WSR 06-17-039
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed August 8, 2006, 10:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-153.

Title of Rule and Other Identifying Information: Chapter 308-93 WAC, Vessel registration and certificates of title, specifically WAC 308-93-146 Vessel carbon monoxide warning sticker.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on September 27, 2006, at 1:30 p.m.

Date of Intended Adoption: October 24, 2006.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48200, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-0140, by September 26, 2006.

Assistance for Persons with Disabilities: Contact Dale R. Brown by September 26, 2006, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to establish where to obtain warning stickers, how to display them, and the criteria for a vessel manufacturer's warning label must have to meet the requirements described in SB 6364 passed by the 59th legislature, 2006 regular session.

Reasons Supporting Proposal: SB 6364.

Statutory Authority for Adoption: Chapter 88.02 RCW.

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

Name of Agency Personnel Responsible for Drafting: Dale Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Toni Wilson, 1125 Washington Street S.E., Olympia, WA, (360) 902-3811.

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

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

August 8, 2006
Julie Knittle, Administrator
Title and Registration Services

NEW SECTION

WAC 308-93-146 Vessel carbon monoxide warning decal. (1) **What is a carbon monoxide warning decal?** A carbon monoxide warning decal is displayed on a vessel to warn people of the dangers of carbon monoxide poisoning.

(2) **What vessels are required to have a carbon monoxide warning decal?** Any vessel with an engine that produces carbon monoxide by burning a carbon based fuel such as: Gas, propane, oil, diesel, or charcoal. A personal watercraft (Jet Ski type) is exempt from this rule.

(3) **How do I get a carbon monoxide warning decal?** You will receive the carbon monoxide warning decal from your vessel dealer, or vehicle/vessel licensing offices when you:

(a) Purchase a vessel from a dealer; or

(b) Renew your vessel registration; or

(c) Transfer a vessel into your name from a private sale; or

(d) Transfer a vessel from outside the state or country with a certificate of ownership or registration to a Washington certificate of ownership or registration; or

(e) Request one through your local vehicle/vessel licensing office; or

(f) Receive one that has been approved by the Coast Guard from a boating safety organization.

(4) **Where do I attach the carbon monoxide warning decal to my boat or vessel?** You must attach it on the interior of the vessel so it is clearly visible to a person and where they may be exposed to carbon monoxide.

(5) **Is there a charge for the carbon monoxide warning decal?** No.

(6) **Will I ever have to replace my vessel carbon monoxide warning decal?** Yes, when the decal becomes faded, damaged, or is no longer readable you can request a replacement at no cost.

(7) **Will a carbon monoxide warning label installed by the manufacturer or issued by another state meet the requirements of this rule?** The department will accept any decal approved by the United States Coast Guard for similar uses in other states when transferring certificate of ownership or registration from another state.

WSR 06-17-042
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed August 8, 2006, 3:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-13-071.

Title of Rule and Other Identifying Information: WAC 308-65-080 and 308-65-140.

Hearing Location(s): Dealer and Manufacturer Services, 2424 Bristol Court, 3rd Floor Conference Room, Olympia, WA 98502, on September 26, 2006, at 9:00 a.m.

Date of Intended Adoption: October 24, 2006.

Submit Written Comments to: Kim Johnson, Dealer Services, P.O. Box 9039, Olympia, WA 98507, e-mail kijohnson@dol.wa.gov, fax (360) 586-6703, by September 12, 2006.

Assistance for Persons with Disabilities: Contact Nicole Cope by September 12, 2006, TTY (360) 664-8885 or (360) 664-6455.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Hulk haulers reporting to the department of licensing (DOL) the vehicles they sell out of state would facilitate DOL in having a more accurate database of vehicles in state.

Reasons Supporting Proposal: The Washington State Patrol (WSP) is interested in this reporting and have been consulted. Also, the proposed amendment to WAC 308-65-140 was requested by the WSP.

Statutory Authority for Adoption: Chapter 46.79 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Cal Sanders, 2424 Bristol Court, Olympia, WA 98502, (360) 664-6459; Implementation: Chuck Coach, 2424 Bristol Court, Olympia, WA 98502, (360) 664-6453; and Enforcement: Daniel Devoe, 2424 Bristol Court, Olympia, WA 98502, (360) 664-6451.

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

A cost-benefit analysis is not required under RCW 34.05.328. There is no impact for DOL or small business.

Daniel Devoe
Administrator

AMENDATORY SECTION (Amending WSR 00-13-020, filed 6/12/00, effective 7/13/00)

WAC 308-65-080 Hulk hauler—Procedures for acquiring and selling vehicles. On what ownership documents may I buy and sell vehicles/hulks? (1) Supporting acquisition for transport, resale. The hulk hauler may acquire vehicles or hulks for transport and resale to a licensed motor vehicle wrecker or scrap processor upon obtaining ownership documents in the form of a certificate of ((~~title~~)) ownership properly endorsed, from a state issuing a title, or a certificate of registration and notarized bill of sale from a jurisdiction issuing only a registration certificate or other approved ownership documents as follows:

(a) Affidavit of lost or stolen title signed by the owner on record with the department, and release of interest from the owner.

(b) Affidavit of sale of a junk vehicle from the landowner who has complied with RCW 46.55.230.

(c) Affidavit of sale from a registered tow truck operator.

(d) A court order.

(e) Acquisition from wreckers licensed by the department may be supported by obtaining the wrecker's invoice or bill of sale listing each vehicle by the wrecker's "yard number." Such invoice or bill of sale ((~~shall~~)) must be given to the scrap processor or vehicle wrecker purchasing the vehicles listed ((~~therein~~)).

(f) Bills of sale pursuant to WAC 308-63-020 for vehicles from nontitle jurisdictions that have had their titles surrendered to a state after having been declared a total loss and for vehicles of the type to which titles are not issued.

(2) Must possess supporting documentation. Before a hulk hauler may transport any vehicle for resale, he/she ((~~shall~~)) must have in his/her possession ownership documents to support lawful acquisition or possession, as enumerated in subsection (1) of this section. Such documentation ((~~shall~~)) must be in his/her possession at all times while the vehicle is transported.

(3) Handling vehicles. A hulk hauler may not operate as a wrecker or remove parts from vehicles, provided that the hulk hauler may remove the parts necessary to sell vehicle salvage to a licensed scrap processor, ((~~e.g.~~)) example, the upholstery, gasoline tank, and tires, so long as such parts are removed on the premises of a licensed wrecker or scrap processor where prior permission is granted or at a location approved by the department.

(4) May sell to licensed wreckers and scrap processors. Vehicles in the possession of a licensed hulk hauler may only be sold to a licensed wrecker or scrap processor.

(5) When sold to a licensed wrecker or scrap processor in another state or country, the licensed hulk hauler must furnish a written report to the department by the tenth of the month following sale of the vehicle. The report must contain the following:

(a) A description of each vehicle acquired by make, model, year and vehicle identification number;

(b) The date acquired, name of the person, firm or corporation from which obtained;

(c) A description of the ownership document, including any title or registration number.

This report must be made in duplicate, retaining the duplicate for the hulk hauler's files for a period of three years. The report must be accompanied by properly endorsed certificates of title or registration or such other adequate evidence of ownership as may come into the hulk hauler's possession.

AMENDATORY SECTION (Amending WSR 00-13-020, filed 6/12/00, effective 7/13/00)

WAC 308-65-140 Scrap processor—Procedures for monthly reports. How must I file monthly reports to the department? (1) Must maintain books and files.

(a) The scrap processor shall maintain the following books and files of all vehicles, acquired other than from a wrecker or out-of-state salvage company, which shall contain the following:

(i) A description of each vehicle acquired by make, model, year and vehicle identification number;

(ii) The date acquired, name of the person, firm or corporation from which obtained, and the wrecker license numbers if such person is licensed as a wrecker by the department;

(iii) A ((~~description of the document evidencing ownership, and if a certificate of title or registration, the title or registration number~~)) copy of the document evidencing ownership, as required by WAC 308-65-080; and

(iv) The license plate number and name of state in which vehicle was last registered.

(b) For all vehicles acquired from a licensed wrecker, a copy of the wrecker's invoice or bill of sale shall suffice as the record of acquisition and demolition.

(c) For vehicles acquired from out-of-state salvage companies, an invoice listing the vehicles and the affidavit of compliance with the out-of-state jurisdiction.

(d) For vehicle parts, an invoice or bill of sale describing the part and identifying the seller by name and address. That record will be available for inspection.

(e) Such records shall be maintained for three years and shall be subject to periodic inspection by authorized representatives of the department and appropriate law enforcement officers.

(2) Must furnish written reports. By the tenth of the month following acquisition of vehicles or hulks for demolition, each scrap processor shall submit a report, on the form prescribed by the department, listing each vehicle, whether or not such vehicles have been demolished. This report shall be made in duplicate, retaining the duplicate for the scrap processor's files. The report shall give such information as the scrap processor is required to keep by subsection (1) of this section, provided that the scrap processor need not include copies of a wrecker's invoice or bill of sale in such report so long as he/she retains copies of the invoices and bills of sale for a period of three years. It shall be accompanied by properly endorsed certificates of title or registration or such other adequate evidence of ownership as may come into the scrap processor's possession when he/she acquires vehicles for salvage from other than wreckers licensed by the department.

WSR 06-17-043
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed August 8, 2006, 3:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-13-072.

Title of Rule and Other Identifying Information: WAC 308-90-120.

Hearing Location(s): Dealer and Manufacturer Services, 2424 Bristol Court, 3rd Floor Conference Room, Olympia, WA 98502, on September 26, 2006, at 11:00 a.m.

Date of Intended Adoption: October 24, 2006.

Submit Written Comments to: Kim Johnson, Dealer Services, P.O. Box 9039, Olympia, WA 98507, e-mail kijohnson@dol.wa.gov, fax (360) 586-6703, by September 12, 2006.

Assistance for Persons with Disabilities: Contact Nicole Cope by September 12, 2006, TTY (360) 664-8885 or (360) 664-6455.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule would provide that the required deposit trust account be maintained in an in-state bank. This aligns with comments by certain of our advising AGs, and in the interest of consumer protection.

Reasons Supporting Proposal: In the interest of providing further protection for the investments of the citizenry.

Statutory Authority for Adoption: Chapter 88.02 RCW.

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

Name of Proponent: Department of licensing (DOL), governmental.

Name of Agency Personnel Responsible for Drafting: Cal Sanders, 2424 Bristol Court, Olympia, WA 98502, (360) 664-6459; Implementation: Chuck Coach, 2424 Bristol Court, Olympia, WA 98502, (360) 664-6453; and Enforcement: Daniel Devoe, 2424 Bristol Court, Olympia, WA 98502, (360) 664-6451.

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

A cost-benefit analysis is not required under RCW 34.05.328. There is no impact for DOL or small business.

Daniel Devoe
Administrator

AMENDATORY SECTION (Amending Order DLR-162, filed 1/19/88)

WAC 308-90-120 Trust account. (1) The deposit trust account required by RCW 88.02.220 must be established and maintained within Washington state.

(2) The dealer's separate trust account cannot accrue interest.

((~~(2)~~)) (3) Any fees assessed by the depository against the trust account shall not be paid from purchasers trust funds.

WSR 06-17-044
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed August 8, 2006, 3:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-13-073.

Title of Rule and Other Identifying Information: WAC 308-66-110, 308-66-210, 308-66-120, and 308-66-177.

Hearing Location(s): Dealer and Manufacturer Services, 2424 Bristol Court, 3rd Floor Conference Room, Olympia, WA 98502, on September 26, 2006, at 10:00 a.m.

Date of Intended Adoption: October 24, 2006.

Submit Written Comments to: Kim Johnson, Dealer Services, P.O. Box 9039, Olympia, WA 98507, e-mail kijohnson@dol.wa.gov, fax (360) 586-6703, by September 12, 2006.

Assistance for Persons with Disabilities: Contact Nicole Cope by September 12, 2006, TTY (360) 664-8885 or (360) 664-6455.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendments to the first three sections are housekeeping in nature. They align the WAC with present practices. The amendment to WAC 308-66-177 is to further define the requirement in RCW 46.70.180(9) for a deposit trust account.

Reasons Supporting Proposal: Amendments to the first three sections are housekeeping and in cooperation with the department of licensing (DOL) MLS. The amendment to the trust account rule is based on comments by certain AG advisors.

Statutory Authority for Adoption: Chapter 46.70 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Cal Sanders, 2424 Bristol Court, Olympia, WA 98502, (360) 664-6459; Implementation: Chuck Coach, 2424 Bristol Court, Olympia, WA 98502, (360) 664-6453; and Enforcement: Daniel Devoe, 2424 Bristol Court, Olympia, WA 98502, (360) 664-6451.

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

A cost-benefit analysis is not required under RCW 34.05.328. There is no impact for DOL or small business.

Daniel Devoe
Administrator

AMENDATORY SECTION (Amending WSR 04-16-090, filed 8/3/04, effective 9/3/04)

WAC 308-66-110 Definitions. For the purpose of administering chapter 46.70 RCW, the following terms shall be construed in the following manner:

(1) "Offering" the sale of a vehicle shall include the distribution by any means of a list, with or without prices, of vehicles for sale.

(2) "Soliciting" the sale of a vehicle shall include an offer to effect the purchase or sale of a vehicle on behalf of another person.

(3) "Normal business hours" or "reasonable times" shall include, but not be limited to, the hours from 10:00 a.m. through 4:00 p.m. for five days each week. When a dealer closes the place of business during normal business hours, a sign must be posted on the main door of the business stating the time that the dealer will next be open for business and how the dealer may be contacted provided that this is not permission to routinely avoid maintaining normal business hours.

(4) An "employee" of a dealer is a person on the payroll who appears on the record of the dealer as an employee for whom social security, withholding tax, and all deductions required by law have been made.

(5) A "broker" shall mean any person acting independently, who for a commission, fee or any other form of compensation arranges or engages in the wholesale or retail purchase, sale or lease with option to purchase, of a vehicle.

(6) A "vehicle dealer identification card" is a card, prescribed by the department and issued by a licensed dealer, that is used to identify the principal of a dealership, including a corporate officer, a partner of a partnership, or sole proprietor, or a member of a limited liability company, or an "employee," for purposes of driving a vehicle bearing dealer license plates.

(7) A "demonstration permit" is a permit issued by a dealer to a prospective customer entitling the prospective customer to operate a particular vehicle for demonstration purposes.

(8) Current service agreement - The agreement between a vehicle manufacturer or vehicle distributor and a seller, stipulating that the seller will provide warranty adjustments for the owners of that manufacturer's or distributor's new vehicles which qualify for adjustments under the manufacturer's or distributor's warranty.

(9) New vehicle warranty - The warranty extended by a manufacturer or distributor to the first retail purchaser.

(10) "Closing" shall mean the process of completion of sale transaction.

(11) "Completion of sale" in the case of a consigned vehicle shall mean that the purchaser has possession of the vehicle, all liens against the vehicle are paid, the seller has the proceeds of sale, and title to the vehicle has been transferred to the retail purchaser.

(12) "Listing" shall mean a contract between a seller of a used mobile/manufactured home and a listing dealer for the dealer to locate a willing purchaser for that home.

(13) "Consignment" shall mean an arrangement whereby a vehicle dealer accepts delivery or entrustment of a vehicle and agrees to sell the vehicle on behalf of another.

(14) "Remanufactured" shall mean to remake or reprocess into a finished product by a large scale industrial process.

(15) "Guaranteed title" as it relates to a consigned vehicle shall mean a guarantee by the consignor to convey title to the consignee upon sale of the vehicle. The consignment agreement between the consignor and consignee shall comply with the provisions of WAC 308-66-155.

(16) "Used vehicle" in keeping with RCW 46.04.660, and for purposes of the requirement for a service agreement in RCW 46.70.101 (1)(a)(vii), a vehicle will be considered used if it meets the following requirements:

(a) It has been titled or registered to a bona fide retail purchaser/lessee for a period of 90 days or more; and

(b) The vehicle has been operated (driven) to the extent that its odometer registers 3,000 miles or more.

However, the requirements of (a) and (b) of this subsection will not apply if a bona fide retail purchaser/lessee sells, trades, or otherwise disposes of the vehicle prior to its having met those requirements. To document such an exemption, the subsequent wholesaling and retailing dealer must keep, as a dealer business record, a notarized affidavit from either the bona fide retail purchaser/lessee, or in the case of an imported vehicle, a notarized affidavit from the importer of the vehicle. That affidavit will be prescribed by the department and must confirm that the retail purchaser/lessee was a bona fide retail purchaser/lessee.

(17) A "bona fide retail purchaser/lessee" is one who purchases or leases a vehicle for the purpose of using it, rather than for the purposes of resale or lease.

(18) The "principal" of a business as used herein means a true party of interest, including:

(a) The proprietor of a sole proprietorship;

(b) A partner of a partnership or a limited liability partnership;

(c) An officer of a corporation; ((~~or~~))

(d) A member or manager of a limited liability company;

(e) A spouse, if he or she is a true party of interest;

(f) In addition, any owner of ten percent or more of the assets who is not already listed.

AMENDATORY SECTION (Amending WSR 04-16-090, filed 8/3/04, effective 9/3/04)

WAC 308-66-120 Dealer's license application. What information is needed to apply for a vehicle dealer license?

(1) Each application shall contain in addition to the information required by RCW 46.70.041:

(a) The names and residential addresses of all owners of ten percent or more of the assets of the business;

(b) The name and address of the principal place of business;

(c) The names and addresses of each and every subagency, if any;

(d) A current balance sheet of assets, liabilities and owner's equity which shall have been prepared within sixty days of its submission, including proof of the assets;

(e) A statement of whether or not the applicant ((~~or~~)), including any sole proprietor, partner, member, officer, or director of the firm, was the holder of a license issued pursuant to chapter 46.70 RCW which was revoked for cause and never reissued by the department, or suspended for cause and the terms of the suspension have not been fulfilled or assessed a monetary penalty that has not been paid;

(f) A list of all dealerships previously operated by each person named on the application and with which each person presently or was formerly connected or employed.

(2) An applicant must appear for a personal interview if requested by the department.

(3) The department may require a credit report for each person named on each application for a dealer's license.

(4) An applicant must provide as evidence of leasehold or ownership interest of business location either:

(a) A copy of the rental or lease agreement between the applicant and landowner showing the business location by commonly known address, or

(b) A copy of the county assessor's record showing ownership of the business location, the applicant's name and the commonly known address.

(5) An applicant must provide a bank reference for verifying financial condition consisting of:

(a) The name of the applicant's bank, a person to contact at that bank concerning the applicant's financial condition, or

(b) A letter of credit current within the last sixty days, or

(c) A flooring agreement, if with a financial institution, or

(d) A line of credit with a financial institution.

(6) The department may require an applicant to provide evidence that the business location conforms to all zoning and land use ordinances.

(7) A corporate applicant must provide the corporation number and corporation name issued by the secretary of state's office authorizing the company to do business within this state.

(8) The business name and address on the license application and all required supporting documents must be the same.

(9) The applicant must provide a certification of completion in the dealer education program:

(a) At least one principal of each company applying for an original vehicle dealer license must receive certification in the dealer education program required by RCW 46.70.041 (1)(l).

(b) The department encourages as many principals of each company as possible to obtain such certification.

