The fire code official may reduce fire flow requirements for buildings protected by an approved automatic sprinkler system.

For the purpose of this section, additions exceeding 60 percent of the value of such building or structure, or alterations and repairs to any portion of a building or structure within a twelve-month period that exceeds 100 percent of the value of such building or structure shall be considered new construction. In the case of additions, fire walls shall define separate buildings.

EXCEPTIONS: 1. Portable school classrooms, provided aggregate area of clusters of portable school classrooms does not exceed 5,000 square feet (1465 m²); and clusters of portable school classrooms shall be separated as required in Chapter 5 of the building code.
2. Group E Day Care.

When not required by other provisions of this chapter, a fire-extinguishing system installed in accordance with NFPA 13 may be used for increases and substitutions allowed in Section 504.2, 506.3, and Table 601 of the building code.

903.2.10.3 Buildings over 75 feet in height. An automatic sprinkler system shall be installed throughout buildings with a floor level having an occupant load of 30 or more that is located 75 feet (22 860 mm) or more above the lowest level of fire department vehicle access.

EXCEPTIONS: 1. Airport control towers.
2. Open parking structures.
3. Occupancies in Group F-2.

909.6.3 Elevator shaft pressurization. Where elevator shaft pressurization is required to comply with Exception 5 of Section 707.14.1, the pressurization system shall comply with the following.

909.6.3.1 Standards and testing. Elevator shafts shall be pressurized to not less than 0.10 inch water column relative to atmospheric pressure. Elevator pressurization shall be measured with the elevator cars at the designated primary recall level with the doors in the open position. The test shall be conducted at the location of the calculated maximum positive stack effect in the elevator shaft. The measured pressure shall be sufficient to provide 0.10 inch of water column as well as accounting for the stack and wind effect expected on the mean low temperature January day.

909.6.3.2 Activation. The elevator shaft pressurization system shall be activated by a fire alarm system which shall include smoke detectors or other approved detectors located near the elevator shaft on each floor as approved by the building official and fire chief. If the building has a fire alarm panel, detectors shall be connected to, with power supplied by, the fire alarm panel.

909.6.3.3 Separation. Elevator shaft pressurization equipment and its ductwork located within the building shall be separated from other portions of the building by construction equal to that required for the elevator shaft.

909.6.3.4 Location of intakes. Elevator shaft pressurization air intakes shall be located in accordance with Section 909.10.3. Such intakes shall be provided with smoke detectors which upon detection of smoke, shall deactivate the pressurization fan supplied by that air intake.

909.6.3.5 Power system. The power source for the fire alarm system and the elevator shaft pressurization system shall be in accordance with Section 909.11.

909.6.3.6 Hoistway venting. Hoistway venting required by IBC Section 3004 need not be provided for pressurized elevator shafts.

909.6.3.7 Machine rooms. Elevator machine rooms required to be pressurized by IBC Section 3006.3 need not be pressurized where separated from the hoistway shaft by construction in accordance with IBC Section 707.

909.6.3.8 Special inspection. Special inspection for performance shall be required in accordance with Section ~~((909.18-8.3 and IBC Section 1704))~~ 909.18.8. System acceptance shall be in accordance with Section 909.19.

WSR 05-24-091

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 6, 2005, 3:32 p.m., effective January 6, 2006]

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

Purpose: The department is adopting new WAC 388-106-1000 through 388-106-1055, private duty nursing, to clarify client eligibility, changes in provider contracting requirements, and the provision of private duty nursing services. The client eligibility requirements are now standardized for all adults aged eighteen or older who receive services through ADSA. This rule-making action repeals WAC 388-71-0900 through 388-71-0965.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-71-0900, 388-71-0905, 388-71-0910, 388-71-0915, 388-71-0920, 388-71-0925, 388-71-0930, 388-71-0935, 388-71-0940, 388-71-0945, 388-71-0950, 388-71-0955, 388-71-0960, and 388-71-0965.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: 42 C.F.R. 440.80.

Adopted under notice filed as WSR 05-19-127 on September 20, 2005.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-106-1010: In subsection (2)(d) clarified that the need for the nursing care task must be every day; in subsection (2)(h), added ability of ARNP, as well as primary physician, to document client's need for PDN. This language (primary physician/ARNP) was added throughout the WAC; in subsection (2)(j)(i), after "exhalation," change the "and" to "or"; and in subsection (2)(j)(ii)(A), the phrase "at least one time in a four continuous hour period" was removed from this section and subsections (2)(j)(iii), (iv), and (v). The client's daily requirement for four continuous hours remains in effect for PDN eligibility.

WAC 388-106-1025: WAC reference was changed to the nurse delegation program, WAC 246-840-910 to 246-840-970.

WAC 388-106-1030(1): After "department designated PDN skilled nursing task log," added "or equivalent which has been approved by ADSA prior to use." This phrase was added after every reference to the skilled nursing task log throughout.

A final cost-benefit analysis is available by contacting Tiffany Sevruck, Home and Community Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2538, fax (360) 407-7582, e-mail sevruta@dshs.wa.gov. The preliminary cost-benefit analysis is unchanged and will be final.

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 11, Amended 0, Repealed 14.

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 11, Amended 0, Repealed 14.

Date Adopted: November 29, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-106-1000 What is the intent of WAC 388-106-1000 through WAC 388-106-1055? The intent of WAC 388-106-1000 through WAC 388-106-1055 is to:

(1) Describe the eligibility requirements under which an adult age eighteen or older may receive Private Duty Nursing (PDN) services through the Department's Aging and Disability Services Administration (ADSA);

(2) Provide assistance to clients and enable families to support clients in their own homes; and

(3) Describe the requirements clients and their families, home health agencies, and privately contracted registered

nurses (RNs) and licensed practical nurses (LPNs) must meet in order for services to be authorized for PDN.

NEW SECTION

WAC 388-106-1005 What services may I receive under private duty nursing (PDN)? PDN is a program that provides skilled nursing care if you have complex medical needs that cannot be met through other services. PDN is an alternative to institutional care and is the program of last resort.

NEW SECTION

WAC 388-106-1010 Am I eligible for Medicaid-funded private duty nursing services? In order to be eligible for Medicaid-funded PDN, you must:

(1) Be financially eligible, which means you:

(a) Meet Medicaid requirements under the Categorically Needy program or the Medically Needy Program (MNP).

(b) Use private insurance as first payer, as required by Medicaid rules. Private insurance benefits, which cover hospitalization and in-home services, must be ruled out as the first payment source to PDN.