(c) For annual dealer license renewals, either a company principal or a managing employee may complete the continuing education program. The continuing education certificate will indicate that the dealership has fulfilled the requirement.

(d) Certifications for either original or renewal applications will be valid for twelve months.

(10) Any service agreement required by RCW 46.70.041 must be on file with the department. An acquisition or loss of a service agreement must be reported to the department in writing within ten days.

NEW SECTION

WAC 308-66-177 Trust account. The deposit trust account required by RCW 46.70.180(9) must be established and maintained within Washington state.

AMENDATORY SECTION (Amending WSR 04-16-090, filed 8/3/04, effective 9/3/04)

WAC 308-66-210 Statement of change in business structure, ownership interest or control. When do I report such a change? (1) With the exception of a corporation any person licensed as a dealer under chapter 46.70 RCW must, within ten days following any change in its business structure, file a new application and pay original licensing fees under the new entity.

(2) In addition, any new principals including, but not limited to, new corporate officers, directors, managing partners, members or trustees, must, within ten days of assuming such function, file an application including fingerprint cards and legal and financial history.

(((~~2~~))) (3) Any person licensed as a vehicle manufacturer pursuant to chapter 46.70 RCW must inform the department in writing within ten days of the change to:

(a) The business structure of the licensee company and must file a new application and pay original licensing fees under the new entity;

(b) The mailing address of the licensee;

(c) The name and address of employees or agents designated pursuant to RCW 46.70.041 and 46.70.101 to provide service or repairs to vehicles located within the state of Washington. However, if the licensee requires warranty service to be performed by all of its dealers pursuant to current service agreements on file with the department, it need not advise the department of changes in such employees or agents.

(((~~3~~))) (4) Any and all changes affecting the applicability of a surety bond shall be reflected by appropriate endorsement to such bond.

WSR 06-17-052
PROPOSED RULES
SOUTHWEST CLEAN AIR AGENCY

[Filed August 9, 2006, 11:50 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: SWCAA 400-030 Definitions. This is an existing section that contains the definitions of words and phrases used throughout SWCAA 400. Most definitions are identical to associated federal definitions.

SWCAA 400-045 Permit Application for Nonroad Engines. This is an existing section identifying requirements for permit applications for nonroad engine projects.

SWCAA 400-046 Application Review Process for Nonroad Engines. This is an existing section identifying requirements for the processing and approval of permit applications for nonroad engine projects.

SWCAA 400-075 Emission Standards for Sources Emitting Hazardous Air Pollutants. This is an existing section that adopts the federal standards for sources emitting hazardous air pollutants contained in 40 C.F.R., Parts 61, 63 and 65 by reference (NESHAPS/MACT) as requirements for sources in SWCAA jurisdiction for local implementation and enforcement.

SWCAA 400-101 Emission Units Exempt from Registration Requirements. This is an existing section identifying those sources that are exempt from the registration and new source review requirements of SWCAA 400-100 and 400-110.

SWCAA 400-111 Requirements for New Sources in a Maintenance Plan Area. This is an existing section identifying the requirements for new or modified sources in a maintenance plan area. Because of the maintenance plan status of an area, emission standards to maintain air quality in a maintenance plan area are more demanding than those in less populated or industrialized areas.

SWCAA 400-113 Requirements for New Sources in Attainment or Nonclassifiable Areas. This is an existing section identifying the new source review requirements for new or modified sources in attainment areas.

SWCAA 400-115 Standards of Performance for New Sources. This is an existing section that adopts by reference the new source performance standards (NSPS) contained in 40 C.F.R., Part 60 for identified sources categories.

SWCAA 400-141 Prevention of Significant Deterioration (PSD). This is an existing section describing the requirements for those sources that would be subject to the federal PSD permitting requirements and provides reference to the appropriate federal regulations.

SWCAA 400-171 Public Involvement. This is an existing section identifying the requirements for public notice of agency actions, and the process by which public involvement is to be administered. This section also identifies those documents that are subject to a formal public notice and those that are not subject to a formal public notice.

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques. This is an existing section identifying presumptive requirements for new exhaust stack installations, and describes the procedure by which the maximum allowable stack height is to be determined. This section also prohibits selected exhaust gas dispersion practices.

Hearing Location(s): Office of SWCAA, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, on November 2, 2006, at 3:00 p.m.

Date of Intended Adoption: November 2, 2006.

Submit Written Comments to: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682-2454, e-mail wess@swcleanair.org, fax (360) 576-0925, by October 24, 2005.

Assistance for Persons with Disabilities: Contact Mary Allen by October 25, 2006, TTY (360) 574-3058.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SWCAA 400-030 Definitions. The proposed revision expands the definition of "new source" to specifically include the installation or construction of an "emission unit." This change is intended to clarify and codify existing agency policy.

SWCAA 400-045 Permit Application for Nonroad Engines. The proposed revision corrects an inaccurate cross sectional rule reference.

SWCAA 400-046 Application Review Process for Nonroad Engines. The proposed revision corrects an inaccurate cross sectional rule reference.

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 61, 63 and 65.

SWCAA 400-101 Emission Units Exempt from Registration Requirements. The proposed changes clarify the applicability language of the exemption section.

SWCAA 400-111 Requirements for New Sources in a Maintenance Plan Area. The proposed revision significantly reformats this section to incorporate updated requirements consistent with the forthcoming ozone maintenance plan for the Portland/Vancouver area. This action is needed to support adoption of the ozone maintenance plan.

SWCAA 400-113 Requirements for New Sources in Attainment or Nonclassifiable Areas. The proposed revision incorporates updated language regarding requirements for sources that impact a maintenance area. The changes are intended to support the forthcoming ozone maintenance plan for the Portland/Vancouver area. This action is needed to support adoption of the ozone maintenance plan.

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.

SWCAA 400-141 Prevention of Significant Deterioration (PSD). The proposed revisions update the adoption by reference rule citations to match the current format of the equivalent sections located in chapter 173-400 WAC.

SWCAA 400-171 Public Involvement. The proposed revision removes minor permit modifications from the list of agency actions that require a mandatory public comment period. This action is intended to streamline public involvement requirements for minor modifications.

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques. The proposed revision establishes a presumptive requirement for vertical exhaust stack orientation. This action codifies elements of the agency's existing permitting policy.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 70.94.141.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Southwest Clean Air Agency (SWCAA), governmental.

Name of Agency Personnel Responsible for Drafting: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, (360) 574-3058; Implementation: Paul Mairose, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, (360) 574-3058; and Enforcement: Robert Elliott, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, (360) 574-3058.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes proposed by SWCAA are consistent with federal or state rules already in effort. This agency is not subject to the small business economic impact provision of chapter 19.85 RCW. A fiscal analysis has been performed to establish the basis for any proposed fee increases. Copies of this analysis are available from SWCAA.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 70.94.141(1), section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. SWCAA is not voluntarily invoking section 201, chapter 403, Laws of 1995, for this action.

August 9, 2006
Robert D. Elliott
Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 06-18 issue of the Register.

WSR 06-17-069
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed August 11, 2006, 12:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-11-159.

Title of Rule and Other Identifying Information: Chapter 308-56A WAC, Certificates of title—Motor vehicles, etc., specifically WAC 308-56A-115 Vehicles from jurisdiction other than Washington, 308-56A-150 Certificate of vehicle inspection, and 308-56A-210 Ownership in doubt.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on September 26, 2006, at 10:00 a.m.

Date of Intended Adoption: October 24, 2006.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48200, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-0140, by September 25, 2006.

Assistance for Persons with Disabilities: Contact Dale R. Brown by September 25, 2006, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to add language to the rule to include eliminating certain vehicle use classes from requiring a Washington state patrol (WSP) vehicle identification number (VIN) inspection. This rule will make clear which vehicles must have a WSP VIN inspection.

Reasons Supporting Proposal: The reason is to reduce record retention for a vehicle/vessel microfiche from twenty years to six years (plus current year) to be in compliance with records management laws. To offset the workload increase for WSP, the rule change will eliminate certain types of inspection currently required by rule e.g., mopeds, small personal use trailers, and off-road vehicles, travel trailers, campers, and motor homes over ten years old.

Statutory Authority for Adoption: RCW 46.01.110.

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

Name of Agency Personnel Responsible for Drafting: Dale Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Eric Andersen, 1125 Washington Street S.E., Olympia, WA, (360) 902-4045.

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

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

August 11, 2006
Julie Knittle, Administrator
Title and Registration Services

AMENDATORY SECTION (Amending WSR 03-05-081, filed 2/19/03, effective 3/22/03)

WAC 308-56A-115 Vehicles from ((~~jurisdiction~~)) a state or country other than Washington. (1) **What ownership documents are required to title and license a vehicle not currently titled or licensed in the state of Washington?**

(a) If a vehicle is titled in another state, the application for certificate of ownership must be accompanied by the most current title issued by that state.

(b) If the vehicle was acquired from an agency of the United States government, the federal ownership document issued by the United States government must accompany the application for certificate of ownership. When a bill of sale covers more than one vehicle, a photocopy may be accepted when:

(i) United States federal government already registered and/or titled in Washington with an FED use class, the purchaser needs a bill of sale and the current registration for an

NTI or when title is issued in Washington, need title properly released.

(ii) A ((~~secured~~)) secure odometer disclosure completed only by the transferee/buyer if the vehicle falls within the federal odometer criteria.

(c) If a vehicle is titled in another country, the application for certificate of ownership must be accompanied by the most current ownership document issued by that ((~~jurisdiction~~)) country. If the country from which the vehicle is imported cancels the vehicle title and/or registration for export, the application for certificate of ownership must be accompanied by documents showing proof of ownership and evidence of the cancellation.

(d) If a member of the United States armed forces owns the vehicle and the vehicle has been registered by a United States government military entity, the application for certificate of ownership must be accompanied by the registration certificate as proof of ownership. If there is a lien holder, the armed forces member must provide the lien holder information at the time of application.

(2) **What ownership documents are required to obtain a certificate of ownership for a vehicle from a nontitling ((~~jurisdiction~~)) state or country?**

(a) If the vehicle is from a ((~~jurisdiction~~)) state or country that by policy or law does not title a specific vehicle, but does register it, the department will accept the registration as an ownership document. If the applicant is not the owner shown on the registration, a bill of sale or release of interest is also required.

(b) If the vehicle is from a ((~~jurisdiction~~)) state or country that neither registers nor titles, the department will accept a statement from the applicant certifying when and where they purchased the vehicle, and that the previous ((~~jurisdiction~~)) state or country does not title or register this type of vehicle. A bill of sale is required for vehicles brought in from ((~~such jurisdiction~~)) any state or country. A statement certifying how the vehicle was acquired must be submitted at the time of application. The Washington certificate of ownership may contain a special notation if issued under these circumstances. If the bill of sale is not available, ownership in doubt procedures from WAC 308-56A-210 apply.

(3) **What if I am unable to locate a record of my vehicle in any ((~~jurisdiction~~)) state or country?** If there is no indication that your vehicle is from a nontitle or nonregistration ((~~jurisdiction~~)) state or country, and no ((~~jurisdiction has a~~)) record of your vehicle is found, you may follow ownership in doubt procedures in WAC 308-56A-210.

(4) **What is required to title a vehicle from a titling ((~~jurisdiction~~)) state or country that has refused to issue a title document for a specific vehicle?** If the ((~~jurisdiction~~)) state or country has refused to issue title, Washington may require the customer to comply with ownership in doubt procedures from WAC 308-56A-210 except those in WAC 308-56A-210(2). In those cases where a title was refused for reasons not applicable to Washington, the department may consider issuing a title with the appropriate documentation.

(5) **What documentation is required in addition to the ownership document if my vehicle is from a foreign country?** In addition to the ownership document, the application for certificate of ownership must be accompanied by:

(a) An approved United States Department of Treasury Customs Service form properly executed authorizing the vehicle entry into this country. Applications for certificate of ownership for vehicles imported from Puerto Rico need not be accompanied by a customs document;

(b) An English translation for any document provided which is not in the English language. The translator shall provide a notarized/certified affidavit attesting to the accuracy of the translation;

(c) A release of interest from the owners shown on the ownership documents, as provided in WAC 308-56A-210, if the applicant is not the owner shown.

AMENDATORY SECTION (Amending WSR 04-08-002, filed 3/24/04, effective 4/24/04)

WAC 308-56A-150 Certificate of vehicle inspection. (1) **When is a certificate of vehicle inspection required?** A certificate of vehicle inspection, completed by the Washington state patrol or other authorized inspector, must accompany the application for certificate of ownership and include the applicable statutory inspection fee whenever the applicant's vehicle is:

(a) Reported destroyed since the last certificate of ownership was issued;

(b) A homemade, assembled, or rebuilt vehicle not previously titled as such;

(c) One whose identification number needs verification as requested by the department, county auditor, or authorized agent;

(d) A kit vehicle not previously titled as such (if no vehicle identification number (VIN) previously assigned);

(e) A street rod not previously titled as such;

(f) A glider kit not previously titled as such;

(g) Subject to ownership in doubt described in WAC 308-56A-210(1) except those in WAC 308-56A-210(2);

(h) One which the Washington crime information center (WACIC) or National Crime Information Center (NCIC) indicates may be stolen; ((~~or~~))

(i) One for which the WACIC/NCIC has failed to respond to the stolen vehicle search required by chapter 46.12 RCW; or

(j) Inspections are not required for snowmobiles or mobile homes.

(2) **Is there a fee charged for a VIN inspection?** Yes, the amount of the fee is established in RCW 46.12.040. The fee is not due when:

(a) The out-of-state fee authorized by chapter 46.12 RCW has been collected on the same application; or

(b) The Washington state patrol or department of licensing has determined that the fee is not due.

(3) **Who is authorized to perform a vehicle inspection?** Vehicle inspections may be performed by:

(a) The Washington state patrol;

(b) Other entities or individuals designated by the director if the vehicle is located in a ((~~foreign~~)) another state or country and the requirement for inspection by the Washington state patrol will cause undue hardship.

(4) **How long is a vehicle certificate of inspection valid?** The vehicle certificate of inspection is valid for the following periods of time after the inspection date:

(((~~(a)~~))) Sixty days for vehicles:

(((~~(i)~~))) (a) Reported destroyed;

(((~~(ii)~~))) (b) Homemade, assembled, rebuilt, street rods, kit vehicles and glider kits;

(((~~(iii)~~))) (c) If the identification number needs verification, has been removed, defaced, altered, destroyed, illegible or missing;

(((~~(iv)~~))) (d) With no Washington record or no manufacture certificate/statement of origin (MCO/MSO)((~~,~~

~~(v)~~))) except those in WAC 308-56A-210(2);

(e) Referred for inspection for any reason not listed.

(((~~(b) Three hundred sixty-five days for a vehicle held in inventory for resale by a licensed dealer.~~)))

AMENDATORY SECTION (Amending WSR 03-05-081, filed 2/19/03, effective 3/22/03)

WAC 308-56A-210 Ownership in doubt. (1) **What does an applicant do when an acceptable release of interest or documentation as defined in WAC 308-56A-265 is not available?** When an applicant is unable to provide an acceptable release of interest or documentation, the applicant may:

(((~~(a) Petition any district or superior court of any county of this state to receive a judgment awarding ownership of the vehicle. Such judgment is required if ownership of the vehicle is contested after the applicant makes application for ownership in doubt and before the three-year ownership in doubt period has lapsed; or~~

~~(b)~~))) Apply for registration only or bonded ((~~certificate of ownership~~)) title as described in this rule ((~~if a judgment is unavailable as described in (a) of this subsection~~)). The applicant must:

(((~~(i)~~))) (a) Provide evidence of ownership of the vehicle such as, but not limited to, a bill of sale;

(((~~(ii)~~))) (b) Obtain a Washington state patrol vehicle identification number (VIN) inspection;

(((~~(iii)~~))) (c) Make a reasonable effort to determine ownership of the vehicle by writing to the agency that issued the last known certificate of ownership or registration. For purposes of this section, an individual purchaser or transferee of a vehicle may request the name and address of the owner(s) of record for that vehicle from the department by satisfying (b)(i) of this subsection and completing a form (Vehicle/Vessel disclosure request) approved by the department. When the department is satisfied the request is for obtaining proper release of interest, the department may disclose the name(s) and address of the last owner(s) of record for that vehicle.

(((~~(A)~~))) (i) If a record is found, the applicant must send a certified or registered letter, return receipt requested, to each owner and secured party of record at the address shown on the last record. The letter must contain information regarding the sender's claim to ownership and a request for the released certificate of ownership or a notarized or certified release of interest.

(((~~(B)~~))) (ii) If the previous owner does not respond within fifteen days after acknowledged receipt or the letter was returned unclaimed, the applicant must provide the form titled ((~~Affidavit of Request for Bonded Title or Registration without Title~~)) Application for Ownership in Doubt, explaining how the vehicle was acquired;

If no record is found, the applicant must provide the completed form titled, ((~~Affidavit of Request for Bonded Title or Registration without Title~~)) Application for Ownership in Doubt.

(((~~(iv)~~))) (d) Determine whether to ((~~bond the vehicle and apply for a certificate of ownership~~)) apply for a bonded title or apply for registration only. A ((~~bond~~)) bonded title is required if the ((~~seller of the vehicle~~)) applicant is a Washington state vehicle dealer ((~~or in lieu of the judgment described in (a) of this subsection if there is evidence of a security agreement on the last record found~~)). A bond ((~~shall~~)) must be for a period of three years from the date of application and be in the amount of one and one-half times the value of the vehicle as determined by one of the following:

(((~~(A)~~))) (i) Information provided by any guide book or other publication of recognized standing in the vehicle industry; or

(((~~(B)~~))) (ii) A value that is agreeable to the applicant and verifiable by the authorized department agent or employee.

(2) **Are there exceptions to the VIN inspection requirement?** Yes, the following vehicles are exempt from a VIN inspection if there is a Washington vehicle record and the customer presents a certificate of ownership or registration certificate issued by Washington, or another state, or country, or if there is no Washington vehicle record (for proof of VIN) and the customer presents a title or registration certificate issued by Washington state or other state or country unless from a state or country that neither registers nor titles as described in WAC 308-56A-115:

(a) Moped;

(b) Trailer with scale weight less than 2,000 pounds;

(c) Off-road and nonhighway vehicles not originally manufactured for road use if model year is ten years old or older;

(d) Travel trailer if model year is ten years old or older;

(e) Camper model year is ten years old or older;

(f) Manufactured homes of any age.

(3) **How can I provide proof of my vehicle's identification number?** An Application for Ownership in Doubt form approved by the department must be completed:

(a) For a vehicle that has an embossed VIN:

(i) A VIN pencil or pen scraping for those vehicles listed above is required; or

(ii) An approved photograph of the VIN is provided; and

(b) For a vehicle that does not have an embossed VIN, the Application for Ownership in Doubt form stating the VIN and how the VIN is attached to the vehicle.

(c) In the absence of either (a) or (b) of this subsection, a VIN inspection is required.

(4) **If I have a bonded ((~~certificate of ownership~~)) title, how can I get a certificate of ownership (title) without the bonded notation?** In order to get a certificate of ownership without the bonded notation((~~, you may~~)):

(a) Submit the properly endorsed certificate of ownership or a satisfactory release of interest and make application to the department anytime during the three-year period; or

(b) After the three-year period, make application to the department.

((~~(3)~~)) (5) **If I have a three-year registration only, how can I obtain a certificate of ownership?** ((~~In order~~)) To receive a certificate of ownership((~~, you may~~)):

(a) Submit the properly endorsed certificate of ownership or a satisfactory release of interest and make application to the department anytime during the three-year period; or

(b) After the three-year period, make application to the department.

((~~(4)~~)) (6) **May I sell a vehicle with a bonded ((~~certificate of ownership~~)) title or a three-year registration only?** Yes. A bonded ((~~certificate of ownership~~)) title may be released and provided to the buyer the same as any other certificate of ownership. There is a possibility that a Washington bonded ((~~certificate of ownership~~)) title may not be accepted by another state. If the other state has a similar program, they may issue their own type of bonded certificate of ownership. If there is a registration only, provide the buyer with a notarized or certified release of interest. The new owner may either provide a judgment ((~~as described in subsection (1)(a) of this section~~)) from a district or superior court of Washington or wait until the expiration of the time remaining on the previous ownership in doubt period and then make application for the certificate of ownership. If a notarized/certified release of interest cannot be obtained from the current registered owner, the new owner must start over with a new three-year bonded or registration only process.

Licensed vehicle dealers cannot lawfully sell vehicles that are registration only.

WSR 06-17-083
PROPOSED RULES
GAMBLING COMMISSION

[Filed August 14, 2006, 1:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-202.

Title of Rule and Other Identifying Information: Amendatory sections WAC 230-25-040 Fund-raising event—House rules to be developed and posted—Limitations on wagers, 230-25-050 Wagering among participants not permitted, and 230-25-325 Limited fund-raising event—Procedures and restrictions.

Hearing Location(s): Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, (253) 851-5402, on October 13, 2006, at 9:30 a.m.

Date of Intended Adoption: October 13, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by October 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by October 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rule changes and new rule would allow poker tournaments at fund-raising events (FRE) and limited FREs.

WAC 230-25-040: This rule requires house rules to be posted for fund-raising events, including wagering limits. A new subsection states there are no limits on the number of poker tournament chips that can be wagered at FREs.

WAC 230-25-050: This rule prohibits players from wagering against each other (such as poker games) at FREs. Language was added to provide an exception to this restriction and authorize poker tournaments at FREs.

WAC 230-25-325: Subsection (7) was added to authorize poker tournaments at limited fund-raising events.

Statutory Authority for Adoption: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation and Enforcement: Rick Day, Director, Lacey, (360) 486-3446.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

August 11, 2006
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 387, filed 7/17/00, effective 8/17/00)

WAC 230-25-325 Limited fund-raising event—Procedures and restrictions. Pursuant to RCW 9.46.0233(2), nonprofit or charitable organizations may offer *limited* fund-raising events (FREs). Organizations offering *limited* FREs must operate the FRE under the following operational procedures:

Operating procedures.

(1) Only members of the organization and their guests shall participate in the event. The event shall not be open to the general public.

(2) Participants shall purchase scrip with cash.

(3) Scrip shall be exchanged at gambling stations for chips.

(4) Only bona fide members will be utilized for all transactions involving acceptance of cash for scrip, conducting the schemes to determine the winners of merchandise prizes, and maintaining records during the event.

(5) The value of all purchased prizes must not exceed ten percent of the gross revenue from the event, less the cost of the FRE equipment rental contract.

(6) Any prizes purchased from the FRE equipment distributor must be disclosed. The cost may not exceed the fair

market value. Prizes may be disclosed to the public at the retail value.

(7) Poker tournaments may be operated at limited fund-raising events. Tournament rules must be established and posted.

FRE equipment distributors.

Limitations.

(((~~(7)~~))) (8) The nonprofit organization may only contract with a person or organization licensed as a FRE equipment distributor to provide the equipment and staff to operate the gaming stations.

(((~~(8)~~))) (9) Under no circumstances shall employees of the FRE equipment distributor handle cash transactions or allow participants to purchase chips with cash.

Compensation.

(((~~(9)~~))) (10) The fee paid to the FRE equipment distributor shall be in compliance with WAC 230-25-120. The FRE equipment distributor shall not share in any way in the proceeds of the event except as set forth in the rule.

Information to be submitted with FRE application.

(((~~(10)~~))) (11) The application must include details relating to the initial cost to participate, and method for purchasing additional scrip, as well as identify all costs included in the initial price to enter that are not related to the gambling activity (i.e., meals, drinks, etc.). The application must also identify the scheme that will be followed to distribute the merchandise prizes to participants at the end of the event (i.e., raffle, auction, etc.).

(((~~(11)~~))) (12) All contracts signed by the FRE licensee with the FRE equipment distributor and premises provider must be submitted with the FRE license application.

Fees.

(((~~(12)~~))) (13) The licensing fee for a *limited* FRE shall be as set forth in WAC 230-04-202(4).

AMENDATORY SECTION (Amending Order 409, filed 2/22/02, effective 7/1/02)

WAC 230-20-244 Electronic bingo card daubers—Definition—Operating restrictions—Standards. The commission deems that any device, apparatus, or scheme that allows a player in any gambling activity a material advantage over other players is against public policy and restriction of such is in the public's interest. Electronic bingo card marking devices or daubers are deemed to provide a player a material advantage unless operated in accordance with subsection (2) of this section. For purposes of this title, the following definitions, restrictions, and standards apply to such devices:

Definition.

(1) Electronic bingo card daubers are defined as electronic appliances used by players to identify bingo cards that contain numbers or symbols input by a player. These devices electronically store preprinted bingo cards purchased by a player, provide a means for players to input numbers or symbols called by the operator, compare the numbers or symbols input by the player to bingo cards previously stored in an electronic data base, and identify to the player those stored bingo cards that contain the numbers or symbols input by the player: Provided, That player-owned devices, which are not directly interfaced with or connected to equipment used to conduct bingo games or the electronic data base in which electronically generated bingo cards are stored in any manner, are not "electronic bingo card daubers" for purposes of this title;

Operating restrictions.

(2) Electronic bingo card daubers will not be deemed to provide players a material advantage and may be used by players in bingo games when operated in the following manner:

Player responsibilities.

(a) The player must perform at least the following functions:

(i) Input each number or symbol called by the operator into the memory of the dauber unit by use of a separate input function for each number symbol. Automatic or global marking of numbers or symbols is prohibited;

(ii) Notify the operator when a winning pattern or "bingo" occurs by means that do not utilize the dauber unit or the associated system; and

(iii) Identify the winning card and display the card to the operator;

Maximum number of cards to be played during each game.

(b) Each electronic dauber unit shall not allow a player to play more than sixty-six cards at one time.

(c) Each player shall not use more than one electronic dauber at any point in time. Provided, That a player can play an unlimited amount of disposable or hard bingo cards in addition to using one electronic dauber unit.

Reserving electronic bingo card daubers.

(d) Operators shall not reserve electronic daubers for any player. An operator must devise and disclose to players a scheme for assignment of dauber units to players during each session. Such schemes shall allow all players an equal opportunity to utilize the available dauber units. If a drawing is used to assign dauber units to players, the operator shall ensure that each player participating in the drawing has an equal chance to win: Provided, That operators that offer electronic dauber units shall reserve at least one device for players with disabilities that would restrict their ability to mark cards and such disabilities are consistent with definitions set forth in the Americans with Disabilities Act (ADA). If there are no requests for use of this unit prior to fifteen minutes before the scheduled start of the session, it may be made available for use by any players;

Fees.

(e) If operators charge players a fee for use of the electronic daubers, such fees must be a flat fee and shall not be based on the number or dollar value of cards purchased.

Rental fees shall be considered bingo receipts for purposes of WAC 230-12-020: Provided, That players with disabilities that would restrict their ability to mark cards and such disabilities are consistent with the ADA shall not be required to pay a rental fee or to comply with minimum purchase requirements imposed on all players utilizing electronic daubers. Such players are required to comply with any minimum purchase requirement imposed on all players by an operator;

Card requirements.

(f) Each player utilizing an electronic dauber must have in their possession cards that meet all requirements of WAC 230-20-240 and 230-20-106. Electronic images of cards or faces stored in such devices are for player convenience only and are not bingo cards for purposes of this title;

Leasing by an operator.

(g) If the electronic daubers are leased to an operator, the lease cannot be based in whole or part on the amount of bingo card sales or rental income derived from such devices. Except that fees may be based on the number of cards sold to a device only for player selection games as described in WAC 230-20-241; and

Discounts and marketing schemes.

(h) The use of electronic daubers is prohibited when a licensee utilizes any marketing scheme for cards that results in a decrease in the per unit price of each card as the number of cards purchased increases: Provided, That a single discount level is authorized for each type of card sold if:

(i) The licensee has a minimum purchase requirement;

(ii) The discount applies to all additional cards purchased; and

(iii) "All you can play" schemes are prohibited;

Standards.

(3) Electronic bingo card daubers must meet the following standards:

(a) Be manufactured by licensed manufacturers;

(b) Be sold, leased, and serviced by licensed distributors or manufacturers: Provided, That operators may perform routine maintenance on devices under their control;

(c) Not be capable of accessing the electronic computer system in any manner that would allow modification of the program which operates and controls the dauber units or the cards stored in the electronic data base; and

(d) Be capable of complying with applicable requirements of WAC 230-20-106.

AMENDATORY SECTION (Amending Order 78, filed 11/17/77)

WAC 230-25-050 Wagering among participants not permitted. ((~~No~~)) Licensees ((~~to conduct~~)) conducting a fund-raising event shall not permit, as a part of that fund-raising event, a gambling activity which involves a wagering of money or other items of value by one participant against another participant. This rule ((~~shall not be construed to~~)) does not prohibit gambling activities wholly administered by the licensee wherein the licensee collects wagers from among the participants and determines the winners and amounts of prizes on a parimutuel basis or poker tournaments as authorized under WAC 230-25-045.

AMENDATORY SECTION (Amending Order 387, filed 7/17/00, effective 8/17/00)

WAC 230-25-040 Fund-raising event—House rules to be developed and posted—Limitations on wagers. (1) Before conducting a fund-raising event (FRE), each licensee shall develop house rules to govern the scope and manner of all gambling activities to be conducted during the FRE. At a minimum, these rules shall:

(a) State the maximum amount of a single wager that may be placed by FRE participants. Wagering limits are as follows:

(i) Single wagers shall not exceed ten dollars;

(ii) Raffles or other similar drawings may exceed the ten dollar wagering limit, but may not exceed the limitations set forth in RCW 9.46.0277; ((~~and~~))

(iii) There are no limits on wagers made using scrip; and

(iv) There are no limits on the number of poker tournament chips that may be wagered.

(b) Prohibit any thing of value from being given to any person involved in the management or operation of the FRE; and

(c) Prohibit any person involved in the management or operation of the FRE from accepting any thing of value.

Posting house rules.

(2) A copy of the rules shall be conspicuously posted in the area where the FRE is being conducted at all times during the FRE. A copy must be available, upon request, to any law enforcement officer or representative of the commission, or member of the general public.

WSR 06-17-084
PROPOSED RULES
GAMBLING COMMISSION

[Filed August 14, 2006, 1:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-01-083.

Title of Rule and Other Identifying Information: Amendatory sections WAC 230-02-205 Gambling service supplier defined and 230-03-210 Applying for a gambling service supplier license; and new sections WAC 230-02-203 Defining lending agent, loan servicer, or placement agent, 230-02-204 Defining regulated lending institution, 230-03-211 Defining "lending agent," "loan servicer," or "placement agent," and 230-03-212 Defining "regulated lending institution."

Hearing Location(s): Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, (253) 851-5402, on October 13, 2006, at 9:30 a.m.

Date of Intended Adoption: October 13, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by October 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by October 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule change clarifies which type of financiers need to be licensed and which do not; requiring businesses that analyze gambling equipment be licensed; and requiring businesses that enter into ongoing financial relationships with manufacturers to provide "gambling related software" to be licensed. "Gambling related software" affects the results/outcome of games or directly interfaces with, or controls, the operation of the gambling equipment.

Statutory Authority for Adoption: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation and Enforcement: Rick Day, Director, Lacey, (360) 486-3446.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

August 11, 2006
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 456, filed 3/14/06, effective 7/1/06)

WAC 230-02-205 Gambling service supplier defined. A "gambling service supplier" is any person who provides gambling related services for compensation, whether directly or indirectly.

(1) Gambling related services include at least the following:

(a) Providing consulting or advisory services regarding gambling activities;

(b) Providing gambling related management services;

(c) Providing financing for purchases or leases of gambling equipment or for providing financing for infrastructure or facilities, or equipment that supports gambling operations for more than one licensee. For purposes of this section, financing by any bank, mutual savings bank, or credit union regulated by the department of financial institutions or any federally regulated commercial lending institution shall not be deemed as providing gambling related services;

(d) Acting as a lending agent, or loan servicer, or placement agent as defined in WAC 230-02-203;

(e) Providing any other service or activity where influence may be exerted over any gambling activity licensed by the commission;

((~~(e)~~)) (f) Providing assembly of components for gambling equipment under a contract with a licensed manufacturer or entering into an ongoing financial arrangement for gambling related software with a licensed manufacturer;

((~~(f)~~)) (g) Providing installation, integration, maintenance, or any other service of digital surveillance systems that allows direct access to the operating system; ((~~or~~ ~~(g)~~)) (h) Training individuals to conduct authorized gambling activities; or

(i) Performing the testing and certification of tribal lottery systems as meeting requirements specified in the tribal-state compact.

(2) The term "gambling services supplier" does not include the following:

(a) Universities and colleges that are regulated by the Washington state board of community and technical colleges and the higher education coordinating board which train individuals to conduct authorized gambling activities;

(b) Licensed manufacturers or distributors who service and repair pull-tab dispensing devices, bingo equipment or any other authorized gambling equipment;

(c) Attorneys, accountants, and governmental affairs consultants whose primary business is providing professional services that are unrelated to the management or operation of gambling activities; ((~~and~~))

(d) Persons that only provide nonmanagement related recordkeeping services for punch board and pull-tab operators, when the combined total gross billings from such services does not exceed twenty-five thousand dollars during any calendar year;

(e) Persons who provide names, images, artwork or associated copyrights or trademarks, or other features that do not affect the results or outcome of the game, for use in gambling equipment; and

(f) Regulated lending institutions as defined in WAC 230-02-204.

NEW SECTION

WAC 230-02-203 Lending agent, loan servicer, and placement agent defined. A person or entity, other than a regulated lending institution, that finds, places, administers, facilitates, or services loans to licensees and whose services include, but are not limited to, one or more of the following:

(1) Charging an ongoing fee for their services;

(2) Maintaining rights as the lender;

(3) Determining when the loan is in default; or

(4) Maintaining access to collateral.

NEW SECTION

WAC 230-02-204 Regulated lending institution defined. A regulated lending institution is any state or federally regulated organization primarily in the business of lending money. An organization must demonstrate that it is a reg-

ulated lending institution by meeting all of the following criteria:

(1) Is registered and actively regulated by the Securities and Exchange Commission or any other United States federal or state governmental banking or financial regulatory agency. Lending institutions must demonstrate to the commission that they are actively regulated by at least:

(a) Annually reporting information on their lending activities to the regulatory agency; and

(b) Receiving regular audits or inspections by the regulatory agency; and

(c) Owners and officers undergo criminal history background checks.

(2) Is acting as a passive investor in the licensed establishment to which they are lending money. For the purposes of this rule, passive investors are those who do not have actual or potential influence over the operations of the licensed entity. A lending institution will not be considered a passive investor if they:

(a) Appoint or have the right to appoint officers, directors, consultants, or other positions with the licensed establishment; or

(b) Require the licensed establishment to seek their approval or authorization in making business decisions for the organization; or

(c) Have full access to records of the establishment; or

(d) Have the ability to convert the debt into shares which would result in the lender becoming a substantial interest holder per WAC 230-02-300(4).

(3) A majority of its outstanding loans receivable are from businesses not engaged in gambling activities.

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

WAC 230-03-210 Applying for a gambling service supplier license. (1) You must apply for a gambling service supplier license if you perform any of the following gambling-related services for compensation:

(a) Consulting or advisory services regarding gambling activities; or

(b) Gambling management services; or

(c) Financing for purchases or leases of gambling equipment or financing for providing infrastructure or facilities, or equipment that supports gambling operations for more than one licensee; or

(d) Acting as a lending agent, or loan servicer, or placement agent; or

(e) Providing the assembly of components for gambling equipment under a contract with a licensed manufacturer or entering into an ongoing financial arrangement for gambling related software with a licensed manufacturer; or

(((~~(e)~~))) (f) Installing, integrating, maintaining, or servicing digital surveillance systems that allow direct access to the operating system; or

(((~~(f)~~))) (g) Training individuals to conduct authorized gambling activities; or

(((~~(g)~~))) (h) Providing any other service or activity where influence may be exerted over any gambling activity licensed by the commission; or

(i) Performing the testing and certification of tribal lottery systems as meeting requirements specified in the tribal-state compact.

(2) You do not need a gambling service supplier license if you are:

(a) A bank, mutual savings bank, or credit union regulated by the department of financial institutions or any federally regulated commercial lending institution; or

(b) A university or college regulated by the Washington state board of community and technical colleges and the higher education coordinating board that trains individuals to conduct authorized gambling activities; or

(c) An attorney, accountant, or governmental affairs consultant whose primary business is providing professional services that are unrelated to the management or operation of gambling activities; or

(d) A person ((~~that~~)) who only provides nonmanagement-related recordkeeping services for punch board and pull-tab operators, when the combined total gross billings from such services does not exceed twenty-five thousand dollars during any calendar year; or

(e) A person who provides names, images, artwork or associated copyrights or trademarks, or other features that do not affect the results or outcome of the game, for use in gambling equipment; or

(f) Regulated lending institutions.

NEW SECTION

WAC 230-03-211 Defining "lending agent," "loan servicer," or "placement agent." (1) "Lending agent," "loan servicer," or "placement agent" means any person or entity, other than a regulated lending institution, that finds, administers, facilitates, or services loans for a licensee.

(2) The services of lending agents, loan servicers, or placement agents include, but are not limited to:

(a) Charging an ongoing fee for their services;

(b) Maintaining rights as the lender;

(c) Determining when the loan is in default; and/or

(d) Maintaining access to collateral.

NEW SECTION

WAC 230-03-212 Defining "regulated lending institution." (1) "Regulated lending institution" means any state or federally regulated organization primarily in the business of lending money for investment purposes.

(2) "Regulated lending institutions" must:

(a) Register with the Securities and Exchange Commission or any other United States federal or state governmental banking or financial regulatory agency.

(b) Be actively regulated by the Securities and Exchange Commission or any other United States federal or state governmental banking or financial regulatory agency. "Active regulation" means:

(i) Reporting annually on lending activities to the regulatory agency;

(ii) Receiving regular audits or inspections by the regulatory agency; and

(iii) Undergoing criminal history background checks of owners and officers.

(c) Act as passive investors in the licensee. "Passive investors" mean investors who have no actual or potential influence over the operations of the licensee. A "passive investor" does not:

(i) Appoint or have the right to appoint officers, directors, consultants, or other positions with the licensee;

(ii) Require the licensee to seek approval or authorization in making business decisions;

(iii) Have full access to the records of the licensee;

(iv) Have the ability to convert debt into shares which would result in the lender becoming a substantial interest holder; or

(v) Have any other influence or control over the licensee.