(2) Be medically eligible, which means an ADSA Department's Community Nurse Consultant (CNC) or ADSA's Division of Disabilities Services' (DDS) Nursing Care Consultant (NCC) must assess you using the CARE assessment and the PDN skilled nursing task log for initial eligibility determination and thereafter every six months, and determine that you:

(a) Require care in a hospital or meet nursing facility level of care, as defined in WAC 388-106-0310; and

(b) Have unmet skilled nursing needs that cannot be met in a less costly program or less restrictive environment; and

(c) Are not able to have your care tasks provided through nurse delegation, WAC 246-840-910 through WAC 246-840-970; through COPES skilled nursing, WAC 388-515-1505; or through self-directed care RCW 74.39.050; and

(d) Have a complex medical need that requires four or more hours every day of continuous skilled nursing care which can be safely provided outside a hospital or nursing facility; and

(e) Require skilled nursing care that is medically necessary, per WAC 388-500-0005; and

(f) Be able to supervise your care (provider) or have a guardian who is authorized to supervise your care; and

(g) Have family or other appropriate informal support who is responsible for assuming a portion of your care; and

(h) Have your primary care physician or ARNP document your medical stability and appropriateness for PDN and:

(i) Provide orders for medical services; and

(ii) Document approval of the service provider's PDN plan of care.

(i) Do not have other resources or means for obtaining this service; and

(j) Are dependant upon technology every day, with at least one of the following skilled care needs:

(i) You need mechanical ventilation, and the use of a mechanical device to fill the lungs with oxygenated air and then allow time for passive exhalation; or

(ii) You need complex respiratory support, which means that:

- (A) You require two of the following treatment needs:
 - (I) Postural drainage and chest percussion; or
 - (II) Application of respiratory vests; or
 - (III) Nebulizer treatments with or without medications;

or

- (IV) Intermittent Positive Pressure Breathing; or
- (V) O2 saturation measurement with treatment decisions dependent on the results; and

(B) Your treatment needs must be assessed and provided by an RN or LPN; and

(C) Your treatment needs cannot be nurse delegated or self-directed;

(iii) You need tracheostomy care, and tracheal suctioning;

(iv) You need intravenous/parenteral administration of multiple medications, and care is occurring on a continuing or frequent basis; or

(v) You need intravenous administration of nutritional substances, and care is occurring on a continuing or frequent basis.

Reviser's note: The spelling 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.

NEW SECTION

WAC 388-106-1020 How do I pay for my PDN services? You are not required to pay participation for PDN services, but the cost of services is subject to estate recovery, under chapter 388-527 WAC. If you are also receiving other services (e.g. COPES), you may be responsible for paying participation as required under WAC 388-515-1505, WAC 388-515-1540, or WAC 388-515-1550. Your financial worker will inform you about your participation requirements for those services.

NEW SECTION

WAC 388-106-1025 Who can provide my PDN services? In addition to a family member(s) or an Individual Provider providing self-directed care under RCW 74.39.050 or an Individual Provider or Home Care Agency caregiver providing Nurse Delegation per WAC 246-840-910 through WAC 246-840-970:

(1) A home health agency licensed by the Washington State Department of Health can provide your PDN services as long as it also has a PDN contract with DSHS's Aging and Disability Services Administration.

(2) If a home health agency described in subsection (1) is not willing to provide your PDN services, or is not available due to your geographic location, an ADSA private registered nurse (RN) or licensed practical nurse (LPN) who meets the requirements of WAC 388-106-1040 may be able to provide your PDN services.

NEW SECTION

WAC 388-106-1030 Are there limitations or other requirements for PDN? The limits to PDN services are:

(1) Your PDN services can be authorized for four to sixteen hours per day, except as noted in WAC 388-106-1045(4). This authorization is based on a combination of skilled nursing tasks identified in CARE, the department designated PDN Skilled Nursing Task Log or equivalent which has been approved by ADSA prior to use, and detailed information provided to CNC or NCC. The CNC or NCC determines initial eligibility for PDN, up to a maximum of sixteen hours per day. After the initial determination of eligibility is made by the CNC or NCC, the PDN Skilled Nursing Task Log or its approved equivalent will be initiated and completed by the agency or private nurse(s) for fourteen days and submitted to the CNC or NCC for review. At the end of the fourteen-day review period, a final determination will be made on the number of PDN hours required to meet your care needs. PDN skilled task logs or their approved equivalent will also be completed for fourteen days prior to the six-month reassessment for review by the CNC or NCC to determine ongoing eligibility and required PDN hours.

(2) Trained family members must provide for any hours above your assessment determination, or you or your family must pay for these additional hours.

(3) In instances where your family is temporarily absent due to vacations, additional PDN hours must be:

- (a) Paid for by you or your family; or
- (b) Provided by other trained family members. If this is not possible, you may need placement in a long-term care facility during their absence.

(4) You may use respite care if you and your unpaid family caregiver meet the eligibility criteria defined in WAC 388-106-1210.

(5) You may receive additional hours, up to thirty days only when:

- (a) Your family is being trained in care and procedures;
- (b) You have an acute episode that would otherwise require hospitalization;
- (c) Your caregiver is ill or temporarily unable to provide care; or
- (d) There is a family emergency.

NEW SECTION

WAC 388-106-1035 What requirements must a home health agency meet in order to provide and get paid for my PDN? A home health agency must:

(1) Be licensed by the Washington State Department of Health and have a contract to provide Private Duty Nursing Services with Aging and Disability Services Administration;

(2) Operate under physician orders;

(3) Develop and follow a detailed service plan that is reviewed and signed at least every six months by the client's physician;

(4) Initiate and complete the PDN skilled Nursing Task Log or approved equivalent for fourteen days and submitted to the CNC or NCC for review for initial eligibility determination and fourteen days prior to the six-month reassessments;

(5) Meet all documentation requirement required by DOH In-home licensing, WAC 246-335-055, WAC 246-335-080, and WAC 246-335-110; and

(6) Submit timely and accurate invoices to the Social Services Payment System (SSPS).

NEW SECTION

WAC 388-106-1040 What requirements must a private duty RN, or LPN under the supervision of an RN, meet in order to provide and get paid for my PDN services? In order to be paid by the department, a private RN under the supervision of a physician/ARNP, or an LPN under the supervision of an RN, must:

(1) Have a license in good standing, per RCW 18.79.030 (1)(3);

(2) Complete a PDN contract with ADSA;

(3) Provide services according to the plan of care under the supervision/direction of a physician;

(4) Complete a background inquiry application. This will require fingerprinting if the RN or LPN has lived in the state of Washington less than three years;

(5) Have no conviction for a disqualifying crime, as stated in RCW 43.43.830 and 43.43.842 and WAC 388-71-0500 through WAC 388-71-05640 series;

(6) Have no stipulated finding of fact and conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry with a finding of abuse, neglect, abandonment or exploitation of a minor or vulnerable adult;

(7) Meet provider requirements under WAC 388-71-0510, WAC 388-71-0515, WAC 388-71-0540, WAC 388-71-0551, and WAC 388-71-0556;

(8) Complete time sheets monthly;

(9) Complete documentation regarding all PDN services provided per the plan of care as required in WAC 388-502-0020 and WAC 246-840-700;

(10) The PDN skilled Nursing Task Log or its approved equivalent must be initiated and completed by the licensed nurse for fourteen days and submitted to the CNC or NCC for review for initial eligibility determination and fourteen days prior to the six-month reassessment determination. The licensed nurse is responsible to submit these logs to the NCC or CNC when they are completed; and

(11) Submit timely and accurate invoices to SSPS.