(d) Have nongambling-related businesses as a majority of their outstanding loans receivable.

WSR 06-17-118
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed August 18, 2006, 10:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-09-005.

Title of Rule and Other Identifying Information: Chapter 392-210 WAC, Student testing and evaluation—Washington state honors award program.

Hearing Location(s): Office of Superintendent of Public Instruction, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504-7200, on October 3, 2006, at 10:00-11:00 a.m.

Date of Intended Adoption: November 2, 2006.

Submit Written Comments to: Gayle Pauley, Office of Superintendent of Public Instruction, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail gpauley@ospi.wednet.edu, fax (360) 586-3305, by October 10, 2006.

Assistance for Persons with Disabilities: Contact Dodie Richter by September 26, 2006, TTY (360) 664-3631 or (360) 725-6194.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 392-210 WAC has not been updated in a number of years and still lists the Washington precollege test as a testing measure for the Washington state honors award. This test is no longer in existence. The SAT and ACT are the two test measures used to identify students as award nominees. Other changes are for clarification only.

Reasons Supporting Proposal: Clarity and accuracy of the WAC will direct districts and OSPI in its implementation.

Statutory Authority for Adoption: RCW 28A.600.070.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Add "public" and "private" to clarify that both types of schools may nominate students (WAC 392-210-015). Add the arts to the list of acceptable content areas (WAC 392-210-015). Add SAT and ACT to define test measures to be used in the student identification process (WAC 392-210-015 and 392-210-020). Add January 31 of the year of graduation to clearly define testing due date (WAC 392-210-015). Add "twelve" to clarify grade level of eligible students (WAC 392-210-025).

Name of Proponent: Gayle Pauley, Director Title I/LAP & Title V, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Pauley, Office of Superintendent of Public Instruction, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504-7200, (360) 725-6100; Implementation: Bob Harmon, Office of Superintendent of Public Instruction, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504-7200, (360) 725-6170; and Enforcement: Terry Bergeson, Office of Superintendent of Public Instruction, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504-7200, (360) 725-6004.

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

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

August 17, 2006
Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 93-24, filed 11/10/93, effective 12/11/93)

WAC 392-210-015 Criteria for the selection of Washington state honors award students. The Washington state honors award program shall recognize the top ten percent of the students in the state in each year's public and private high school graduating class who have demonstrated outstanding academic achievement. Outstanding academic achievement shall be determined by the following criteria:

(1) An academic achievement index based upon a combination of the combined high school grade point average (calculated as provided in WAC 180-57-055) in the academic core subjects of English, mathematics, science, social studies, the arts, and languages other than English which may include American Indian languages and the combined verbal and quantitative composite scores on the ((~~Washington precollege test~~)) Scholastic Aptitude Test (SAT) or the American College Test (ACT);

(2) Credits (as defined in WAC 180-51-050) earned in grades nine through ((~~eleven~~)) twelve in the academic core subjects of English, mathematics, science, social studies, the arts, and foreign language;

(3) Completion of at least seventy-five percent of the graduation requirements for the high school in which the candidate is enrolled; and

(4) Enrollment in at least three academic core subjects in grade twelve.

In order to be considered for a Washington honors award, students must have taken the ((~~Washington precollege test~~)) Scholastic Aptitude Test (SAT) or the American College Test (ACT) prior to ((~~enrollment in grade twelve~~)) Janu-

ary 31 of the year of graduation and be enrolled in a participating high school as indicated by the principal on forms provided by the superintendent of public instruction.

AMENDATORY SECTION (Amending Order 85-13, filed 12/9/85)

WAC 392-210-020 Determination of the Washington state honors award academic achievement index. The superintendent of public instruction shall calculate the academic achievement index based upon an equivalent numeric weighting of the combined high school grade point average in academic core subjects and the combined verbal and quantitative composite scores on the ((~~Washington precollege test~~)) Scholastic Aptitude Test (SAT) or the American College Test (ACT). The superintendent of public instruction shall determine the top ten percent of each year's graduating class based upon a ranking of all participating students on the academic achievement index.

AMENDATORY SECTION (Amending Order 86-9, filed 7/18/86)

WAC 392-210-025 Credits earned in academic core subjects. To be considered for a Washington state honors award, a student must have earned, during grades nine through ((~~eleven~~)) twelve, at least seventy-five percent of the credits required for graduation from his or her high school including a minimum of ten credits in the academic core subjects of English, mathematics, science, social studies, the arts, and foreign language.

Each participating high school principal shall verify, on forms provided by the superintendent of public instruction, that each candidate has completed at least seventy-five percent of the school's total graduation credit requirements. The superintendent of public instruction shall require each student's high school transcript to be verified to assure that each student has earned the minimum credits in each of the academic core subjects. All participating high schools shall make available the grades nine through ((~~eleven~~)) twelve transcripts for all participating students on or before ((~~August 15 of each year~~)) the date provided annually by the superintendent of public instruction.

AMENDATORY SECTION (Amending Order 93-24, filed 11/10/93, effective 12/11/93)

WAC 392-210-030 Enrollment in academic core subjects during grade twelve required. To be considered for a Washington state honors award, a student must be enrolled in at least three of the academic core subjects of English, mathematics, science, social studies, the arts, and languages other than English during ((~~the first term of~~)) the senior year((~~, excluding summer term~~)). The minimum enrollment requirement shall be verified in writing by the participating high school principal ((~~before November 1 of each school year,~~)) on forms provided annually by the superintendent of public instruction.

AMENDATORY SECTION (Amending Order 85-13, filed 12/9/85)

WAC 392-210-035 Notification of students eligible for honors award. Commencing with the ninth grade, and each year thereafter, each participating high school shall provide((~~, no later than October 1,~~)) each enrolled student with a copy of the eligibility criteria for the Washington state honors award. The superintendent of public instruction shall provide schools with a suggested format that may be used to notify students.

AMENDATORY SECTION (Amending Order 85-13, filed 12/9/85)

WAC 392-210-040 Notification of Washington honors award recipients. ((~~On or before December 15 of each school year~~)) The superintendent of public instruction shall annually provide to each participating school principal the names of those enrolled students who have been selected for a Washington honors award.

AMENDATORY SECTION (Amending Order 85-13, filed 12/9/85)

WAC 392-210-045 Washington honors award certificate. The superintendent of public instruction shall prepare annually for each honors award recipient a suitable printed certificate which shall describe the purposes of the award, indicate the year in which the award was given, ((~~identify the student and his or her high school,~~)) and be signed by the superintendent of public instruction. The certificate for each honors award recipient shall be delivered to the participating high school principal on or before ((~~April 1~~)) May 30 of each school year. Each participating principal shall provide for issuing the certificate to each recipient at the regular high school commencement or other appropriate time prior to high school commencement.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-210-055	Special consideration for 1985-86 school year.

WSR 06-17-120
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION

[Filed August 18, 2006, 11:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-13-051.

Title of Rule and Other Identifying Information: Tire chain removal and installation, these rules establish a program in which businesses or persons are permitted to install or remove motorist-owned tire chains, on the highway right of way, for a fee.

Hearing Location(s): Washington State Department of Transportation (WSDOT), Transportation Building, Commission Boardroom, 310 Maple Park Avenue S.E., Olympia, WA 98504, on October 6, 2006, at 1:30 p.m.

Date of Intended Adoption: October 6, 2006.

Submit Written Comments to: Enrico Baroga, WSDOT Maintenance, P.O. Box 47358, Olympia, WA 98504-7358, e-mail barogar@wsdot.wa.gov, fax (360) 705-6823, by October 5, 2006.

Assistance for Persons with Disabilities: Contact Enrico Baroga by October 5, 2006, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will help WSDOT establish a program where businesses or persons will install or remove motorist-owned tire chains for a fee. This program is being developed and implemented to help move traffic more efficiently on mountain pass highways during winter road conditions where chains are required.

Reasons Supporting Proposal: CALTRANS has successfully implemented a similar system at Donner Pass. Increased utilization of mountain pass highways makes it critical to keep traffic moving during inclement weather. Implementation of the tire chain program is expected to help winter operations on mountain pass highways.

Statutory Authority for Adoption: RCW 47.04.270.

Statute Being Implemented: None.

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

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

Name of Agency Personnel Responsible for Drafting and Implementation: Enrico Baroga, Olympia, (360) 705-7864.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Development and implementation of the program addressed in this WAC imposes no costs on businesses. The program will actually provide an economic opportunity for small businesses that was not previously existent.

A cost-benefit analysis is not required under RCW 34.05.328. This requirement does not apply as the department of transportation is not specifically enumerated in subsection (5) of RCW 34.05.328.

July 27, 2006
John F. Conrad
Assistant Secretary for
Engineering and Regional Operations

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-095 Emergency road restrictions due to weather or other conditions. (1) **Who has the authority to implement emergency procedures to restrict the movement of a vehicle(s) operating on state highways?** RCW 47.48.031 and 46.44.080 provide authority for the chief or another officer of the state patrol, or the secretary of transportation or designee, to restrict vehicle movement by closing or restricting movement on a section(s) of state highway(s) to all vehicles or specific class of vehicles.

(2) **Under what conditions would a road restriction be put in place?** A restriction or closure may be put in place whenever the department or the state patrol believe that weather or other conditions have created a substantial risk to public safety.

(3) **How are the restrictions maintained?** The department and the state patrol shall exchange notices of conditions that require a restriction(s) or closure to be placed on the highway, and notices when conditions change that will allow the restriction to be terminated. Either the department or the state patrol, whichever agency can best respond to the condition, shall manually control traffic as needed until the restriction is terminated or until the department can install traffic control devices.

(4) **How will the notification of a restriction be communicated to the highway users?** The department and the state patrol have a joint responsibility to provide notice of both the placement and removal of highway restrictions/closures. Notices shall be provided to the news media, affected law enforcement agencies, and other appropriate organizations, both public and private. For areas requiring vehicles to apply tire chains, see subsection (8) of this section.

(5) **At what point does visibility play a factor in the movement of a vehicle operating under special permit?** Moves must not be made when visibility is reduced to one thousand feet or less. If visibility is reduced during transport, the vehicle or vehicle combination must clear the highway at the nearest safe location.

(6) **Can an individual move under special permit be restricted through enforcement intervention?** Yes. An enforcement officer, at his/her discretion, may require the driver of the permitted vehicle or vehicle combination to pull off of the highway when weather or other conditions become unsafe for further movement. The enforcement officer may direct or escort the permitted vehicle to a place of safety where it may be parked until the unsafe conditions abate.

(7) **Do vehicles carrying hazardous or radioactive cargo have greater opportunity of being affected by restrictions?** Yes. Due to the potential risks to the public, RCW 47.01.270 and 47.48.050 have provided the department and the state patrol with the specific authority to close a section(s) of the highway(s) to transporters of placarded radioactive or hazardous cargo. The basis for closure is the same as stated in subsection (2) of this section.

(8) **Who has authority to prohibit permitted vehicles from chain/approved traction device control areas, and how is this communicated?** The department and the state patrol may prohibit a vehicle, whether moving under special permit for oversize/overweight or not, from entering chain/approved traction device control areas. Prohibitions are put in place when it is determined the vehicle will experience difficulty in safely traveling the area. Traffic control signs will generally communicate prohibitions (i.e., "TRACTION ADVISORY/OVERSIZED VEHICLES PROHIBITED," "CHAINS REQUIRED ON ALL VEHICLES EXCEPT ALL WHEEL DRIVE," "VEHICLES OVER 10,000 GVWR CHAINS REQUIRED," etc.). In addition, specific vehicle combinations may be required to operate with specified traction devices (i.e., "TRACTORS

PULLING DOUBLE TRAILERS MUST CHAIN UP"). Also, refer to WAC 204-24-050 (2)(h) for a list of areas where sufficient tire chains must be carried on the vehicle(s) between November 1 and April 1 of each year.

(9) **What penalties are in place for vehicles moving in prohibited areas?** Movement into a restricted area when the vehicle is prohibited, or without the specified traction device, is a violation of the special permit, which is a traffic infraction, and subject to the penalties of RCW 46.44.105.

(10) **What responsibilities must the operator of a vehicle(s) operating under special permit, during winter road conditions, assume when signs or other traffic control devices are not present?** A vehicle, or vehicle combination, operating under special permit for oversize, must stop movement at the nearest safe location during periods when:

(a) Snow is falling to a degree that visibility is limited to less than one thousand feet; or

(b) Immediately following a severe storm when snow removal equipment is operating; or

(c) When fog or rain limits visibility to less than one thousand feet; or

(d) When compact snow and ice conditions require the use of chains.

Movement must not resume until conditions have abated and clearance obtained from the nearest department or state patrol office. Failure to stop is a violation of the permit and subject to the penalties of RCW 46.44.105.

(11) **What services may a business or person provide under the department's tire chain service provider program, as authorized under chapter 47.04 RCW?** If the department has issued a permit as provided under subsection (18) of this section to a business or person, hereinafter permittee(s), they are only allowed to install and/or remove motorist-provided tire chains under this program. Providing other services for a fee on highway right of way is prohibited. Permittees are not allowed to sell or rent tire chains to motorists on the highway right of way. If needed, minor repair of motorist-provided tire chains or selling elastic cords to motorists to ensure the proper fit of chains to tires is allowed as part of the installation or removal of tire chains. For example, a minor repair may be the replacement of a link that is missing from a tire chain.

(12) **Where on the highway right of way will permittees be allowed to establish work stations?** The department will designate chain-on and chain-off areas. Permittees will be allowed to establish work stations in authorized locations only in these designated areas. Permittees are prohibited from establishing work stations on the highway right of way outside of department specified locations.

(13) **When may permittees establish work stations in designated areas?** Permittees may establish work stations in designated areas only when they are requested to do so by the department's maintenance personnel responsible for highway operations. Department maintenance personnel will also notify permittees when chains are no longer required and work stations must be closed. Establishing work stations without a request from department maintenance personnel is prohibited.

(14) **Are motorists required to use tire chain installation and/or removal services?** Use of tire chain services is voluntary. Room will be provided in designated chain-on and chain-off areas for motorists to pull out of the travel lane to install or remove their own tire chains.

(15) **What fees may permittees charge for their services?** A set fee schedule will be annually determined by the department with input from interested parties. All permittees will charge the same fee schedule for services provided. The schedule will include fees for minor repairs and selling elastic cords to motorists for the proper fit of chains to tires. Charging amounts outside of the set fee schedule while working on the highway right of way is prohibited.

(16) **What worker safety standards do permittees have to meet while working on the highway right of way?** All permittees must follow, at a minimum, all safety work standards and requirements that are listed in the permit.

(17) **If multiple permittees are authorized to work on highway right of way, how will a fair opportunity to work be afforded to all permittees?** If multiple permittees are permitted, the department will utilize a rotational call-out system.

(18) **What process is available for acquiring a permit?** An application/permit form must be completed and submitted to the department. A brief, informational training session, provided by the department, must be attended by all service providers and service providers must exhibit tire chain installation/removal competency. When these requirements are met, the department may issue a permit to the applicant. The department may limit the number of permits issued on a first-come first-served basis. The department, in issuing a permit for the installation or removal of tire chains, assumes no responsibility for the actions, inactions, competence, or reliability of the permittee in performing those services and shall not be liable for the damages relating to acts or omissions of the permittees in accordance with RCW 47.04.270.

(19) **What happens if any permit condition is violated by the permittee or if the permittee has made false or misleading statements on the permit application?** If a permittee violates any permit condition or if the permittee has made a false or misleading statement on the permit application, the department may immediately revoke the permit. The permittee is not entitled to a permit revocation hearing.

WSR 06-17-129
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 06-08—Filed August 21, 2006, 4:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-11-065.

Title of Rule and Other Identifying Information: Amendments to chapter 173-160 WAC, Minimum standards for construction and maintenance of water wells and chapter 173-162 WAC, Rules and regulations governing the regulations and licensing of well contractors and operators.

Hearing Location(s): Big Bend Community College, 7662 Chanute Street N.E., Room 1870 A and B, Moses Lake, WA 98837, on September 26, 2006, at 7 p.m.; at the Depart-

ment of Ecology Headquarters, 300 Desmond Drive, Auditorium, Lacey, WA 98503, on September 27, 2006, at 7 p.m.; and at the University Center in Everett Station, 3201 Smith Avenue, Room 315 (Student Lounge), Suite 200, Everett, WA 98201, on September 28, 2006, at 7 p.m.

Date of Intended Adoption: November 21, 2006.

Submit Written Comments to: Richard Szymarek, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-47600, e-mail rszy460@ecy.wa.gov, fax (360) 407-7162, by 5:00 p.m. on October 6, 2006.

Assistance for Persons with Disabilities: Contact Judy Beitel by September 18, 2006, TTY (877) 833-6341 or (360) 407-6878.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology has been directed by the 2005 legislature to revise the existing well construction and licensing rules. Additionally, ecology has been meeting with the technical advisory committee since October 2002 to make other revisions that will make the rule easier to understand, improve organization and readability, address technical issues and other driller concerns, and enhance public health and welfare.

Reasons Supporting Proposal: The reasons for the rule makings are: To respond to legislative requirements; to maintain consistency with the drilling statute; to remain current with changes in drilling technology; to respond to driller requests; and to clarify existing rules.

Statutory Authority for Adoption: Chapter 18.104 RCW, Water Well Construction Act (1971).

Statute Being Implemented: Chapter 18.104 RCW, Water Well Construction Act (1971).

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Szymarek, Olympia, Washington, (360) 407-6648; Implementation and Enforcement: Ken Slattery, Olympia, Washington, (360) 407-6602.

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

Small Business Economic Impact Statement

EXECUTIVE SUMMARY: When proposing a new administrative rule for consideration, the Washington state department of ecology (ecology) is required by RCW 19.85.030 to determine whether the rule will impose a disproportionate impact on small business. This document fulfills this requirement for the proposed amendments of chapter 173-160 WAC, Minimum standards for construction and maintenance of wells and chapter 173-162 WAC, Rules and regulations governing the regulation and licensing of well contractors and operators.

The proposed rule amendments can be expected to affect well contractors and operators, landowners, and commerce. This small business economic impact analysis quantifies the rules' impact on both small and large businesses, and concludes that there is a disproportionate impact on small businesses. Compliance with these rules is not expected to lose sales or revenue for businesses.

1. BACKGROUND: The purpose of the rule proposal is to amend two existing regulations pertaining to well construction standards and professional licensing of well drillers. The standards for well construction (chapter 173-160 WAC) identify specific construction requirements that all wells must meet in order to protect public health, safety, and welfare as well as to protect the ground water resource. The licensing rule (chapter 173-162 WAC) provides for the administration of the licensing of Washington state well drillers.

The changes to the standards for well construction and driller licensing are required by legislative mandate (chapter 18.104 RCW). The proposed rule changes are to maintain consistency with the drilling statute and to remain current with changes in drilling industry and technology advances. Most amendments to the rules were driven by driller request and the need to clarify the existing rules.

Changes to the "standards for well construction" involve changes to the definition section; expansion of some of the technical areas; statutory changes in drilling fees; and improvement to the organization of certain sections. With the exception of licensing fees, changes to the licensing regulations are all required by statute. They include the development of rules to conduct an annual review of those counties that have delegated authority to inspect wells; development of a retirement license; and clarification and improvement to the current continuing education program. Ecology is also proposing a raise in licensing renewal fees from $20 every two years to $75 every two years. New applications for licenses will increase from $25 to $75.

The proposed rule amendments include:

1. Clarifying operator standards and well drilling rule language to make chapter 173-160 WAC consistent with operating standards of the industry and definitions consistent with industry terminology;

2. Revising the standards for construction and maintenance of wells to make chapter 173-160 WAC consistent with legislative mandates for fees and services; and

3. Resetting the application fees for the regulation and licensing of well contractors and operators.

As required by RCW 19.85.030, ecology is developing and issuing this small business economic impact statement (SBEIS) as part of this rule adoption process. The objective of this SBEIS is to identify and evaluate the various requirements and costs that the proposed rule amendments might impose on business. In particular, the SBEIS examines whether the costs on business that might be imposed by the proposed rule amendments impose a disproportionate impact on the state's small businesses. This is consistent with the legislative purpose of the Regulatory Fairness Act (chapter 19.85 RCW) and is set out in RCW 19.85.011:

"The legislature finds that administrative rules adopted by state agencies can have a disproportionate impact on the state's small businesses because of the size of those businesses. This disproportionate impact reduces competition, innovation, employment and new employment opportunities, and threatens the very existence of some small businesses."

The specific purpose and required contents of the SBEIS is contained in RCW 19.85.040.

(1) A small business economic impact statement must include a brief description of the reporting, record keeping,

and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements. It shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW 34.05.320, including costs of equipment, supplies, labor, and increased administrative costs. It shall consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue. To determine whether the proposed rule will have a disproportionate impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:

(a) Cost per employee;

(b) Cost per hour of labor; or

(c) Cost per one hundred dollars of sales.

(2) A small business economic impact statement must also include:

(a) A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as required by RCW 19.85.030(3), or reasonable justification for not doing so, addressing the options listed in RCW 19.85.030(3);

(b) A description of how the agency will involve small businesses in the development of the rule; and

(c) A list of industries that will be required to comply with the rule. However, this subsection (2)(c) shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply.

For purposes of an SBEIS, the terms "small business," and "industry" are defined by RCW 19.85.020. *"Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees. "Industry" means all of the businesses in this state in any one four-digit standard industrial classification as published by the United States Department of Commerce.*

The proposed water well drilling rule amendments developed by ecology as part of this rule-making process will be evaluated in the following sections of this document. Specifically, the following sections contain the information required by the Regulatory Fairness Act, chapter 19.85 RCW.

2. ANALYSIS OF COMPLIANCE COSTS FOR WASHINGTON BUSINESSES: The SBEIS is intended to analyze the difference between the situation "without the proposed rule amendments" and the expected situation "with the proposed rule amendments." In order to accomplish this comparison, a baseline scenario, which describes the current situation, must be defined. The baseline used in this analysis is the current situation under state regulations.

In the proposed rule amendments, some changes originated from legislative mandates, some are clarifications of the existing rule with no real change, and some simply redefine or include new industry terminology. These amendments make no real change from the baseline and will not have cost impacts on those required to comply. These clarifying changes are not analyzed in this SBEIS. This analysis will analyze the changes from the baseline that would result in additional costs. The primary costs include the new requirements for the operation and maintenance of wells, and the fee application structure for well contractors and operators. Compliance with these rules is not expected to lose sales or revenue for businesses.

2.0 Costs to construction and maintenance of wells.

WAC 173-160-191(16), design and construction requirements for completing wells. For wells completed in an unconsolidated formation in which the bore hole extends beyond the casing or screen, the driller must backfill that portion of the bore hole that extends more than ten feet beyond the casing or screen. The backfill shall consist of either bentonite or chlorinated sand or pea gravel. If any portion of the bore hole extension penetrates a clay layer which is greater than six feet in thickness, that portion of the bore hole shall be sealed with bentonite. Although there may be some minor costs, compared to previous rule language, there is no way for ecology to determine how many wells this could affect as it has always been common practice to drill past the end of the casing in search of additional flow. This is currently a standard practice in the industry and will not be analyzed from old rule language.

WAC 173-160-381(2) and 173-160-381(4), standards for decommissioning a well. Defining the correct procedure for decommissioning and sealing wells will have additional costs. Ecology estimates two hundred to three hundred wells annually will need to be decommissioned in Washington state. The well program estimates costs of decommissioning a well by backfilling instead of perforating at $2,000 per well[1]. A lower range of one hundred fifty to two hundred fifty wells could be decommissioned under the new guidelines. Cost estimates to landowners would be $300,000 to $500,000 annually.

2.1 Costs of licensing for well contractors and operators.

WAC 173-162-060, licensing fees. Application fees will be increased from $25 to $75 for each category of license (water and resource protection) and renewals will increase from $20 to $75. Well licenses are good for two years. The primary costs associated with this rule amendment are the increase in fees for licensing of well contractors and operators. Two additional licenses are proposed. The "Inactive" license and the "Retirement" license will also have a $75 application fee.

License	Old Fee	Proposed Fee	Estimated Annual # licenses	Estimated NET Costs
Water Well Operator (Training)	$25	$75	30	$1,500
Water Well Operator (New)	$25	$75	30	$1,500
Water Well Operator (Renewal)	$20	$75	240	$13,200
Resource Protection Well Operator (Training)	$25	$75	30	$1,500
Resource Protection Well Operator (New)	$25	$75	30	$1,500

License	Old Fee	Proposed Fee	Estimated Annual # licenses	Estimated NET Costs
Resource Protection Well Operator (Renewal)	$20	$75	200	$11,000
Conditional			1	
Inactive		$75	2	$150
Retirement		$75	2	N/A[2]
TOTAL 2 YEAR NET COSTS				$30,350
TOTAL ANNUAL NET COSTS				**$15,175**

WAC 173-162-085, continuing education. Under the proposed rule the department of ecology will no longer be a continuing education provider. An estimated five hundred sixty well drillers annually received their necessary continuing education units (CEUs) from ecology at a rate of $25 per the required seven CEUs. Continuing education will now be available from other providers. One of the primary provider's costs ranges from $75 to $125 for the annual CEU credits. An estimated $28,000 to $56,000 additional continuing education expenses would be shifted to well drillers of Washington state.

2.2 Other impacts to standards for construction and maintenance of wells.

There will be other impacts as a result of this rule making to chapter 173-160 WAC. Under WAC 173-160-040(2), drillers working in counties with delegated authority to inspect wells will be required to check with the county environmental health section for inspection requirements. They will be required to obey all county notification and reporting requirements. This will have a minor impact on drillers that is below the threshold for quantification.

WAC 173-160-171 (3)(b)(vi) states that wells shall not be located within certain minimum distances from known or potential sources of contamination including within one thousand feet from the boundary of a permitted or previously permitted solid waste landfill as defined by the permit or one thousand feet from the property boundary of other solid waste landfills, except ecology may grant a variance under certain circumstances. This will have a minor impact on drillers who may not be able to avoid the setback distance and are forced to ask for a variance. The number of these occurrences cannot be determined.

2.3 Other impacts to the regulation and licensing of well contractors and operators.

There will be other impacts as a result of this rule making to chapter 173-162 WAC. Under WAC 173-162-085, drillers are required to obtain fourteen CEUs every two years to maintain their drilling licenses. Ecology will no longer be a provider of CEUs, therefore, drillers will have to obtain them from other sources[3]. The cost to the drillers for this cannot be determined.

Under WAC 173-162-095 (3)(b), drillers will need to notify ecology at least twenty-four hours prior to their scheduled exam date if they cannot meet that date. If they fail to reschedule their exam within thirty days of the initial exam date, they will forfeit their application and fee. This will have an impact on those drillers that do not meet this requirement. It is unknown how many drillers will fall into this category. Ecology assumes all applicants will reschedule within thirty days.

3. QUANTIFICATION OF COSTS AND RATIOS: The largest cost generated by the proposed rule amendments is the cost of the well decommissioning, well driller licensing fees, and continuing education, although there may be some other minor costs.

In this SBEIS, the names of businesses are taken from employment security's database for SIC code 1780 (water well drilling), and then are matched to this database to find out the corresponding employee numbers and number of firms. For an average small business that drills wells, its average number of employees is 2.6. For an average top 10% business that has an employed well driller, its average number of employees is 29.5. Total cost to all drillers ranges from $343,000 to $571,000. There are two hundred twenty-three active firms in the employment security database giving total cost between $1,538 and $2,561 per firm.

The cost per employee ratio for small business is from $591 to $985 per employee, and is from $52 to $87 per employee for the top 10% of the largest businesses. These numbers demonstrate that the proposed rule amendments have a disproportionate impact on small business[4].

4. ACTIONS TAKEN TO REDUCE THE IMPACT OF THE RULE ON SMALL BUSINESS: This SBEIS concludes that the proposed rule amendments will disproportionately impact small business. It is not expected that any business will lose sales or revenue. RCW 19.85.030(2) requires:

Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses.

(a) Reducing, modifying, or eliminating substantive regulatory requirements;

Ecology has deleted or modified certain sections of chapters 173-160 and 173-162 WAC which will offset the burden to small businesses. Sections deleted include WAC 173-160-201(9) and 173-162-050 (2)(a)(ii).

(b) Simplifying, reducing, or eliminating record-keeping and reporting requirements;

Ecology has not offset the record-keeping and reporting requirements. Small businesses currently have all record-keeping and reporting processes in place. There is no mitigation of these at this time.

(c) Reducing the frequency of inspections;

Ecology has not offset the frequency of inspections for small businesses. The Well Drillers Association, an organization on the technical advisory committee (TAG) that assisted ecology in this rule making, wanted inspections to be increased.

(d) Delaying compliance timetables;

Ecology has not offset delaying compliance timetables. The Well Drillers Association as members of the TAG wanted inspections to be increased and therefore, timetables will not be delayed to satisfy their request.

(e) Reducing or modifying fine schedules for noncompliance;

Ecology has not offset reducing or modifying fine schedules for noncompliance. Fines are set by statute in chapter 18.104 RCW and cannot be reduced or mitigated through rule.

(f) Any other mitigation techniques.

Ecology did not include any other mitigation techniques.

5. THE INVOLVEMENT OF SMALL BUSINESS IN THE DEVELOPMENT OF THE PROPOSED RULE AMENDMENTS: As mandated by statute, the program has utilized the TAG which was established by the 1993 legislature to assist in the development of these rules. This group consists of six licensed drillers, two health staff, two ecology staff, one engineer, and one hydrogeologist. The TAG is chaired by ecology. This group started their work in 2002. Since then, a series of continuing education workshops have been conducted to get driller input on potential rule changes. Further involvement included public workshops and mailings.

6. THE SIC CODES OF IMPACTED INDUSTRIES: Ecology concludes that the businesses associated with the SIC code 1780 and 1781 will be impacted from the proposed rule amendments.

[1] Dick Szymarek, Well drilling lead, department of ecology.

[2] Not analyzed. Not required, gives no well drilling privileges.

[3] Washington State Groundwater Association, etc.

[4] Cost calculations do not separate costs passed on to consumers. All costs of the rule are assumed to be business.

A copy of the statement may be obtained by contacting Richard Szymarek, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6648, fax (360) 407-7162, e-mail rszy461@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Richard Szymarek, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6648, fax (360) 407-7162, e-mail rszy461@ecy.wa.gov.

August 21, 2006
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-010 What is the purpose of this regulation? (1) These regulations are adopted under chapter 18.104 RCW, to establish minimum standards for the construction and decommissioning of all wells in the state of Washington.

(2) The following are excluded from these regulations:

(a) Any excavation that is not intended to locate, divert, artificially recharge, observe, monitor, dewater, or withdraw ground water ((~~for agricultural, municipal, industrial, domestic, or commercial use~~)) except resource protection wells, ground source heat pump borings, grounding wells, and geotechnical soil borings.

(b) Any excavation for the purpose of obtaining or prospecting for oil, natural gas, minerals, products of mining, quarrying, inserting media to repressure oil or natural gas bearing formations, storing petroleum, natural gas, or other products, as provided in chapter 78.52 RCW.

(c) Injection wells regulated in chapter 173-218 WAC.

Exception: Injection wells used to withdraw ground water and remediation wells that are used to inject any substance to remediate, clean up, or control potential or actual contamination may be regulated by chapters 173-218 and 173-160 WAC.

(d) Infiltration or exfiltration galleries, trenches, ponds, pits, and sumps, except where the department determines that the intended use of the excavation meets a definition in RCW 18.104.020.

(e) Grounding wells and grounding rods that are installed to a depth of twenty-five feet or less.

(3) Under chapter 90.48 RCW, those excavations excluded in subsection (2)(a) through (d) of this section shall be constructed, maintained, and decommissioned to ensure protection of the ground water resource and to prevent the contamination and waste of that resource.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-040 How does this regulation relate to other authorities? (1) Nothing in these regulations may be construed to waive any legal requirements of other state agencies or local governmental entities relating to well construction, nor may it preclude the adoption of more stringent minimum well construction standards by local government.

(2) Well contractors shall be familiar with all state and local well construction requirements, and existing and approved site plans, to include septic permits, for their job sites prior to initiating construction. Drillers working in counties that have delegated authority to inspect wells shall check with the county environmental health section for inspection requirements. Drillers are required to obey all county notification and reporting requirements.

NEW SECTION

WAC 173-160-073 How will the delegated authorities be evaluated? The department will, on an annual basis, review each of the local health jurisdictions or counties, interagency agreements. The review shall include an audit of the construction inspections, decommissioning inspections, enforcement activities, variance decisions, training needs, technical assistance, coordination with drillers and other driller interactions that occurred during the year. The review will also address the need to update or otherwise change portions of the delegation agreements.

The department will summarize the reviews into an annual report. The report will be completed no later than April 1 of each year. The completed report will be available to the public upon request and posted on the department's web site.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-101 What are the general standards that apply to all water wells? The following minimum standards apply to all water wells constructed and decommis-

sioned in the state of Washington. It is the responsibility and liability of the water well operator who constructs the well, the property owner, and the water well contractor, to take whatever measures are necessary to guard against waste and contamination of the ground water resources.

(1) It is necessary in some cases to construct and decommission wells with additional requirements beyond the minimum standards. Additional requirements may be necessary when the well is constructed or decommissioned ((~~in, or~~)) adjacent to a known, or potential source of contamination. Examples of sources, or potential sources of contamination are found in the well siting section, WAC 173-160-171.

(2) Nothing in these regulations limits the department's authority to approve comparable alternative specifications for well construction as technology in the industry develops, or new and comparable methods of construction become known to the department.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-106 How do I apply for a variance on a water well? (1) When strict compliance with the requirements and standards of this chapter are impractical, any person may request a variance to the department from a regulation or regulations. The application for variance must propose a comparable alternative specification that will provide equal or greater human health and resource protection than the minimum standards. Application for a variance shall be made in writing and approved prior to the construction or decommissioning of the well.

(2) The variance application shall contain at least the following information:

(a) Name, address, and phone number of the person requesting the variance;

(b) Address of well site;

(c) 1/4, 1/4, section, township, range;

(d) The specific regulation(s) that cannot be followed;

(e) The comparable alternative specification;

(f) Justification for the request.

(3) At the department's discretion, the proponent may be required to provide additional technical information justifying the variance.

(4) The variance application will be evaluated, and a response will be given within fourteen days. In a public health emergency or other exceptional circumstance, verbal notification for a variance may be given. An emergency usually consists of a well failure resulting in a dry well or an unusable well. Driller convenience does not constitute an emergency.

(((~~4~~))) (5) The emergency variance recipient must immediately follow up with a written notification to the department so that a permanent record is made of the variance.

(((~~5~~))) (6) Local health districts or counties with delegated authority may grant variances under the provision chapter 18.104 delegated authority.

AMENDATORY SECTION (Amending Order 98-17, filed 9/2/98, effective 10/3/98)

WAC 173-160-111 What are the definitions of specific words as used in this chapter? (1) "Abandoned well" means a well that is ((~~unused,~~)) unmaintained((~~, and~~)) or is in such disrepair ((~~as to be~~)) that it is unusable or is a risk to public health and welfare.

(2) "Access port" is a 1/2- to 2-inch tapped hole or tube equipped with a screw cap, which provides access to the inner casing, for measurement of the depth to water surface. An access port also means a removable cap.

(3) "Annular space" is the space between the surface or outer casing and the inner casing, or the space between the wall of the drilled hole and the casing.

(4) "Aquifer" is a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

(5) "Artesian well" is a well tapping an aquifer bounded above and below by confining or impermeable rock or soil layers, or rock or soil layers of distinctly lower permeability than the aquifer itself. The water will rise in the well above the point of initial penetration (above the bottom of the confining or impermeable layer overlying the aquifer). This term includes both flowing and nonflowing wells.

(6) "Artificial gravel pack" is a mixture of gravel or sand placed in the annular space around the liner, perforated pipe, or well screen. A gravel pack is used to reduce the movement of finer material into the well and provide lateral support to the screen in unstable formations.

(7) "Artificial recharge" is the addition of water to an aquifer by activities of man, such as irrigation or induced infiltration from streams, or injection through wells, trenches, pits, and ponds.

(8) "Bentonite" is a mixture of swelling clay minerals, predominantly sodium montmorillonite.

(9) "Building drain" means that part of the lowest piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning two feet outside the building wall.

(10) "Building sewer" means that part of the horizontal piping of a drainage system which extends from the end of the building drain and which receives the discharge of the building drain and conveys it to a public sewer, private sewer, individual sewage disposal system, or other point of disposal.

(11) "Capped well" is a well that is not in use and has a watertight seal or cap installed on top of the casing.

(((~~10~~))) (12) "Casing" is a pipe, generally made of metal or plastic, which is installed in the bore hole as part of the drilling process to maintain the opening. Casing may be utilized in either consolidated or unconsolidated formations and must meet the requirements of WAC 173-160-201.

(((~~11~~))) (13) "Consolidated formation" means any geologic formation in which the earth materials have become firm and cohesive through natural rock forming processes. Such rocks commonly found in Washington include basalt, granite, sandstone, shale, conglomerate, and limestone. An uncased bore hole will normally remain open in these formations.

(((~~(12)~~))) (14) "Constructing a well" or "construct a well" means:

(a) Boring, digging, drilling, or excavating a well;

(b) Installing casing, sheeting, lining, or well screens, in a well; ((~~or~~))

(c) Drilling a geotechnical soil boring; or

(d) Installing an environmental investigation well.

"Constructing a well" or "construct a well" includes the alteration of an existing well.

(((~~(13)~~))) (15) "Contamination" has the meaning provided in RCW 90.48.020.

(((~~(14)~~))) (16) "Curbing" is a liner or pipe made of concrete, precast tile or steel installed in dug wells to provide an annular space between the well bore and the liner or pipe for sealing.

(((~~(15)~~))) (17) "Decommissioning" means to fill or plug a well so that it will not produce water, serve as a channel for movement of water or pollution, or allow the entry of pollutants into the well or aquifer(s).

(((~~(16)~~))) (18) "Department" means the department of ecology.

(((~~(17)~~))) (19) "Design pumping rate" means the maximum pumping rate as determined by the well driller, without exceeding the department's policy on sand and turbidity.