NEW SECTION

WAC 388-106-1045 Can I receive PDN services in a licensed adult family home (AFH)? You may be eligible to receive PDN services if you are residing in an Adult Family Home (AFH) if the AFH provider (owner and operator) meets the following requirements:

(1) Possesses current Washington State Registered Nurse license in good standing;

(2) Signs a contract amendment with ADSA in which the provider agrees to ensure provision of twenty-four-hour personal care and nursing care services. Nursing care service will be provided in accordance with chapter 18.79 RCW;

(3) Provides your PDN service through an RN, or LPN under the supervision of an RN. PDN services are based on the CARE assessment, the department designated PDN skilled task log or its approved equivalent, and other documentation which determines eligibility and the number of PDN hours to be authorized;

(4) Provides the PDN services to you. Your service plan may be authorized for four to eight hours per day and cannot exceed a maximum of eight PDN care hours per day based on the CARE assessment, the department designated PDN skilled task log or its approved equivalent, and other documentation;

(5) Have a nursing service plan prescribed by your primary physician or ARNP. The physician/ARNP is responsible for:

(a) Overseeing your plan of care, which must be updated at least every six months;

(b) Monitoring client's medical stability; and

(6) Document the services provided per the plan of care and the department designated PDN Skilled Task Log or its approved equivalent at initial eligibility determination and fourteen days prior to the six-month re-assessment determination and other documentation; and

(7) Keep records in accordance with AFH licensing and contract requirements.

NEW SECTION

WAC 388-106-1050 May I receive other long-term care services in addition to PDN? (1) In addition to PDN services, you may be eligible to receive care through Community Options Program Entry System (COPEs), Medically Needy Residential Waiver (MNRW), Medically-Needy In-home Waiver (MNIW), or Medicaid Personal Care (MPC), for unmet personal needs not performed by your family/informal support system.

(2) If you receive personal care services in addition to PDN services, you cannot receive your personal care and household tasks from an individual provider, personal aide, or home care agency provider at the same time that your PDN provider is providing your care. The agency or privately contracted nurse is responsible for providing personal care and/or household tasks that occur during the time that they are providing your PDN services, unless you have an informal support that is providing or assisting you at the same time.

NEW SECTION

WAC 388-106-1055 Can I choose to self-direct my care if I receive PDN services? You may choose to self-direct part of your health-related tasks to an individual provider, as outlined in RCW 74.39.050. You may also still receive PDN services, if you meet the PDN eligibility requirements.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-71-0900 What is the intent of WAC 388-71-0900 through 388-71-0960?
- WAC 388-71-0905 What is private duty nursing (PDN) for adults?
- WAC 388-71-0910 Am I financially eligible for Medicaid-funded private duty nursing services?
- WAC 388-71-0915 Am I medically eligible to receive private duty nursing services?
- WAC 388-71-0920 How is my eligibility determined?
- WAC 388-71-0925 Am I required to pay participation toward PDN services?
- WAC 388-71-0930 Are PDN costs subject to estate recovery?
- WAC 388-71-0935 Who can provide my PDN services?
- WAC 388-71-0940 Are there limitations or other requirements for PDN?
- WAC 388-71-0945 What requirements must a home health agency meet in order to provide and get paid for my PDN?
- WAC 388-71-0950 What requirements must a private RN or LPN meet in order to provide and get paid for my PDN services?
- WAC 388-71-0955 Can I receive PDN in a licensed adult family home (AFH)?
- WAC 388-71-0960 Can I receive services in addition to PDN?
- WAC 388-71-0965 Can I choose to self-direct my care if I receive PDN?

**WSR 05-24-103
PERMANENT RULES
HIGHER EDUCATION
COORDINATING BOARD**

[Filed December 7, 2005, 9:14 a.m., effective January 7, 2006]

Effective Date of Rule: Thirty-one days after filing.
Purpose: Title 14 WAC, Committee on Advanced Tuition Payment, was established to provide operating procedures for the Committee on Advanced Tuition Payment con-

sistent with chapter 42.32 RCW, Open public meetings; chapter 42.17 RCW, Public records; chapter 35.05 [34.05] RCW, Administrative Procedure Act; and chapter 43.120 RCW, State Environmental Policy [Act]. The proposed changes amend the program office location, the committee structure and members, and references to chapter 42.17 RCW, Public Records Act, which was recodified during 2005.

Citation of Existing Rules Affected by this Order: Amending WAC 14-276-010 to 14-276-030, 14-276-050 to 14-276-080, 14-276-100 to 14-276-120, 14-104-010, 14-104-030, 14-108-040, 14-122-010, and 14-133-020.

Statutory Authority for Adoption: RCW 28B.95.030 (9)(e).

Adopted under notice filed as WSR 05-20-001 on September 21, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 8, Repealed 0.

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

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

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

Date Adopted: December 7, 2005.

Heidi J. Jones
Process Analyst
and Rules Manager

AMENDATORY SECTION (Amending WSR 98-23-009, filed 11/5/98, effective 12/6/98)

WAC 14-104-010 Time and place of committee meetings. The committee shall hold regular (~~semiannual~~) meetings at such time as it may fix. The annual meeting schedule shall be published in the *Washington State Register*. Special meetings may be requested by the chair of the committee or by a majority of the members of the committee and announced in accordance with law.

All regular and special meetings of the committee shall be held at the (~~Capitol Campus~~) state investment board, Olympia, Washington, unless scheduled elsewhere, and are open to the general public, except for lawful executive sessions.

No official business may be conducted by the committee except during a regular or special meeting.

AMENDATORY SECTION (Amending WSR 98-23-009, filed 11/5/98, effective 12/6/98)

WAC 14-104-030 Delegation to director. The committee delegates to the director its authority and responsibility to

administer the advanced college tuition payment program, also known as the guaranteed education tuition (GET) program in accordance with laws, policies, and rules approved by the committee to the fullest extent permitted by law. At the operational level, the director has final administrative authority over all matters affecting the program. Employees of the program shall be employees of the higher education coordinating board and the board shall carry out administrative responsibilities otherwise not assigned to the committee ~~((until such time as the final structure and location of the program is decided by the legislature)).~~

AMENDATORY SECTION (Amending WSR 98-23-009, filed 11/5/98, effective 12/6/98)

WAC 14-108-040 Application for adjudicative proceeding. An application for adjudicative proceeding shall be in writing. Application forms are available at the following address: ~~((1603 Cooper Point Road))~~ 919 Lakeridge Way S.W., Olympia, Washington ((98504-3450)) 98502.

Written application for an adjudicative proceeding should be submitted to the above address within twenty calendar days of the agency action giving rise to the application, unless provided for otherwise by statute or rule.

AMENDATORY SECTION (Amending WSR 98-23-009, filed 11/5/98, effective 12/6/98)

WAC 14-122-010 Policy. If any purchaser of an account as defined in RCW 28B.95.020(8), or any other person, is indebted to the program for an outstanding overdue debt, the committee need not provide any further services of any kind to such individual, including, but not limited to, transmitting files, records, vouchers, or other services which have been requested by such person.