(20) "Dewatering well" means a cased or lined excavation or boring that is intended to withdraw or divert ground water for the purpose of facilitating construction, stabilizing a land slide, or protecting an aquifer.

(((~~(18)~~))) (21) "Director" means director of the department of ecology.

(((~~(19)~~))) (22) "Disinfection" or "disinfecting" is the use of chlorine, or other disinfecting agent or process approved by the department, in sufficient concentration and contact time adequate to inactivate coliform or other indicator organisms.

(((~~(20)~~))) (23) "Domestic water supply" is any water supply which serves a family residence(s).

(((~~(21)~~))) (24) "Draw down" is the measured difference between the static ground water level and the ground water level induced by pumping.

(((~~(22)~~))) (25) "Drilled well" is a well in which the hole is usually excavated by mechanical means such as rotary, cable tool, or auger drilling equipment.

(((~~(23)~~))) (26) "Drilling log" means a water or resource protection well report.

(27) "Driven well" is a well constructed by joining a "drive point" to a length of pipe, then driving the assembly into the ground.

(((~~(24)~~))) (28) "Dug well" is a well generally excavated with hand tools or by mechanical methods. The side walls may be supported by material other than standard weight steel casing.

(((~~(25)~~))) (29) "Filter pack" means clean, well rounded, smooth, uniform, sand or gravel, which is placed in the annulus of the well between the bore hole wall and the liner, perforated pipe, or well screen to prevent formation material from entering the well.

(((~~(26)~~))) (30) "Formation" means an assemblage of earth materials grouped together into a unit that is convenient for description or mapping.

(((~~(27)~~))) (31) "Ground source heat pump boring" means a vertical boring constructed for the purpose of installing a closed loop heat exchange system for a ground source heat pump.

(32) "Ground water" means and includes ground waters as defined in RCW ((~~90.40.035~~)) 90.44.035.

(((~~(28)~~))) (33) "Grounding well" means a grounding electrode installed in the earth by the use of drilling equipment to prevent buildup of voltages that may result in undue hazards to persons or equipment. Examples are anode and cathode protection wells.

(34) "Grout" is a fluid mixture of cement, bentonite, and water used to seal the annular space around or between well casings, or to decommission wells.

(((~~(29)~~))) (35) "Impermeable" is a descriptive term for earth materials which have a texture or structure that does not permit fluids to perceptibly move into or through its pores or interstices.

(((~~(30)~~))) (36) "Liner" means ((~~any device~~)) a pipe inserted into a larger casing, ((~~screen,~~)) or bore hole, after the drilling process has occurred, as a means of maintaining the structural integrity of the well. Liners may only be used in consolidated formations and must meet the requirements of WAC 173-160-201.

(((~~(31)~~))) (37) "Maximum pumping rate" means the maximum pumping rate, as determined by the well driller, without exceeding the department's policy on sand and turbidity.

(38) "Operator" means a person who:

(a) Is employed by a well contractor;

(b) Is licensed under this chapter; or

(c) Who controls, supervises, or oversees the construction of a well or who operates well construction equipment.

(39) "Owner" or "well owner" means the person, firm, partnership, copartnership, corporation, association, other entity, or any combination of these, who owns the property on which the well is or will be constructed or has the right to the well by means of an easement, covenant, or other enforceable legal instrument for the purpose of benefiting from the well.

(40) "Permeability" is a measure of the ease of which liquids or gas move through a porous material.

(a) For water, this is usually expressed in units of centimeters per second or feet per day. Hydraulic conductivity is a term for water permeability.

(b) Soils and synthetic liners with a water permeability of 1 x 10[-7] cm/sec or less may be considered impermeable.

(((~~(32)~~))) (41) "Pollution" has the meaning provided in RCW 90.48.020.

(((~~(33)~~))) (42) "Pressure grouting" is a method of forcing grout into specific portions of a well for sealing purposes.

(((~~(34)~~))) (43) "PTFE" means polytetrafluoroethylene casing materials such as teflon. The use of the term teflon is not an endorsement for any specific PTFE product.

(((~~(35)~~))) (44) "Public water supply" is any water supply intended or used for human consumption or other domestic uses, including source, treatment, storage, transmission and distribution facilities where water is furnished to any community, collection or number of individuals, available to the public for human consumption or domestic use, excluding water supplies serving one single-family residence and a sys-

tem with four or fewer connections, all of which serve residences on the same farm.

(((~~36~~))) (45) "PVC" means polyvinyl chloride, a type of thermoplastic casing or liner.

(((~~37~~))) (46) "Static water level" is the vertical distance from the surface of the ground to the water level in a well when the water level is not affected by withdrawal of ground water.

(((~~38~~))) (47) "Temporary surface casing" is a length of casing (at least four inches larger in diameter than the nominal size of the permanent casing) which is temporarily installed during well construction to maintain ((~~the~~)) an annular space for later placement of the surface seal as described in WAC 173-160-275, 173-160-285, 173-160-305, and 173-160-315. The temporary surface casing shall be removed before well completion.

(((~~39~~))) (48) "Test well" is a well (either cased or uncased), constructed to determine the quantity of water available for beneficial uses, identifying underlying rock formations (lithology), and to locate optimum zones to be screened or perforated. If a test well is constructed with the intent to withdraw water for beneficial use, it must be constructed in accordance with the minimum standards for water supply wells, otherwise they shall be constructed in accordance with the minimum standards for resource protection wells. A water right permit, preliminary permit, or temporary permit shall be obtained prior to constructing a test well unless the anticipated use of water is exempt as provided in RCW 90.44.050. A "test well" is a type of "water well."

(((~~40~~))) (49) "Tremie tube" is a small diameter pipe used to place grout, filter pack material, or other well construction materials in a well.

(((~~41~~))) (50) "Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

(((~~42~~))) (51) "Unconsolidated formation" means any naturally occurring, loosely cemented, or poorly consolidated earth material including such materials as uncompacted gravel, sand, silt and clay.

Alluvium, soil, and overburden are terms frequently used to describe such formations.

(((~~43~~))) (52) "Water well" means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering or withdrawal of ground water ((~~for agricultural, municipal, industrial, domestic, or commercial use~~)). Water wells include ground source heat pump borings and grounding wells.

(((~~44~~))) (53) "Water well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing water wells.

(((~~45~~))) (54) "Water well report" means a document that describes how a water well, ground source heat pump, or grounding well was constructed or decommissioned and identifies components per the requirements of WAC 173-160-141.

(55) "Well alteration(s)" include(s): Deepening, hydrofracturing or other operations intended to increase well yields, or change the characteristics of the well. Well alteration does not include general maintenance, cleaning, sanitation, and pump replacement.

(((~~46~~))) (56) "Well completion" means that construction has progressed to a point at which the drilling equipment has been removed from the site, or a point at which the well can be put to its intended use.

(((~~47~~))) (57) "Well contractor" means a resource protection well contractor and water well contractor licensed and bonded under chapter 18.27 RCW.

(58) "Well driller(s)" or "driller(s)" is synonymous with "operator(s)."

(((~~48~~))) (59) "Well" means water wells, resources protection wells, ((~~instrumentation wells,~~)) dewatering wells, and geotechnical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for oil or natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

(60) "Well screen" means a device, usually made of plastic or metal that is capable of preventing unconsolidated or poorly consolidated geologic material from entering the well. The size of the material which is prevented from entering the well is predetermined and controlled by the screen opening or slot size of the screen. A well screen may include a riser pipe.

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

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-141 What are the requirements regarding water well reports? (1) Anyone who constructs or decommissions a well is required to submit a complete report on the construction, alteration, or decommissioning of the well to the ((~~department~~)) water resources program within thirty days after completion of a well, or after the drilling equipment has left the site. Submission of well report to consulting firms does not meet the well contractor's obligation of this section.

(a) This applies to all water wells.

(b) The water well report must be made on a form provided by the department, or a reasonable facsimile of the form, as approved by the department.

(2) Where applicable the water well report must include, at least, the following information:

(a) Owner name; operator/trainee name; operator/trainee license number; contractor registration number, drilling company name;

(b) Tax parcel number;

(c) Well location address;

(d) Location of the well to at least 1/4, 1/4 section or smallest legal subdivision;

(e) Unique well identification tag number;

(f) Construction date;

(g) Start notification number;

(h) Intended use of well;

(i) The well depth, diameter, and general specifications of each well;

(j) Total depth of casing;

(k) Well head elevation;

(l) Drilling method;

(m) Seal material, seal location and type of placement used;

(n) Filter pack location; filter pack material used;

(o) The thickness and character of each bed, stratum or formation penetrated by each well, including identification of each water bearing zone;

(p) Casing gauge, diameter, stickup, type of material, and length, also of each screened interval or perforated zone in the casing;

(q) The tested capacity of each well in gallons per minute, and the test duration and draw down of the water level at the end of the capacity test;

(r) Recovery data;

(s) For each nonflowing well, the depth to the static water level, as measured below the land surface;

(t) For each flowing well, the shut-in pressure measured above the land surface, or in pounds per square inch at the land surface; and

(u) Water right permit or certificate number for all wells that are not exempt under RCW 90.44.050; and

(v) Such additional factual information as may be required by the department.

(3) The well report must show the license number and signature of the person who constructed the well. If this is an unlicensed person, exempted under RCW 18.104.180(2), the report shall show the license number and signature of the licensed operator who witnessed the drilling. Water well reports for wells constructed by trainees shall have the signature and license number of the trainee and the licensed operator.

(4) If a well report is missing, a new report may be generated. This report shall contain all physical components of the well and report all available information in accordance with this section. The report shall be signed by the individual collecting the physical information of the well. Submittal of this report does not relieve the person who constructed the well of their obligation to submit a complete well report under subsection (1) of this section.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-151 Does the department require prior notice and fees for well constructing, reconstructing, or decommissioning a water well? (1) Yes. The property owner, owner's agent, or water well operator shall notify the department of their intent to begin well construction, reconstruction-alteration, or decommissioning procedures at least seventy-two hours before starting work.

(2) The notice of intent is submitted on forms provided by the department and must contain the following:

(a) Well owner name;

(b) Well location; street address; county name, 1/4, 1/4 section, township, and range, and tax parcel number;

(c) Proposed use; (if the intended withdrawal requires a water right, the permit or certificate shall be attached to the notice of intent);

(d) Approximate start and completion dates;

(e) Contractor registration number;

(f) Operator/trainee name and license number; and

(g) Drilling company name.

(3) In an emergency, a public health emergency, or in exceptional instances, the department may allow verbal notification to the appropriate regional office, with a ((~~start card written notification follow-up~~)) notice of intent and payment of fee submitted within twenty-four hours. An emergency situation may consist of a failing well, or water quality issues which could result in a public health or safety concern.

(4) The notice must be accompanied by the following fees which apply to all newly constructed or altered wells:

(a) The fee for one ((~~new~~)) water well, other than a dewatering well, with a top casing diameter of less than twelve inches is ((~~one~~)) two hundred dollars. This fee does not apply to a ground source heat pump boring or a grounding well.

(b) The fee for one ((~~new~~)) water well, other than a dewatering well, with a top casing diameter of twelve inches or greater is ((~~two~~)) three hundred dollars.

(c) The fee for a ground source heat pump boring or a grounding well is forty dollars for construction of up to four ground source heat pump borings or grounding wells per project and ten dollars for each additional ground source heat pump boring or grounding well constructed on a project with more than four wells.

(d) The combined fee for construction and decommissioning of a dewatering well system shall be forty dollars for each two hundred horizontal lineal feet, or portion of horizontal lineal feet, of the dewatering well system.

(((~~d) There is no fee for decommissioning~~)) (e) The fee to decommission a water well is fifty dollars.

(f) The fee to decommission a ground source heat pump boring or a grounding well is twenty dollars.

(5) If drilling results in an unusable well (dry hole), there is no additional fee for a second attempt, provided:

(a) A subsequent attempt at constructing a new well is made immediately; and

(b) The unusable well(s) is properly decommissioned before drilling equipment leaves the well site; and

(c) The department is notified of all decommissionings; and

(d) A well report describing the decommissioning process is submitted to the department in accordance with this chapter.

(6) A new notice of intent and fee shall be required on all follow-up construction after the drilling equipment has left the drill site.

(7) A refund shall be made on any well that has not been constructed provided, a written request on an approved form is made by the person who paid the fee and is submitted to the department within ((~~twelve~~)) six months from the date the notice and fee were received by the department. ((~~A copy of the notice of intent receipt must accompany the request.~~))

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-161 How shall each water well be planned and constructed? Every well must be planned and constructed so that it is:

(1) Adapted to those geologic and ground water conditions known to exist at the well site to insure utilization of any natural protection available;

(2) Not a conduit for contaminating the ground water or surface water nor a means of wasting water;

(3) Capable of yielding, where obtainable, the quantity of water necessary to satisfy the requirements the user has stated are needed and for which the well water is intended to be used.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-171 What are the requirements for the location of the well site and access to the well? (1) The proposed water well shall be located on high ground that is not in the floodway.

(2) It shall be protected from a one hundred year flood and from any surface or subsurface drainage capable of impairing the quality of the ground water supply.

(3) All wells shall not be located within certain minimum distances of known or potential sources of contamination.

(a) Some examples of sources or potential sources of contamination include:

(i) Septic systems, including proposed and reserve sites under a valid septic design: Provided, that the design has been approved for installation by a health authority;

(ii) Manure, sewage, and industrial lagoons;

(iii) Landfills;

(iv) Hazardous waste sites;

(v) Sea((-))/salt water intrusion areas;

(vi) Chemical and petroleum storage areas;

(vii) Pipelines used to convey materials with contamination potential;

(viii) Livestock barns and livestock feed lots.

(b) Minimum set-back distances for water wells other than for public water supply are:

(i) Five feet from any existing building structure, building projection, or building drain. Water wells shall not be located in garages, barns, storage buildings or ((~~inhabited~~)) dwellings.

(ii) Fifty feet from a septic tank, septic holding tank, septic containment vessel, septic pump chamber, and septic distribution box.

(iii) Fifty feet from building sewers, public sewers, collection and nonperforated sewer distribution lines except building drains.

(iv) One hundred feet from the edge of a drainfield, proposed drainfield which has been approved by a health authority, and reserve drainfield areas.

(v) One hundred feet from all other sources or potential sources of contamination except for solid waste landfills.

(vi) One thousand feet from the ((~~property~~)) boundary of a permitted or previously permitted (under chapter 173-304, 173-306, 173-351, or 173-350 WAC) solid waste landfill as defined by the permit; or one thousand feet from the property boundary of other solid waste landfills. Except, a variance may be granted if documentation is provided that demonstrates the construction and operation of the well adjacent to the landfill will not further degrade the environment and will not cause a public health risk.

(c) All public water supply wells shall be located by the department of health or the local health authority.

(i) Before construction begins, site approval must be obtained from the department of health, or the local health authority.

(ii) The requirements of the state board of health regulation regarding public water supplies shall apply.

(iii) This regulation includes requirements for zones of protection, location of the well, accessibility features, and certain construction requirements.

(4) In siting a well, the driller shall consider:

(a) All local and state water well construction regulations, policies, and ordinances;

(b) Permeability of the soil or rock;

(c) Adjacent land uses;

(d) Local ground water conditions; and

(e) End use of the well.

(5) ((~~When a well is located in an area of known or potential contamination, the water well casing and seal shall be impervious to the contaminants.~~

~~(6)~~)) Before construction, the water well operator should strongly emphasize to the well owner, the importance of retaining good accessibility to the well to permit future inspection, maintenance, supplementary construction, and decommissioning.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-191 What are the design and construction requirements for completing wells? (1) You may complete wells with screens, perforated liners or pipe, or open bottom completion. The well driller or designer shall advise the owner or the owner's representative of the most appropriate method of completion.

(2) All well components must be of sufficient strength to withstand the normal forces to which they are subjected during and after construction.

(3) Water wells must be completed in a manner which prevents the production of untreatable amounts of sand, silt, or turbid water which would render the well unusable.

(4) Open bottom completion is appropriate where the withdrawn waters are essentially free of sand, silt and turbidity.

(5) Perforated pipe completion is suitable for a coarse-grained, permeable aquifer where the withdrawn waters are free of sand, silt or turbidity.

(6) Perforations above the static water level are not permitted.

(7) In place perforations with Star, Mills knife, or similar type perforators are acceptable.

(8) Perforated pipe liners, either saw cut, torch cut, mill slotted, or punched are acceptable.

(9) The use of perforated casing for working casing as the hole is being drilled is prohibited, except in those cases where the contractor can, through personal experience in the particular area of drilling, attest to the sufficiency of the pre-

perforated casing in all respects for the specific well being constructed.

(10) Pipe liners may be of steel, plastic or other suitable corrosion resistant material.

(11) All liners must be of sufficient strength to withstand normal forces exerted upon the liner material during installation and operation.

(12) Liners may be used only in ((~~a natural development or gravel packed type construction~~)) consolidated formations.

(13) The installation of a liner without a gravel pack is prohibited when conditions exist that will result in excessively turbid water.

(14) Well screens and well points must be constructed of compatible corrosion resistant material.

(a) A neoprene, or grout seal shall be fitted to the top of the well screen assembly, if necessary.

(b) The bottom of the well screen shall be plugged or capped.

(c) The use of lead packers is prohibited.

(15) The alignment of the bore hole, permanent casing, or liner shall be sufficiently plumb and straight to allow the installation of screens, liners, pumps, and pump columns without binding or having adverse affects on the operation of the installed pumping equipment.

(a) Alignment of the well casing or bore hole shall not deviate from an alignment that would allow a twenty foot test section of pipe to be inserted to the bottom of the well without binding.

(b) The diameter of the test section of pipe shall be per Table 1 in WAC 173-160-201.

(c) For testing alignment in casing reductions, each section shall be tested separately.

(16) For wells completed in an unconsolidated formation in which the bore hole extends beyond the completed casing or screen depth, the driller must backfill that portion of the bore hole that extends more than ten feet beyond the casing or screen. The backfill shall consist of either bentonite or chlorinated sand or pea gravel. If any portion of the bore hole extension penetrates a clay layer which is greater than six feet in thickness, that portion of the bore hole shall be sealed with bentonite. A notice of intent to decommission a water well is not required for this work.

AMENDATORY SECTION (Amending Order 98-17, filed 9/2/98, effective 10/3/98)

WAC 173-160-201 What are the casing and liner requirements? (1) Proper casing must be installed in all water supply wells.

(2) The casing shall withstand normal forces which act upon it during and after installation. It shall be resistant to the corrosive effects of the surrounding formations, earth, and water and shall be impervious to any contaminants encountered.

(3) All plastic casing ((~~for use~~)) or liner pipe used in potable water supply wells must be manufactured to conform to National Sanitation Foundation (NSF) Standard 14-84, or the most recent revision.

(4) Unless prior approval is obtained from the department, ((~~materials for~~)) well casings and liner pipes must be made of either steel ((~~casing as shown in Table 1~~)) or plastic ((~~casing as shown in Table 2~~)).

(5) Liner pipe must be of sufficient strength to withstand breakage or collapse when the well is pumped and meet ASTM potable water standards.

(6) When installed, liner pipe shall extend or telescope at least two feet into the lower end of the well casing. If more than one string of liner pipe is installed, each string shall extend or telescope at least eight feet into the adjacent larger diameter liner pipe.

(7) Liner pipe may not be permanently fixed to a well casing below land surface.

(8) Minimum specifications for steel casing and steel liner pipe for water wells are shown in Table 1.

(((~~6~~))) (9) Minimum specifications for plastic casing and plastic liner pipe for water wells are shown in Table 2.

(10) Steel casing larger than twenty inches shall have a minimum wall thickness of 0.375 inches.

TABLE 1

Minimum Specifications for Steel Casing and Steel Liner Pipe

NOMINAL SIZE (inches)	OUTSIDE DIAMETER (inches)	WALL THICKNESS (inches)	WEIGHT PER FOOT (pounds)	TEST SECTION OUTSIDE DIAMETER (inches)
1.25	1.660	0.140	2.27	0.500
1.5	1.900	0.145	2.72	0.750
2.0	2.375	0.154	3.65	1.000
2.5	2.875	0.203	5.79	1.500
3.0	3.500	0.216	7.58	2.000
3.5	4.000	0.226	9.11	2.500
4.0	4.500	0.237	10.79	3.000
5.0	5.563	0.258	14.62	3.500
6.0	6.625	0.250	17.02	4.000
8.0	8.625	0.250	22.36	6.000
10	10.750	0.250	28.04	8.000
12	12.750	0.250	33.38	10.000
14	14.000	0.312	45.61	11.000
16	16.000	((~~0.344~~)) 0.375	57.52	14.000
18	18.000	0.375	70.59	16.000
20	20.000	0.375	78.60	18.000
24	24.000	0.375	94.62	20.000
30	30.000	0.375	118.65	24.000

TABLE 2

Minimum Specifications for Plastic Casing and Plastic Liner Pipe

NOMINAL CASING DIAMETER (inches)	MINIMUM THICKNESS (inches)	SDR
2.0	0.133	21
2.5	0.137	21
3.0	0.167	21
3.5	0.190	21
4.0	0.214	21
4.5	0.236	21
5.0	0.265	21
6.0	0.316	21
8.0	0.410	21

NOMINAL CASING DIAMETER (inches)	MINIMUM THICKNESS (inches)	SDR
10	0.511	21
12	0.606	21

STEEL CASING AND STEEL LINER

(((~~(7)~~))) (11) All steel casing ((~~materials~~)) and steel liner must be new or, in like new condition, and be structurally sound.

(a) Casing or liner that has been exposed to a contaminant shall not be used in well construction unless the contamination can be entirely removed.

(b) When casing or liner lengths are joined together, they must be connected by watertight weld or screw coupled joints.

(i) Welded joints must be at least as thick as the wall thickness of the well casing and be fully penetrating.

(ii) All steel well casing or liner shall meet or exceed the minimum American Society for Testing and Materials (ASTM) A-53 A or B specification for steel pipe.

PLASTIC CASING AND PLASTIC LINER

(((~~(8)~~))) (12) Plastic, fiberglass, PVC, SR, ABS, CPVC or other type of nonmetallic well casing or liner must be manufactured and installed to conform with ANSI/ASTM F 480-81, ((~~Standard Dimension Ratio (SDR) 21~~)) or the most recent revision.

(a) SDR is calculated by dividing the outside diameter of the pipe by the wall thickness.

(b) SDR 21 is the minimum requirement (Class 200); higher pressure rated pipe may be used.

(c) All plastic casing must be installed only in an oversized drill hole without driving. The oversized hole must be a diameter of at least 4 inches larger than the outside diameter of the plastic casing or coupling hubs, whichever is larger. Plastic casing and liner must be of sufficient strength to withstand breakage or collapse when installed and while the well is pumped. Plastic casing and liner must meet ASTM potable water standards.

(d) All plastic casing or liner must be new or, in like new condition and clearly marked by the manufacturer showing nominal size, class, type of plastic material, SDR, ASTM designation, and have a National Sanitation Foundation (NSF) seal of approval for use in potable water supplies.

(e) Casing or liner that has been exposed to a contaminant shall not be used in well construction unless the ((~~construction can be~~)) contaminant is entirely removed.

(f) Plastic casing or liner joints must be watertight.

(i) Either "bell" type, threaded joints, or coupling hubs are approved.

(ii) Hub couplings must be of materials meeting the specifications for plastic casings as stipulated in subsection (2) of this section.

(iii) If joints are secured with solvent cement, it must be done in accordance with manufacturer's directions.

(((~~(g) Table 2 is the manufacturer's recommendations for specifications of plastic casing.~~

~~TABLE 2~~
~~Minimum Specifications for Plastic Casing~~

~~NOMINAL CASING DIAMETER (inches)~~	~~MINIMUM THICKNESS (inches)~~	~~SDR~~
~~2.0~~	~~0.13321~~	~~21~~
~~2.5~~	~~0.13721~~	~~21~~
~~3.0~~	~~0.16721~~	~~21~~
~~3.5~~	~~0.19021~~	~~21~~
~~4.0~~	~~0.21421~~	~~21~~
~~4.5~~	~~0.23621~~	~~21~~
~~5.0~~	~~0.26521~~	~~21~~
~~6.0~~	~~0.31621~~	~~21~~
~~8.0~~	~~0.41021~~	~~21~~
~~10~~	~~0.51121~~	~~21~~
~~12~~	~~0.60621~~	~~21~~

~~LINER PIPE~~

~~(9) Liner pipe must consist of steel, in new or like new condition, free of pits or breaks; or polyvinyl chloride (PVC), CPVC, type 1120, with SDR 21 (Class 200) or greater wall thickness. All PVC must be clearly marked to identify the type, class, and SDR.~~

~~(a) Liner pipe must be of sufficient strength to withstand breakage or collapse when the well is pumped and meet ASTM potable water standards.~~

~~(b) When installed, liner pipe shall extend or telescope at least two feet into the lower end of the well casing. If more than one string of liner pipe is installed, each string shall extend or telescope at least eight feet into the adjacent larger diameter liner pipe.~~

~~(c) Liner pipe may not be permanently fixed to a well casing below land surface.~~))

CONCRETE CURBING

(((~~(10)~~))) (13) The concrete used to make curbing must consist of clean, hard and durable aggregate with not less than five sacks (ninety-four pounds per sack) of portland cement per cubic yard of concrete.

(a) The maximum diameter of aggregate particles may not exceed 1 1/2 inches, but in any case may not exceed 1/5 the minimum width of the casing thickness.

(b) The ratio of coarse aggregate to fine aggregate (passing No. 4 U.S. Standard Sieve) must be approximately 1 1/2 to 1 by volume, but in any case, may not exceed 2 to 1 nor be less than 1 to 2.

(((~~(11)~~))) (14) The curbing shall be at least six inches thick and free of voids. The walls shall be poured in one continuous operation.

(((~~(12)~~))) (15) When concrete tile is used to line a well, the combined total wall thickness and seal shall be a minimum of six inches.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-221 What are the standards for sealing materials? (1) **Bentonite sealant:**

(a) Bentonite used to prepare slurries for sealing, or decommissioning shall be specifically designed for this purpose. At no time shall grout slurry contain materials that are toxic, polluting, develop odor or color changes, or serve as a micro-bacterial nutrient. All bentonite slurries shall be prepared and installed according to the manufacturer's instructions. All additives must be certified by a recognized certification authority such as NSF. Active solids content (bentonite) shall be twenty percent by weight or greater in all bentonite slurries. The active solids shall be checked by using the following formula:

Weight of bentonite (lbs.) X 100 = % solids
Weight of bentonite (lbs.) + (gallons of water x 8.33 lbs./gal)

Example: 105 lbs. of bentonite X 100 = 20% solids
105 lbs. bentonite + (50 gallons of water x 8.33 lbs./gal)

(b) Unhydrated bentonite—pelletized, granulated, powder, or chip bentonite may be used in the construction of seals or in decommissioning of wells. The bentonite material shall be specifically designed for sealing or decommissioning and be within the industry tolerances for dry western sodium bentonite. Polymer additives must be designed and manufactured to meet industry standards to be nondegrading and must not act as a medium which will promote growth of micro-organisms. All unhydrated bentonite used for sealing or decommissioning must be free of organic polymers. Placement of bentonite shall conform to the manufacturer's specifications and result in a seal free of voids or bridges.

(2) **Cement sealants:**

(a) Neat cement consists of either portland cement types I, II, III, or high-alumina cement mixed with not more than six gallons of potable water per sack of cement (ninety-four pounds per sack).

(b) Neat cement grout consists of neat cement with up to five percent bentonite clay added, by dry weight of the bentonite. Bentonite is added to improve flow qualities and compensate for shrinkage.

(c) Concrete sealants consist of clean, hard and durable aggregate with not less than five sacks (ninety-four pounds per sack) of portland cement per cubic yard of concrete sealant and water.

(i) The maximum diameter of aggregate particles may not exceed 1 1/2 inches, but in any case may not exceed 1/5 the minimum width of the casing thickness.

(ii) The ratio of coarse aggregate to fine aggregate (passing No. 4 U.S. Standard Sieve) must be approximately 1 1/2 to 1 by volume, but in any case, may not exceed 2 to 1 nor be less than 1 to 2.

(iii) The quantity of water used for each batch of cement sealant shall not exceed manufacturer's recommendation.

(d) Expanding agents, such as aluminum powder, may be used at a rate not exceeding 0.075 ounce (1 level teaspoon) per sack (ninety-four pounds per sack) of dry cement. The powder may not contain polishing agents. High-alumina cement and portland cement of any type must not be mixed together.

(e) Controlled density fill (CDF) or fly ash shall not be used in any well construction or decommissioning.

(f) All cement sealants shall be mechanically mixed prior to placing in the well or bore hole.

(3) **Sealing methods:**

(a) When neat cement or neat cement grout is used in sealing, it shall be placed seventy-two hours before additional drilling takes place, unless special additives are mixed with the neat cement or neat cement grout that cause it to set in a shorter period of time.

(b) All hydrated sealing materials shall be placed by tremmying the mixture from the bottom of the annular space to the surface in one continuous operation.

(4) This section may not preclude the use of new sealant materials which have been approved by the technical advisory group.

(5) Sealing materials shall be impervious to any contaminants encountered.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-231 What are the standards for surface seals? (1) All water wells constructed shall have a surface seal which seals the annular space between the bore hole and the permanent surface casing.

(a) The seal shall be constructed to prevent surface contaminants from reaching the ground water.

(b) The surface seal must have a minimum diameter of four inches larger than the nominal size of the surface casing, to include the outside diameter of the bell, in bell and hub couplings.

(c) The surface seal must extend from land surface to a minimum depth of eighteen feet. Except, when the minimum surface seal requirements for driven, jetted, dewatering and some dug wells are less than eighteen feet. See the appropriate section for these wells for a detailed description of their sealing requirements.

(2) Sealing material must be placed in an open annular space that is a minimum of four inches greater in diameter than the nominal size of the permanent casing.

(3) The completed surface seal must fully surround the permanent casing, must be evenly distributed, free of voids, and extend to undisturbed or recompacted soil.

(4) After the permanent casing has been set in final position, the annular space shall be filled to land surface with bentonite or neat cement grout or neat cement. Leaving voids for future installation of equipment such as a pitless adapter is prohibited.

(5) A temporary surface casing with a minimum length of eighteen feet and a minimum nominal diameter of four inches greater than the permanent casing shall be used in all unconsolidated formations such as in gravels, sands, or other unstable conditions when the use of drilling fluid or other means of keeping the bore hole open are not employed. Except driven and jetted wells shall utilize a temporary surface casing with a minimum length of six feet and a minimum nominal diameter of four inches greater than the permanent

casing shall be used in all unconsolidated formations such as in gravels, sands, or other unstable conditions when the use of drilling fluid or other means of keeping the bore hole open are not employed.

(6) Whenever reconstruction involves permanent surface casing movement; or the existing surface seal is damaged; or a surface seal never existed; the driller shall repair, replace, or install a minimum of eighteen feet of surface seal around the permanent casing.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-241 What are the requirements for formation sealing? (1) Unconsolidated formation sealing - Without significant clay beds or other confining formations - Drilled wells that penetrate an aquifer overlain by unconsolidated formations such as sand and gravel without significant clay beds (at least six feet thick) or other confining formations shall be sealed in accordance with the surface sealing requirements of WAC 173-160-231. See Figure 1.

(2) Unconsolidated formation sealing - With significant clay beds or other significant confining formations - Drilled wells that penetrate an aquifer overlain by clay or other confining formations that are at least six feet thick, shall be sealed to prevent movement of water or contamination in the annular space between the permanent casing and the clay or other confining formation(s). One of the following methods shall be used to seal the annular space:

(a) A drill hole at least four inches greater in diameter than the nominal size of the permanent well casing shall extend from the land surface into the clay bed or other confining formation located directly above the aquifer to be developed. The annular space shall be filled with bentonite (slurry or unhydrated), neat cement grout, or neat cement to form a watertight seal between the permanent casing and all significant confining formations encountered during drilling. If bentonite slurry, neat cement grout, or neat cement is used to seal the annular space it must be placed by either pumping or tremmying the seal material from the lowest clay bed or other confining formation of significance encountered, to land surface. The drill hole shall be kept open through the use of a temporary casing or any other drilling method that stabilizes the bore hole wall. See Figure 1.

(b) An upper drill hole at least four inches greater in diameter than the nominal size of the permanent well casing shall extend to a minimum of eighteen feet from land surface. A temporary casing or other means of maintaining an open bore hole shall be utilized. All temporary casing will have an outside diameter of a minimum of four inches larger than the permanent casing (for example, a ten-inch temporary casing for a six-inch permanent casing). The upper drill hole shall always contain a minimum of nine feet of sealant throughout the advancement of the permanent casing. Except, if the temporary casing is removed or not utilized, the upper drill hole shall be kept full of sealant. See Figure 1.

(3) Consolidated formations - In drilled wells that penetrate an aquifer, either within or overlain by a consolidated formation, sealing of the casing shall conform with one of the following procedures.

(a) Procedure one - An upper drill hole at least four inches greater in diameter than the nominal size of the permanent well casing shall extend from land surface into a sound, unfractured, consolidated formation. An unperforated permanent casing shall be installed to extend to this same depth, and the lower part of the casing shall be driven ((~~and sealed~~)) into the consolidated formation ((~~to establish~~)) and sealed in a manner that establishes a watertight seal between the formation and the casing. The remainder of the annular space to land surface shall be filled with neat cement grout, neat cement, or bentonite.

(i) If the consolidated formation is encountered at a depth less than eighteen feet from land surface, the upper drill hole and permanent casing shall extend to a minimum of eighteen feet from land surface. See Figure 2.

(ii) If neat cement grout, neat cement, or bentonite slurry is placed by pumping to seal the entire annulus from the bottom up to land surface, the upper drill hole may be a minimum of two inches larger than the outside diameter of the permanent casing.

(b) Procedure two - An upper drill hole at least four inches greater in diameter than the nominal size of the permanent casing extends from land surface to a depth of at least eighteen feet. An unperforated permanent casing shall be driven into the consolidated formation and sealed in a manner that establishes a watertight seal between the formation and the casing. Throughout the driving of the well casing to the consolidated formation, the annular space between the upper drill hole and the permanent casing shall be kept at least one-half full with unhydrated bentonite, or bentonite slurry. The remainder of the annular space to land surface shall be filled with cement grout, neat cement, or bentonite. See Figure 2.

(c) If temporary surface casing is used in either procedure (a) or (b) of this subsection, the casing must be a minimum of eighteen feet long and at least four inches larger in diameter than the permanent casing. If a consolidated formation is encountered within the first eighteen feet, the temporary casing may terminate at the interface of the consolidated formation. Withdrawal of the temporary casing must take place simultaneously with proper sealing of the annular space to land surface.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-261 How do I seal dug wells? The surface seal of all dug wells shall be constructed to effectively seal the annular space between the undisturbed native material of the upper well hole and the well curbing, which may consist of (concrete tile, steel pipe or liner). The seal depth shall be at least eighteen feet from land ((~~to~~)) surface or to within three feet of the bottom in dug wells that are less than twenty-one feet in depth. Dug wells may be sealed with cement, neat cement, bentonite, or neat cement grout. A cap shall be placed on all dug wells. Except during maintenance, the cap shall remain in place. The cap shall prevent entry of pollutants, insects, and mammals into the well. See Figure 3.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-271 What are the special sealing standards for driven wells, jetted wells, and dewatering wells? (1) Driven wells - An upper hole at least four inches greater in diameter than the permanent casing shall extend a minimum of six feet below land surface. The annular space between the upper oversized drill hole and the permanent casing must be kept at least one-half full with bentonite or bentonite slurry throughout all driving of the pipe. The remaining annular space to land surface shall be filled with neat cement grout, neat cement, or bentonite. See Figure 4.

(2) Jetted wells - The surface seal in jetted wells shall be constructed to seal the annular space between the permanent casing and undisturbed native soil. An upper hole at least four inches greater in diameter than the permanent casing shall extend a minimum of six feet below land surface.

(3) Dewatering wells:

(a) Permanent dewatering wells shall be sealed ((~~to a depth of eighteen feet or within three feet of the bottom of the well for wells less than twenty-one feet deep. The minimum annular space requirements, sealing material, and decommissioning procedures of this chapter apply to all permanent dewatering wells.~~

~~(b) Temporary dewatering wells - Dewatering wells that are in place less than eighteen months and are less than eighteen feet deep are exempt from the sealing requirements of this chapter. Temporary wells that are installed over eighteen months and that are deeper than eighteen feet, must have a minimum of eighteen feet of surface seal and meet the minimum annular space requirements and sealing materials authorized under~~)) in one of the following manners:

(i) For wells in which the top of the screen interval is greater than twenty-one feet below land surface, the minimum sealing depth shall be eighteen feet.

(ii) If the top of the screen interval is twenty-one feet or less below the land surface, the seal shall be within three feet of the top of the screen. In no instance shall the seal be less than ten feet in depth.

(iii) All permanent dewatering wells shall be constructed to prevent interconnection of separate aquifers penetrated by the well, and provide casing stability.

(b) Temporary dewatering wells are wells that are in place less than eighteen months.

(i) Temporary dewatering wells less than twenty-five feet deep shall have a minimum of a three-foot surface seal.

(ii) Temporary dewatering wells that are installed deeper than twenty-five feet, must have a minimum of five feet of surface seal.

(iii) Temporary dewatering wells that connect different aquifers, allowing waters to commingle, must have a dewatering plan that addresses and mitigates potential inter-aquifer transfer and cross-contamination.

(iv) All temporary dewatering wells must be decommissioned or reconstructed to meet standards for permanent dewatering wells within eighteen months from the date of installation.

(c) The minimum annular space requirements, sealing material, and decommissioning procedures of this chapter apply to all dewatering wells. This includes wells that have been cut down, altered or damaged during the dewatering process. Temporary dewatering wells located within an area to be excavated for construction are exempt from these sealing requirements but are required to be decommissioned in accordance with this chapter.

AMENDATORY SECTION (Amending Order 98-17, filed 9/2/98, effective 10/3/98)

WAC 173-160-291 What are the standards for the upper terminal of water wells? (1) The watertight casing or curbing of any well shall extend at least six inches above the ground surface. Pit completion is prohibited.