AMENDATORY SECTION (Amending WSR 98-23-009, filed 11/5/98, effective 12/6/98)

WAC 14-133-020 Organization—Operation—Information. (1) Organization. The advanced college tuition payment program is established in Title 28B.95 RCW. The program is governed by the committee on advanced tuition payment, also known as the guaranteed education tuition (GET) committee, composed of the executive director of the higher education coordinating board, the director of the office of financial management, ~~((and))~~ the state treasurer, or their designees, and two citizen members. The committee employs a director, who administers the program.

(2) Operation. The administrative office is located at the following address:

~~((1603 Cooper Point Road NE))~~ 919 Lakeridge Way S.W.
Olympia, Washington ~~((98504-3450))~~ 98502

The office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.

(3) Information. Information concerning the advanced college tuition payment program and contracts for the purchase of tuition units may be obtained at the following address:

~~((1603 Cooper Point Road))~~ 919 Lakeridge Way S.W.
Olympia, Washington 98502

(4) The staff of the higher education coordinating board shall support the committee.

AMENDATORY SECTION (Amending WSR 98-23-009, filed 11/5/98, effective 12/6/98)

WAC 14-276-010 Purpose. The purpose of this chapter is to ensure that the advanced college tuition payment program complies with the provisions of chapter ~~((42-17))~~ 42.56 RCW and in particular with those sections of that chapter dealing with public records.

AMENDATORY SECTION (Amending WSR 98-23-009, filed 11/5/98, effective 12/6/98)

WAC 14-276-020 Definitions. (1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

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

(3) The "committee on advanced college tuition payment" is an agency organized by statute pursuant to chapter 28B.95 RCW. The committee on advanced college tuition payment, also known as the guaranteed education tuition (GET) committee, shall hereafter be referred to as the "committee." Where appropriate, the term "committee" also refers to the staff and employees of the committee.

AMENDATORY SECTION (Amending WSR 98-23-009, filed 11/5/98, effective 12/6/98)

WAC 14-276-030 Description of central and field organization of the committee on advanced college tuition payment. (1) The committee on advanced college tuition payment is a state agency established and organized under the authority of chapter 28B.95 RCW for the purpose of implementing the advanced college tuition payment program ("program") established by the legislature. The administrative office of the program is located at ~~((1603 Cooper Point Road))~~ 919 Lakeridge Way S.W., Olympia, Washington 98502.

(2) The program is operated under the supervision and control of the committee. The committee consists of the executive director of the higher education coordinating board, the director of the office of financial management, ~~((and))~~ the state treasurer, or their designees and two citizen members. The committee ~~((normally))~~ meets ~~((semiannually))~~, as provided in WAC 14-104-010. The committee employs a director and an administrative staff. The committee takes such actions and promulgates such rules and poli-

cies as are necessary to the administration and operation of the program.

(3) The director is responsible to the committee for the operation and administration of the program.

(4) The staff of the higher education coordinating board shall support the committee and the board shall carry out administrative responsibilities otherwise not assigned to the committee.

AMENDATORY SECTION (Amending WSR 98-23-009, filed 11/5/98, effective 12/6/98)

WAC 14-276-050 Public records available. All public records of the program, as defined in this chapter, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW ((~~42.17-310~~) 42.56.210 or other statutes.

AMENDATORY SECTION (Amending WSR 98-23-009, filed 11/5/98, effective 12/6/98)

WAC 14-276-060 Public records officer. The committee's public records shall be in the charge of the public records officer designated by the committee. The person so designated shall be located in the administrative office. The public records officer shall be responsible for the following: Implementation of the committee's rules regarding release of public records, coordinating employees in this regard, and generally ensuring compliance by committee employees with the public records disclosure requirements in chapter ((~~42.17~~) 42.56 RCW.

AMENDATORY SECTION (Amending WSR 98-23-009, filed 11/5/98, effective 12/6/98)

WAC 14-276-070 Office hours. Public records shall be available for inspection and copying during the customary office hours of the committee. For purposes of this chapter, the customary office hours shall be from 8:00 a.m. to noon, and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays ((~~and holidays~~)).

AMENDATORY SECTION (Amending WSR 98-23-009, filed 11/5/98, effective 12/6/98)

WAC 14-276-080 Requests for public records. In accordance with the requirements of RCW ((~~42.17.290~~) 42.56.100) that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records are only obtainable by members of the public when those members of the public comply with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the committee which shall be available at the committee's administrative office. The form shall be presented to the public records officer or, if the public records officer is not available, to any member of the committee's staff at the committee administrative office during customary office hours. The request shall include the following information:

(a) The name of the person requesting the record;

(b) The time of day and calendar date on which the request was made;

(c) The nature of the request;

(d) If the matter requested is referenced within the current index maintained by the public records officer, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to the current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer, or person to whom the request is made, to assist the member of the public in succinctly identifying the public record requested.

AMENDATORY SECTION (Amending WSR 98-23-009, filed 11/5/98, effective 12/6/98)

WAC 14-276-100 Determination regarding exempt records. (1) The committee reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 14-276-080 is exempt pursuant to the provisions set forth in RCW ((~~42.17.310~~) 42.56.210 or other statute. Such determination may be made in consultation with the public records officer, or an assistant attorney general assigned to the committee.

(2) Pursuant to RCW ((~~42.17.260~~) 42.56.070), the committee reserves the right to delete identifying details when it makes available or publishes any public record when there is reason to believe that disclosure of such details would be an unreasonable invasion of personal privacy or impair a vital governmental interest: Provided, however, That in each case, the justification for the deletion shall be explained fully in writing.

(3) Response to requests for a public record must be made promptly. For the purposes of this section, a prompt response occurs if the person requesting the public record is notified within two business days as to whether his request for a public record will be honored.

(4) All denials of request for public records must be accompanied by a written statement, signed by the public records officer or designee, specifying the reason for the denial, a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the public record withheld.

AMENDATORY SECTION (Amending WSR 98-23-009, filed 11/5/98, effective 12/6/98)

WAC 14-276-110 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement which constituted or accompanied the denial.

(2) The written request by a person demanding prompt review of a decision denying a public record shall be submitted to the chair of the committee or designee.

(3) Within five business days after receiving the written request by a person petitioning for a prompt review of a deci-

sion denying a public record, the chair of the committee or designee, shall complete such review.

(4) During the course of the review the chair or designee shall consider the obligations of the committee to comply with the intent of chapter ((42.17)) 42.56 RCW insofar as it requires providing full public access to official records, but shall also consider the exemptions provided in RCW ((42.17.310)) 42.56.210 or other pertinent statutes, and the provisions of the statute which require the committee to protect public records from damage or disorganization, prevent excessive interference with essential functions of the agency, and prevent any unreasonable invasion of personal privacy by deleting identifying details.

AMENDATORY SECTION (Amending WSR 98-23-009, filed 11/5/98, effective 12/6/98)

WAC 14-276-120 Protection of public records.

Requests for public records shall be made at the administrative office of the committee at ((1603 Cooper Point Road)) 919 Lakeridge Way S.W., Olympia, Washington 98502. Public records and a facility for their inspection will be provided by the public records officer. Such records shall not be removed from the place designated. Copies of such records may be arranged according to the provisions of WAC 14-276-090.

WSR 05-24-104

PERMANENT RULES

DEPARTMENT OF HEALTH

(Occupational Therapy Practice Board)

[Filed December 7, 2005, 9:17 a.m., effective January 7, 2006]

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

Purpose: This rule will provide specific guidance related to the professional responsibility of an occupational therapist and occupational therapy assistant to establish, review, and revise client treatment objectives to meet the client's needs. Further clarity will ensure quality care to the public by providing the occupational therapy practitioner with specific guidance while ongoing treatment occurs.

Citation of Existing Rules Affected by this Order: Amending WAC 246-847-170 Code of ethics and standards of professional conduct.

Statutory Authority for Adoption: RCW 18.59.130 and 18.130.050.

Adopted under notice filed as WSR 05-17-051 on August 9, 2005.

A final cost-benefit analysis is available by contacting Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4847, fax (360) 664-9077, e-mail kris.waidely@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 21, 2005.

Mark Lehner, OT, Chair
Occupational Therapy
Practice Board

AMENDATORY SECTION (Amending Order 112B, filed 2/12/91, effective 3/15/91)

WAC 246-847-170 Code of ethics and standards of professional conduct.

(1) It is the professional responsibility of occupational therapists and occupational therapy assistants to provide services for clients without regard to race, creed, national origin, gender, handicap or religious affiliation.

(2) Treatment objectives and the therapeutic process must be formulated to ensure professional accountability.

(3) Services shall be goal-directed in accordance with the overall educational, habilitation or rehabilitation plan and shall include a system to ensure professional accountability.

(4) Occupational therapists and occupational therapy assistants shall recommend termination of services when established goals have been met or when further services would not produce improved client performance.

(5) Occupational therapists and occupational therapy assistants shall accurately represent their competence, education, training and experience.

(6) Occupational therapists and occupational therapy assistants shall only provide services and use techniques for which they are qualified by education, training, and experience.

(7) Occupational therapists and occupational therapy assistants shall accurately record information and report information as required by facility standards and state and federal laws.

(8) All data recorded in permanent files or records shall be supported by the occupational therapist or the occupational therapy assistant's observations or by objective measures of data collection.

(9) Client's records shall only be divulged as authorized by law or with the client's consent for release of information.

(10) Occupational therapists and occupational therapy assistants shall not delegate to other personnel those client-related services where the clinical skills and expertise of an occupational therapist or occupational therapy assistant are required.

(11) If, after evaluating the client, the case is a medical case, the occupational therapist shall refer the case to a physician for appropriate medical direction if such direction is lacking.

(a) Appropriate medical direction shall be sought on at least an annual basis.

(b) A case is not a medical case if the following is present:

- (i) There is an absence of pathology; or
- (ii) If a pathology exists, the pathology has stabilized; and
- (iii) The occupational therapist is only treating the client's functional deficits.

(12) Occupational therapists shall establish, review, or revise the client's treatment objectives at sufficient intervals to meet the client's needs. The occupational therapy assistant shall collaborate with the occupational therapist in this review of the client's treatment objectives.

WSR 05-24-105

PERMANENT RULES

DEPARTMENT OF HEALTH

(Occupational Therapy Practice Board)

[Filed December 7, 2005, 9:19 a.m., effective January 7, 2006]

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

Purpose: This rule provides more clarity regarding acceptable continuing competency requirements. The rule is intended to provide greater flexibility for occupational therapy practitioners to complete their continuing competency requirements. The rule also includes occupational therapy assistants to ensure that all occupational therapy practitioners are receiving ongoing continuing competency to provide safe, skilled, and competent care to the public.

Citation of Existing Rules Affected by this Order: Amending WAC 246-847-065 Continuing competency.

Statutory Authority for Adoption: RCW 18.59.130 and 18.59.090.

Adopted under notice filed as WSR 05-17-045 on August 9, 2005.

A final cost-benefit analysis is available by contacting Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4847, fax (360) 664-9077, e-mail kris.waidely@doh.wa.gov.

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

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Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 21, 2005.

Mark Lehner, OT, Chair
Occupational Therapy
Practice Board

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-847-065 Continued competency.

~~(Licensed occupational therapists must complete thirty hours of continuing education every two years as required in chapter 246-12 WAC, Part 7.)~~ As required in chapter 246-12 WAC, Part 7, licensed occupational therapists and licensed occupational therapy assistants must complete thirty hours of continuing education every two years. A minimum of twenty hours must be directly related to the practice of occupational therapy as defined in RCW 18.59.020 and WAC 246-847-010. The remaining ten hours may be in professional development activities that enhance the licensed occupational therapist or licensed occupational therapy assistant. The thirty contact hours must be obtained through two or more of the activities listed below. Documentation for all activities must include licensee's name, date of activity, and number of hours. Additional specific documentation is defined below:

(1) Continuing education course work. The required documentation for this activity is a certificate or documentation of attendance.

(2) In-service training. The required documentation for this activity is a certificate or documentation of attendance.

(3) Professional conference or workshop. The required documentation for this activity is a certificate or documentation of attendance.

(4) Course work offered by an accredited college or university, provided that the course work is taken after the licensee has obtained a degree in occupational therapy, and the course work provides skills and knowledge beyond entry-level skills or knowledge. The required documentation for this activity is a transcript.

(5) Publications. The required documentation for this activity is a copy of the publication.

(6) Presentations. The required documentation for this activity is a copy of the presentation or program listing. Any particular presentation may be reported only once per reporting period.

(7) Interactive online courses. The required documentation for this activity is a certificate or documentation of completion.

(8) Development of instructional materials incorporating alternative media such as: Video, audio and/or software programs to advance professional skills of others. The required documentation for this activity is a program description. The media/software materials must be available if requested during audit process.

(9) Professional manuscript review. The required documentation for this activity is a letter from publishing organization verifying review of manuscript. A maximum of ten hours is allowed per reporting period for this category.

(10) Guest lecturer for occupational therapy related academic course work (academia not primary role). The required documentation for this activity is a letter or other documentation from instructor.

(11) Serving on a professional board, committee, disciplinary panel, or association. The required documentation for this activity is a letter or other documentation from the organization. A maximum of ten hours is allowed per reporting period for this category.

(12) Self study of cassette, tape, video tape, or other multimedia device, or book. The required documentation for this activity is a two page synopsis of each item written by the licensee. A maximum of ten hours is allowed per reporting period for this category.

(13) Level II fieldwork direct supervision of an occupational therapy student or occupational therapy assistant student by site designated supervisor(s). The required documentation for this activity is a name of student(s), letter of verification from school, and dates of fieldwork. A maximum of ten hours per supervisor is allowed per reporting period for this category.

WSR 05-24-106

PERMANENT RULES

DEPARTMENT OF HEALTH

(Occupational Therapy Practice Board)

[Filed December 7, 2005, 9:20 a.m., effective January 7, 2006]

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

Purpose: The rule addresses issues of unprofessional sexual misconduct with current and former occupational therapy clients. The rule defines inappropriate and unprofessional sexual misconduct in the occupational therapy practitioner-client relationship. The Uniform Disciplinary Act does not provide adequate guidance on sexual misconduct. Setting clear guidelines will outline behaviors that are not acceptable and may be grounds for sanctions against licensure.

Citation of Existing Rules Affected by this Order: Amending WAC 246-847-210 Unprofessional conduct—Sexual misconduct.

Statutory Authority for Adoption: RCW 18.59.130 and 18.130.180.

Adopted under notice filed as WSR 05-17-049 on August 9, 2005.

A final cost-benefit analysis is available by contacting Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4847, fax (360) 664-9077, e-mail kris.waidely@doh.wa.gov.

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

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Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 21, 2005.

Mark Lehner, OT, Chair
Occupational Therapy
Practice Board

NEW SECTION

WAC 246-847-210 Unprofessional conduct—Sexual misconduct. (1) The occupational therapist and occupational therapy assistant shall never engage in sexual contact or sexual activity with current clients.

(2) Sexual contact or sexual activity is prohibited with a former client for two years after cessation or termination of professional services.

(3) The occupational therapist and occupational therapy assistant shall never engage in sexual contact or sexual activity with former clients if such contact or activity involves the abuse of the occupational therapy practitioner-client relationship. Factors which the board may consider in evaluating if the occupational therapy practitioner-client relationship has been abusive includes, but is not limited to:

- (a) The amount of time that has passed since therapy terminated;
- (b) The nature and duration of the therapy;
- (c) The circumstances of cessation or termination;
- (d) The former client's personal history;
- (e) The former client's current mental status;
- (f) The likelihood of adverse impact on the former client and others; and

(g) Any statements or actions made by the occupational therapist or occupational therapy assistant during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the former client.

(4) These rules do not prohibit:

(a) The provision of occupational therapy services on an urgent, unforeseen basis where circumstances will not allow an occupational therapist or occupational therapy assistant to obtain reassignment or make an appropriate referral;

(b) The provision of occupational therapy services to a spouse or any other person who is in a preexisting, established relationship with the occupational therapist or occupational therapy assistant where no evidence of abuse of the occupational therapy practitioner-client relationship exists.

WSR 05-24-107

PERMANENT RULES

DEPARTMENT OF HEALTH

(Occupational Therapy Practice Board)

[Filed December 7, 2005, 9:21 a.m., effective January 7, 2006]

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

Purpose: RCW 70.24.270 requires each profession to have rules that describe education and training on the prevention, transmission and treatment of AIDS. WAC 246-12-260 requires all practitioners must complete four or seven clock hours of AIDS education prior to obtaining a license. WAC 246-847-190 requires six hours. To bring consistency with

WAC 246-847-190 and 246-12-260, the rule amendment requires seven clock hours of AIDS education and training.

Citation of Existing Rules Affected by this Order: Amending WAC 246-847-190 AIDS education and training.

Statutory Authority for Adoption: RCW 18.59.130 and 70.24.270.

Adopted under notice filed as WSR 05-17-050 on August 9, 2005.

A final cost-benefit analysis is available by contacting Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4847, fax (360) 664-9077, e-mail kris.waidely@doh.wa.gov.

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

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Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 21, 2005.

Mark Lehner, OT, Chair
Occupational Therapy
Practice Board

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-847-190 AIDS education and training. Applicants must complete (~~six~~) seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

WSR 05-24-108

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 7, 2005, 9:22 a.m., effective January 7, 2006]

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

Purpose: This proposal increases fees for radiation machine facilities that are governed under WAC 246-254-053.

Citation of Existing Rules Affected by this Order: Amending WAC 246-254-053.

Statutory Authority for Adoption: RCW 70.98.080, 43.20B.020, 43.70.110, and 43.70.250.

Adopted under notice filed as WSR 05-21-125 on October 19, 2005.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-254-053 (2)(b) the shielding design [design] follow-up fee was revised from \$1,000 to \$500.

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 1, Repealed 0.

Date Adopted: December 6, 2005.

M. C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 04-12-125, filed 6/2/04, effective 7/3/04)

WAC 246-254-053 Radiation machine facility registration fees. (1) Radiation machine facility fees apply to each person or facility owning, leasing and using radiation-producing machines.

FEE TYPE	FEE
(a) Annual Base Registration Fee	\$(50) <u>68</u>
(b) Late registration or re-registration	\$(50) <u>68</u>
(c) Tube Fees	See Table 1

Group	First Tube	Each Additional Tube
(i) Group A: Dental, Podiatric, Veterinary, <u>Bone Densitometers</u> uses	\$(51) <u>69</u>	\$(26) <u>35</u>
(ii) Group B: Hospital, Medical, Chiropractic uses	\$(44) <u>190</u>	\$(74) <u>100</u>
(iii) Group C: Industrial, research, and other uses	\$(79) <u>107</u>	\$(26) <u>35</u>
(iv) Group D: Electron Microscopes, Mammographic X-ray Machines	NA	NA

(2) X-ray shielding fees.

(a) Facilities regulated under the shielding plan requirements of WAC 246-225-030 or 246-227-150 are subject to a ~~\$(94)~~ 255 X-ray shielding review fee for each X-ray room

plan submitted. A registrant may request an expedited plan review for an additional \$500 for each X-ray room plan. Expedited plan means the department will complete the plan review within two business days of receiving all required information from the registrant.

(b) If a facility regulated under WAC 246-225-030 or 246-227-150 operates without submittal and departmental approval of X-ray shielding calculations and a floor plan it will be subject to a shielding design follow-up fee of ~~\$(500)~~ 500.

(3) **Radiation safety fee.** If a facility or group of facilities under one administrative control employs two or more full-time individuals whose positions are entirely devoted to in-house radiation safety, the facility shall pay a flat, annual fee of ~~\$(3,290)~~ 4,441.

(4) **Consolidation of registration.** Facilities may consolidate X-ray machine registrations into a single registration after notifying the department in writing and documenting that a single business license applies if the geographical location (parcel number) is the same.

(5) **Inspection fees.**

(a) The cost of routine, periodic inspections, including the initial inspection, are covered under the base fee and tube registration fees as described in subsection (1) of this section.

(b) Facilities requiring follow-up inspections due to uncorrected noncompliances must pay an inspection follow-up fee of \$90.

(6) A facility's annual registration fee is valid for a specific geographical location and person only. It is not transferable to another geographical location or owner or user.

WSR 05-24-109

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 7, 2005, 9:23 a.m., effective January 7, 2006]

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

Purpose: This proposal increases fees for radioactive materials licenses issued by the department's Office of Radiation Protection. This will ensure that the radioactive materials program will have enough fee revenue to maintain licensing, inspection and investigation activities for over four hundred seventy licensees. Fees are adjusted to cover necessary increased program costs.

Citation of Existing Rules Affected by this Order: Amending WAC 246-254-070, 246-254-080, 246-254-090, 246-254-100, and 246-254-120.

Statutory Authority for Adoption: RCW 70.98.080, 43.20B.020, 43.70.110, and 43.70.250.

Adopted under notice filed as WSR 05-21-126 on October 19, 2005.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, 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 5, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 6, 2005.

M. C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 04-12-124, filed 6/2/04, effective 7/3/04)

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) ~~((Five thousand seven hundred thirty two dollars))~~ \$7,050 for operation of a single nuclear pharmacy.

(b) ~~((Nine thousand seven hundred seventy six dollars))~~ \$12,025 for operation of a single nuclear laundry.

(c) ~~((Nine thousand seven hundred seventy six dollars))~~ \$12,025 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.

(d) ~~((Three thousand four hundred twenty eight dollars))~~ \$4,215 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) ~~((Eight hundred eighty four dollars))~~ \$1,085 for a license authorizing the receipt and redistribution from a single facility of manufactured products or devices containing radioactive material.

(f) ~~((Six thousand five hundred fifty six dollars))~~ \$8,065 for a license authorizing decontamination services operating from a single facility.

(g) ~~((Three thousand one hundred dollars))~~ \$3,815 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 three hundred eighty dollars))~~ \$1,700 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 five hundred eighty dollars))~~ \$3,175 for a license authorizing health physics services, leak testing, or calibration services.

(j) ~~((One thousand six hundred twenty dollars))~~ \$1,995 for a civil defense license.

(k) (~~Four hundred eighty-eight dollars~~) \$600 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) (~~Nineteen thousand four hundred dollars~~) \$23,860 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) (~~Eight thousand nine hundred sixty-eight dollars~~) \$11,030 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) (~~Seven thousand two hundred eight dollars~~) \$8,865 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 (~~one hundred dollars~~) \$125 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 04-12-124, filed 6/2/04, effective 7/3/04)

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) (~~Four thousand eight hundred forty-four dollars~~) \$5,960 for operation of a mobile nuclear medicine program from a single base of operation.

(b) (~~Three thousand five hundred thirty-two dollars~~) \$4,345 for a license authorizing groups II and III of WAC 246-235-120 for diagnostic nuclear medicine at a single facility.

(c) (~~Three thousand sixty dollars~~) \$3,765 for a license authorizing groups IV and V of WAC 246-235-120 for medical therapy at a single facility.

(d) (~~Four thousand eight hundred seventy-six dollars~~) \$6,000 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 six hundred twenty dollars~~) \$3,225 for a license authorizing group VI of WAC 246-235-120 for brachytherapy at a single facility.

(f) (~~One thousand six hundred twenty dollars~~) \$1,995 for a license authorizing brachytherapy or gamma stereotactic therapy or teletherapy at a single facility.

(g) (~~Two thousand four hundred sixty-four dollars~~) \$3,030 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 nine hundred sixty dollars~~) \$2,410 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 four hundred thirty-six dollars~~) \$1,765 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 two hundred sixty-four dollars~~) \$1,555 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) (~~Seven hundred eighty-eight dollars~~) \$970 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 04-12-124, filed 6/2/04, effective 7/3/04)

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) (~~Five thousand seven hundred eight dollars~~) \$7,020 for a license authorizing the use of radiographic exposure devices in one or more permanent radiographic vaults in a single facility.

(b) (~~Seven thousand six hundred fifty-two dollars~~) \$9,410 for a license authorizing the use of radiographic exposure devices at temporary job sites but operating from a single storage facility.

(c) (~~Three thousand seven hundred forty eight dollars~~) \$4,610 for a license authorizing well-logging activities including the use of radioactive tracers operating from a single storage facility.

(d) (~~Eight hundred eight dollars~~) \$995 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) (~~Eight hundred eighty four dollars~~) \$1,085 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) (~~Five hundred fifty six dollars~~) \$685 for a license authorizing possession of gas chromatograph units containing radioactive material at a single facility.

(g) (~~One thousand five hundred forty dollars~~) \$1,895 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) (~~Eight thousand one hundred eighty dollars~~) \$10,060 for a license authorizing possession of sealed sources for a walk-in type irradiator at a single facility.

(i) (~~Seven thousand one hundred twenty dollars~~) \$8,760 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) (~~Two thousand two hundred eighty dollars~~) \$2,805 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) (~~Three hundred sixty dollars~~) \$445 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 (~~seventy four dollars~~) \$90 to the department.

(4) General licensees required to register in accordance with WAC 246-233-020 (3)(k) shall forward an annual fee of (~~two hundred fourteen dollars~~) \$265 to the department.

AMENDATORY SECTION (Amending WSR 04-12-124, filed 6/2/04, effective 7/3/04)

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 nine hundred dollars~~) \$4,800 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 nine hundred twenty eight dollars~~) \$2,370 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 six hundred twenty dollars~~) \$1,995 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) (~~Five hundred fifty six dollars~~) \$685 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) (~~Seven hundred forty eight dollars~~) \$920 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 (~~seventy four dollars~~) \$90 to the department.

AMENDATORY SECTION (Amending WSR 04-12-124, filed 6/2/04, effective 7/3/04)

WAC 246-254-120 Fees for licensing and compliance actions. (1) In addition to the fee for each radioactive material license as described under WAC 246-254-070, 246-254-080, 246-254-090, and 246-254-100, a licensee shall pay a service fee for each additional licensing and compliance action as follows:

(a) For a second follow-up inspection, and each follow-up inspection thereafter, a fee of (~~one hundred dollars~~) \$125 per hour of direct staff time associated with the follow-up inspection, not to exceed (~~one thousand dollars~~) \$1,250 per follow-up inspection. Hours are calculated in half-hour increments.

(b) For each environmental cleanup monitoring visit, a fee of (~~one hundred dollars~~) \$125 per hour of direct staff time associated with the environmental cleanup monitoring visit, not to exceed (~~two thousand five hundred dollars~~) \$3,125 per visit. Hours are calculated in half-hour increments.

(c) For each new license application, the fee of (~~one hundred sixty-five dollars~~) \$200 in addition to the required annual fee.

(d) For each sealed source and device evaluation, a fee of (~~one hundred dollars~~) \$125 per hour of direct staff time associated with each sealed source and device evaluation, not to exceed (~~three thousand dollars~~) \$3,750 per evaluation.

(e) For review of air emission and environmental programs and data collection and analysis of samples, and review of decommissioning activities by qualified staff in those work units, a fee of (~~one hundred dollars~~) \$125 per hour of direct staff time associated with the review. The fee does not apply to reviews conducted by the radioactive materials section staff and does not apply unless the review time would result in a special service charge exceeding ten percent of the licensee's annual fee.

(f) For expedited licensing review, a fee of (~~one hundred dollars~~) \$125 per hour of direct staff time associated with the review. This fee only applies when, by the mutual consent of licensee and affected staff, a licensing request is taken out of date order and processed by staff during nonwork hours and for which staff is paid overtime.

(2) The licensee or applicant shall pay any additional service fees at the time of application for a new license or within thirty days of the date of the billing for all other licensing and compliance actions.

(3) The department shall process an application only upon receipt of the new application fee and the annual fee.

(4) The department may take action to modify, suspend, or terminate the license or sealed source and device registration if the licensee fails to pay the fee for additional licensing and compliance actions billed by the department.

WSR 05-24-119

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 7, 2005, 9:33 a.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 84.34.310(6) requires the department to determine and publish the rate of inflation by January 1 of each year for use in that assessment year.

Purpose: To provide the rate of inflation used by county officials to calculate interest on deferred special benefit assessments when farm and agricultural or timber land is removed or withdrawn from classification under chapter 84.34 RCW, the open space program. Special benefit assessments for certain local improvements to farm and agricultural or timber land classified under chapter 84.34 RCW may be deferred by the landowner. If a landowner has chosen to defer these assessments, when the land is subsequently removed or withdrawn from classification, the deferred special benefit assessment becomes due and payable with interest. WAC 458-30-590 provides the rate of inflation used in calculating the interest rate that is added to the amount of deferred special benefit assessments.

Citation of Existing Rules Affected by this Order:
Amending WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation.

Statutory Authority for Adoption: RCW 84.34.360.

Other Authority: RCW 84.34.310.

Adopted under notice filed as WSR 05-20-056 on October 3, 2005.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 7, 2005.

Janis P. Bianchi, Manager
Interpretations and
Technical Advice Unit

AMENDATORY SECTION (Amending WSR 05-01-052, filed 12/7/04, effective 1/1/05)

WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation. (1) **Introduction.** This section sets forth the rates of inflation discussed in WAC 458-30-550. It also explains the department of revenue's obligation to annually publish a rate of inflation and the manner in which this rate is determined.

(2) **General duty of department—Basis for inflation rate.** Each year the department determines and publishes a rule establishing an annual rate of inflation. This rate of inflation is used in computing the interest that is assessed when farm and agricultural or timber land, which are exempt from special benefit assessments, is withdrawn or removed from current use classification.

(a) The rate of inflation is based upon the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce. This rate is used to calculate the rate of interest collected on exempt special benefit assessments.

(b) The rate is published by December 31st of each year and applies to all withdrawals or removals from farm and agricultural or timber land classification that occur the following year.

(3) **Assessment of rate of interest.** An owner of classified farm and agricultural or timber land is liable for interest on the exempt special benefit assessment. Interest accrues from the date the local improvement district is created until the land is withdrawn or removed from classification. Interest accrues and is assessed in accordance with WAC 458-30-550.

(a) Interest is assessed only for the time (years and months) the land remains classified under RCW 84.34.020 (2) or (3).

(b) If the classified land is exempt from the special benefit assessment for more than one year, the annual inflation rates are used to calculate an average rate of interest. This average is determined by adding the inflation rate for each year the classified land was exempt from the special benefit assessment after the local improvement district was created. The sum of the inflation rates is then divided by the number of years involved to determine the applicable rate of interest.

(c) Example. A local improvement district for a domestic water supply system was created in January 1990 and the owner used the statutory exemption provided in RCW 84.34.320. On July 1, 1997, the land was removed from the farm and agricultural classification. An average interest rate was calculated using the inflation rates for 1990 through 1997. The owner was then notified of the amount of previously exempt special benefit assessment, plus the average interest rate.

(4) **Rates of inflation.** The rates of inflation used to calculate the interest as required by WAC 458-30-550 are as follows:

YEAR	PERCENT	YEAR	PERCENT
1976	5.6	1977	6.5
1978	7.6	1979	11.3
1980	13.5	1981	10.3
1982	6.2	1983	3.2
1984	4.3	1985	3.5
1986	1.9	1987	3.7
1988	4.1	1989	4.8
1990	5.4	1991	4.2
1992	3.3	1993	2.7
1994	2.2	1995	2.3
1996	2.2	1997	2.1
1998	0.85	1999	1.42
2000	2.61	2001	1.89
2002	1.16	2003	1.84
2004	2.39	<u>2005</u>	<u>2.54</u>

WSR 05-24-121

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed December 7, 2005, 9:40 a.m., effective January 9, 2006]

Effective Date of Rule: January 9, 2006.

Purpose: The reason for the fee increase is to pay the fees established by Washington State Patrol and the Federal Bureau of Investigation for conducting background searches in order to comply with the Federal Anti-Terrorism and Prevention Act. The act requires that security guard licensees and applicants must submit a fingerprint card for a background check. The rule change will:

(1) Increase renewal fees for one year to pay for background searches.

(2) Increase the original application fee to pay for the additional required background search.

Citation of Existing Rules Affected by this Order: Amending WAC 308-18-150.

Statutory Authority for Adoption: Private security guards, chapter 18.170 RCW.

Other Authority: Federal Anti-Terrorism and Prevention Act 2004.

Adopted under notice filed as WSR 05-22-014 on October 24, 2005.

Changes Other than Editing from Proposed to Adopted Version: The difference between the CR-102 and CR-103 is that the armed license fees were inadvertently omitted from the fee list when the CR-102 was filed. These fees are not new fees and are not fees that have been changed. These fees have been put back on the list of fees in WAC 308-18-150.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 7, 2005.

Jana Jones, Deputy
Policy and Projects

AMENDATORY SECTION (Amending WSR 04-12-023, filed 5/26/04, effective 7/1/04)

WAC 308-18-150 Private security guard company, private security guard, and armed private security guard fees. Licenses issued to private security guard companies and private security guards expire one year from the date of issuance and must be renewed each year. The fees are as follows:

Title of Fee	Fee
Private security guard company/principal:	
Application/includes first examination	\$(250.00) <u>300.00</u>
Reexamination	25.00
License renewal	((250.00)) <u>300.00</u>
Late renewal with penalty	((350.00)) <u>400.00</u>
Change of principal/includes first examination	((65.00)) <u>100.00</u>

Title of Fee	Fee
Principal armed endorsement	((30.00))
	<u>10.00</u>
Private security guard:	
Original license	((53.00))
	<u>82.00</u>
Armed endorsement	((30.00))
	<u>10.00</u>
Transfer fee	20.00
<u>Unarmed license renewal with current</u>	((40.00))
<u>WSP*</u>	<u>70.00</u>
<u>Unarmed license renewal without</u>	<u>100.00</u>
<u>current WSP*</u>	
<u>Note: A current WSP means that a background check was completed by the security guard licensing unit within the last twelve months. You will be billed according to this status.</u>	
<u>Unarmed license late renewal with</u>	((45.00))
penalty	<u>120.00</u>
<u>Armed license renewal</u>	<u>40.00</u>
<u>Armed license late renewal with pen-</u>	<u>45.00</u>
<u>alty</u>	
Certified trainer endorsement exami-	25.00
nation/reexamination	
Certified trainer endorsement renewal	15.00
Duplicate license	10.00