(2) Where the site is subject to flooding, the top of the casing must be at least two feet above the estimated water level of a one hundred-year frequency flood.

(3) All wells shall be equipped with an access port that allows for the measurement of the depth to water surface, or with a pressure gage that indicates the shut-in pressure of a flowing artesian well. See Figure 6. The access ports and pressure gages or other openings in the cover are sealed or capped to prevent entrance of surface water or foreign material into the well.

(4) Any vent opening, observation ports or air-line equipment shall extend from the upper end of the well by watertight piping to a point at least six inches above land surface. The terminals of these facilities shall be shielded or sealed to prevent entrance of foreign matter or pollutants.

(5) A pitless adapter, or similar device is permitted on water wells if it is made with fittings approved by the department of health. The use and installation of pitless adapters must meet manufacturer's standards. The connection must be above static water level except for adapters specifically designed for installation below static water level.

(6) Any person who removes any part of a surface seal to install a pitless adapter shall ((~~repair the seal~~)) be responsible to have the seal repaired by a licensed or otherwise qualified person so that ((~~it~~)) the seal is brought up to land surface.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-311 What are the well tagging requirements? (1) It shall be the operator's responsibility to place a well identification tag with a unique identification number on every well that they construct, alter, or reconstruct within thirty days of completion of the well. The original unique identification number shall be used on all subsequent work and documentation.

(a) The alpha-numeric number shall be recorded on the drilling report in the space provided.

(b) The operator shall remove the well identification tag on all wells they decommission and shall attach the tag to the decommissioning well report.

(2) It shall be the well owner's responsibility to place a well identification tag with a unique identification number on every well they own, unless the well has been previously tagged.

(a) Upon request, the department shall furnish the well owner with a well tag and tagging instructions.

(b) The well owner shall tag their well(s) and submit a completed tagging report to the department.

(3) The well tag shall be permanently attached to the outer well casing or other prominent well feature and be visible above land surface.

(4) All well identification tags shall be supplied by the department.

(5) It is unlawful for a person to tamper with or remove a well identification tag except during well alteration.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-321 How do I test a well? (1) Well authorized by appropriation permit - Before being put to use, each well shall be test pumped for yield and draw down. Reports of the test pumping shall be submitted as required in chapter 90.44 RCW. The driller shall be familiar with and meet all testing procedures outlined in the water right permit. The well shall be test pumped at rates equal to, or greater than, are expected from the well during its normal usage. The test pump for public water supply wells shall be operated continuously for a minimum of four hours, or longer if required by the department of health. The yield and draw down shall be determined following at least four hours of ((~~stabilized water level observation~~)) constant rate pumping. Periodic water level observation should be made during draw down and subsequent recovery periods. Periods of observation shall be more frequent during the onset of the draw down and may decrease in frequency as the draw down or recovery proceeds ((~~toward stabilization~~)). A bailer test is not an acceptable substitute for testing wells under permit or for public water supply wells.

(2) Wells not requiring appropriation permit - Testing of a well that does not require an appropriation permit shall be conducted at a constant rate for a period of at least one hour or longer if required by the department of health. ((~~The last twenty minutes of the test shall be conducted at a constant rate of withdrawal to achieve a stabilized pumping level.~~)) Test pumping under this section can be either by bailer, air lift, or with a pump.

(3) Test data shall be reported to the department on the water well report by the operator at the time the report is submitted.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-371 What are the standards for chemical conditioning? The use of detergents, chlorine, acids or other chemicals in wells for the purpose of increasing or restoring yield, shall be used according to manufacturer's recommendations. The placement or use of packers and subsequent pressurization within the bore hole or casing while cleaning or hydrofracturing shall not damage the seal at the drive shoe. Except for ((~~routine maintenance and cleaning~~)) disinfection and cleaning of wells, a well drilling license is required for all other chemical conditioning that alters the condition of the water well.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-381 What are the standards for decommissioning a well? Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard shall be decommissioned. The decommissioning procedure (as prescribed by these regulations) must be recorded and reported as required by the department.

(1) Drilled cased wells. Remove all liners, debris, and obstructions from the well casing, except well screens and packers. All cased water wells ((~~that were not constructed in accordance with these regulations, or wells which are decommissioned to allow the placement of potential sources of contamination within one hundred feet of the well, or for which a drilling report required under WAC 173-160-141 is missing,~~)) shall be decommissioned in one of the following ways:

(a) Perforate the casing from the bottom to within five feet of the land surface and pressure ((~~grout~~)) seal the casing.

(i) Perforations shall be at least four equidistant cuts per row, and one row per foot. ((~~Each cut shall be at least one and one-half inches long.~~)) The perforations must be sufficient enough to allow neat cement grout or neat cement, or bentonite slurry to migrate outside the casing and effectively prevent the movement of water.

(ii) Apply enough pressure to force the sealing material through the perforations, filling any voids on the outside of the casing.

(iii) The ((~~remainder of the~~)) casing shall be filled completely with neat cement grout, neat cement, or bentonite slurry. The screen and up to five feet of riser pipe may be filled with unhydrated bentonite. The remainder of the riser pipe must be removed.

(iv) The casing may be cut off at a maximum of five feet below land surface. A steel cap shall be welded on the casing; or

(b) Withdraw the casing and fill the bore hole with neat cement grout, neat cement, unhydrated bentonite, or bentonite slurry as the casing is being withdrawn.

(2) ((~~If it can be verified through a field examination and review of the drilling report that a water supply well was constructed in accordance with these regulations, and it is not being decommissioned to allow the siting of potential sources of contamination within one hundred feet of the well, it shall be decommissioned by the casing removal, or casing perforation methods described in subsection (1)(a) or (b) of this section or by:~~

~~(a) Filling the casing from bottom to within five feet of land surface with bentonite, cement grout, or neat cement.~~

~~(b) The casing may be cut off at a maximum of five feet below land surface.~~

~~(3)~~)) Drilled uncased wells - ((~~Backfill~~)) Remove all liners, debris, and obstructions. Seal uncased wells with concrete, neat cement grout, neat cement, or bentonite.

(((~~(4)~~))) (3) Dug wells -

(a) The following criteria are required for the decommissioning of all dug wells:

(i) Remove all debris and obstructions that impede decommissioning or that may contaminate the aquifer from

within the dug well. ((~~Install clean chlorinated sand or pea gravel to a point two feet above static water level. Fill the remainder of the well with concrete or bentonite to the land surface. Dug wells with static levels below twenty feet from land surface, may be decommissioned by placing chlorinated sand or pea gravel to the static level and then placing alternating layers of sealing material and chlorinated sand or pea gravel to within twenty feet of land surface. The alternating layers of sand or pea gravel must be a maximum of five feet thick. The minimum thickness of the sealing material layers must be five feet. The remainder of the dug well to a maximum of two feet below land surface shall be filled with bentonite, neat cement, cement grout, or concrete. Bentonite slurry shall not be used to decommission dug wells.~~))

(ii) Dug wells may have a maximum of three feet of soil cover from top of sealing material to land surface.

(iii) Dug wells shall be sealed with either unhydrated bentonite, neat cement, neat cement grout, or concrete. The use of controlled density fill (CDF), bentonite slurry, or fly ash is prohibited.

(iv) Dug wells that are not cast-in-place must have a minimum of three feet of sealing material in contact with native soil below land surface. Bentonite slurry shall not be used to decommission dug wells.

(b) Dug wells that are dry at any time during the year and that are less than twenty feet in depth shall be sealed from the bottom to within three feet of land surface.

(c) Dug wells that have a static water level of ten feet from land surface or less and a depth of less than twenty feet may be decommissioned by installing clean chlorinated sand or pea gravel to a maximum depth of ten feet below land surface. Otherwise, the well shall be filled with either unhydrated bentonite, neat cement, neat cement grout, or concrete.

(d) Dug wells that have a static water level over ten feet and a depth of less than twenty feet from land surface may be decommissioned by installing clean chlorinated sand or pea gravel to the static level. Otherwise, the well shall be filled with either unhydrated bentonite, neat cement, neat cement grout, or cement.

(e) Dug wells with static levels twenty feet or less from the land surface and that are greater than twenty feet deep may be decommissioned by placing chlorinated sand or pea gravel to twenty feet below land surface. Otherwise, the well, to a maximum of three feet below land surface, shall be filled with unhydrated bentonite, neat cement, neat cement grout, or concrete.

(f) Dug wells with static levels below twenty feet from land surface, may be decommissioned by placing chlorinated sand or pea gravel to the static level and then placing alternating layers of sealing material and chlorinated sand or pea gravel to within twenty feet of land surface. The alternating layers of sand or pea gravel must be a maximum of five feet thick. The minimum thickness of the sealing material layers must be five feet. Otherwise, the dug well shall be filled with unhydrated bentonite, neat cement, neat cement grout, or concrete to a maximum of three feet below land surface.

(4) Flowing artesian wells that are not leaking on the outside of the casing shall be decommissioned by pressure grouting with neat cement or weighted high solids bentonite slurry from the bottom of the well bore to land surface. If the well is leaking on the outside of the casing or if leaking develops while the decommissioning method above is employed, then the casing must be perforated and pressure grouted to replace all confining layers and to stop leakage.

(5) Placement of sealing material.

(a) Sealing material placed below the static water level shall be piped directly to the point of application or placed by means of a dump bailer or pumped through a tremie tube. As the sealing material is placed, the existing well tile may be encapsulated into the seal material. If ((~~cement~~)) concrete, neat cement grout, bentonite, bentonite slurry, or neat cement is used to seal below the static water level in the well, the material shall be placed from the bottom up by methods that avoid segregation or dilution of the material. When used to place concrete, neat cement, neat cement grout, or bentonite slurry the discharge end of the tremie tube shall be submerged in the ((~~grout~~)) sealing material to avoid breaking the seal while filling the annular space.

(b) All authorized sealing material placed above the static water level or into the dewatered portion of the well may be hand poured above the static water level, provided the material does not dilute or segregate, and ((~~the resulting~~)) result in a seal ((~~is~~)) free of voids.

(c) When decommissioning wells that were originally constructed without casing, unhydrated bentonite chips or pellets may be hand placed, provided it forms a continuous seal.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-400 What are the minimum standards for resource protection wells and geotechnical soil borings? The following minimum standards shall apply to all resource protection wells and geotechnical soil borings constructed in the state of Washington. It is the responsibility of ((~~theresource~~)) the resource protection well operator, resource protection well contractor, and the property owner to take whatever measures are necessary to guard against waste and contamination of the ground water resource.

(1) It will be necessary in some cases to construct resource protection wells and geotechnical soil borings with additional requirements beyond the minimum standards.

(2) Nothing in this section limits the department's authority to approve comparable alternative specifications for construction as technology in the industry is developed, or new methods of construction become known to the department.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-410 What are the specific definitions for words in this chapter? This section specifically defines words associated with resource protection wells and geotechnical soil borings**.** To find the definitions of other words, see WAC 173-160-111.

(1) "Environmental investigation well" means a cased hole intended or used to extract a sample or samples of ground water, vapor, or soil from an underground formation and which is decommissioned immediately after the sample

or samples are obtained. An environmental investigation well is typically installed using direct push technology or auger boring and uses the probe, stem, auger, or rod as casing. An environmental investigation well is not a geotechnical soil boring.

(2) "Geotechnical information" means subsurface engineering properties used for the purpose of designing structures such as bridges, buildings, highways, pipelines, or for assessing slope stability samples to ascertain structural properties of the subsurface.

(((~~(2)~~))) (3) "Geotechnical soil boring" or "boring" means an uncased well drilled for the purpose of obtaining soil samples to ascertain structural properties of the subsurface. ((~~Geotechnical soil boring includes auger borings, rotary borings, cone penetrometer probes and vane shear probes, or any other uncased ground penetration for geotechnical information.~~

~~(3)~~))) (4) "Ground source heat pump boring" means a vertical boring constructed for the purpose of installing a closed loop heat exchange system for a ground source heat pump.

(5) "Grounding well" means a grounding electrode installed in the earth by the use of drilling equipment to prevent buildup of voltages that may result in undue hazards to persons or equipment. Examples are anode and cathode protection wells.

(6) "Instrumentation well" means a well in which pneumatic or electric geotechnical or hydrological instrumentation is permanently or periodically installed to measure or monitor subsurface strength and movement. Instrumentation well includes bore hole extensometers, slope indicators, pneumatic or electric pore pressure transducers, and load cells.

(((~~(4) "Lysimeter" means a well used to withdraw soil water or pore samples from subsurface soil or rock above the water table for chemical, physical, or biological testing.~~

~~(5)~~))) (7) "Monitoring well" means a well designed to obtain a representative ground water sample or designed to measure the water level elevations in either clean or contaminated water or soil.

(((~~(6)~~))) (8) "Nested well" means the installation of more than one cased resource protection well in one bore hole. This does not preclude casing reductions or installation of vibrating wire piezometers.

(((~~(7)~~))) (9) "Observation well" means a well designed to measure the depth to the water or water level elevation in either clean or contaminated water or soil.

(((~~(8)~~))) (10) "Piezometer" means a well designed to measure water level elevation at a specific depth beneath the water table.

(((~~(9)~~))) (11) "Remediation well" means a well intended or used to withdraw ground water or inject water, air (for air sparging), or other solutions into the subsurface for the purpose of remediating, cleaning up, or controlling potential or actual ground water contamination.

(((~~(10)~~))) (12) "Resource protection well" means a cased boring intended or used to collect subsurface information or to determine the existence or migration of pollutants within an underground formation. Resource protection wells include monitoring wells, observation wells, piezometers, spill response wells, remediation wells, environmental investigation wells, vapor extraction wells, ground source heat pump boring, grounding wells, and instrumentation wells.

(((~~(11)~~))) (13) "Resource protection well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing resource protection wells or geotechnical soil borings.

(((~~(12)~~))) (14) "Resource protection report" or "geotechnical soil boring report" means a document that describes how a resource protection well or geotechnical soil boring was constructed or decommissioned and identifies its components per the requirements of WAC 173-160-420.

(15) "Spill response well" means a well used to capture or recover any spilled or leaked fluid which has the potential to, or has contaminated the ground water.

(((~~(13)~~))) (16) "Vapor extraction well" means a well used to withdraw gases or vapors from soil, rock, landfill, backfill or ground water for the purpose of investigating or remediating soil ((~~and/~~))or ground water contamination or managing gases or vapors.

(((~~(14)~~))) (17) "Well driller" or "driller" means a resource protection well contractor or operator and a water well contractor or operator.

(((~~(15)~~))) (18) "Well" means water wells, resources protection wells, instrumentation wells, dewatering wells, and geotechnical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for oil or natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

AMENDATORY SECTION (Amending Order 98-17, filed 9/2/98, effective 10/3/98)

WAC 173-160-420 What are the general construction requirements for resource protection wells? (1) No resource protection well or soil boring excavation may be used to withdraw or inject water for domestic, industrial, municipal, commercial, or agricultural purposes.

(2) No resource protection well or soil boring excavation may interconnect aquifers.

(3) Nested resource protection wells are prohibited.

(4) Cuttings, development water, and other investigation derived waste from resource protection well construction or geotechnical soil borings shall be managed in a manner consistent with the intent and purposes of the Water Pollution Control Act, chapter 90.48 RCW, the Hazardous Waste Management Act, chapter 70.105 RCW, and implementing regulations.

(5) Well tagging:

(a) It shall be the driller's responsibility to place a well identification tag with a unique identification number on every resource protection well that they construct or alter within thirty days of completion of the well. Uncased geotechnical soil borings and environmental investigation wells are exempt from the tagging requirements of this chapter.

(i) The alpha-numeric number shall be recorded on the drilling report in the space provided.

(ii) The driller shall remove the well identification tag on all resource protection wells they decommission and shall attach the tag to the decommissioning well report.

(b) It shall be the well owner's responsibility to place a well identification tag with a unique identification number on every resource protection well they own and which was completed prior to the effective date of this regulation.

(i) Upon request, the department shall furnish the well owner with a well tag and tagging instructions.

(ii) The well owner shall tag their well(s) and submit a completed tagging report to the department.

(c) The well tag shall be permanently attached to the outer well casing and be visible above land surface for all wells which have been completed above land surface. For wells completed below land surface, the well tag shall be attached to the well casing or to any permanent and protected portion of the vault.

(d) All well identification tags shall be supplied by the department.

(e) It is unlawful for a person to tamper with or remove a well identification tag except during well alteration.

(6) All resource protection wells will be sealed in accordance with ((~~this chapter~~)) WAC 173-160-450 regardless of the method of installation. Except, resource protection wells that are properly decommissioned prior to the removal of any drilling equipment from the well location are exempted from the surface sealing requirements of this chapter. Provided the decommissioning process includes the removal of any conduit, tubing, probe, or other items inserted into the ground.

(7) All geotechnical soil borings shall be decommissioned under the terms of this chapter.

(8) Except as provided in RCW 18.104.180, all construction, alteration, reconstruction, and decommissioning of resource protection wells and geotechnical soil borings shall be done by an individual licensed under the provisions of chapter 173-162 WAC.

(9) A notice of intent to construct or decommission a resource protection well and a geotechnical soil boring shall be filed with the department a minimum of seventy-two hours prior to initiating construction or decommissioning of the well(s) or boring(s). A fee must accompany each notice of intent to construct or decommission a resource protection well. ((~~The fee for constructing, altering, or reconstructing each resource protection well is forty dollars. Geotechnical soil borings are exempt from all fees.~~))

(a) The fee for a resource protection well, except for an environmental investigation well, a ground source heat pump boring, or a grounding well, is forty dollars for each well.

(b) The fee for an environmental investigation well in which ground water is sampled or measured is forty dollars for the construction of up to four environmental investigation wells per project, ten dollars for each additional environmental investigation well constructed on a project with more than four wells. There is no fee for soil or vapor sampling purposes.

(c) The fee for a ground source heat pump boring or a grounding well is forty dollars for construction of up to four ground source heat pump borings or grounding wells per project and ten dollars for each additional ground source heat pump boring or grounding well constructed on a project with more than four wells.

(d) The fee to decommission a resource protection well, except for an environmental investigation well, is twenty dollars. There is no fee to decommission an environmental investigation well or a geotechnical soil boring.

(e) The fee to decommission a ground source heat pump boring or a grounding well is twenty dollars. Under some circumstances, it may be necessary to construct more resource protection wells or geotechnical soil borings than originally anticipated. When additional resource protection wells are constructed on a site for which a notice of intent and fee were submitted, a second notice and fee shall be submitted within twenty-four hours after all wells have been completed or as soon as the final number of wells to be constructed is determined, whichever is sooner. When additional geotechnical soil borings are needed, the borings may be completed. A follow-up notice of intent shall be submitted to the department within twenty-four hours after all borings are constructed. Notification to construct multiple wells or geotechnical soil borings within the same quarter/quarter section, township, and range may be submitted on one notice form. ((~~A fee of forty dollars per well must be attached to each notice. Example: Six resource protection wells identified on one notice of intent would be submitted along with a two hundred forty dollar fee.~~))

(10) Resource protection well and geotechnical soil boring drilling reports.

(a) Every well contractor is required to submit a complete report on the construction, alteration, or decommissioning of all resource protection wells and geotechnical soil borings they construct. Reports must be submitted to the ((~~department~~)) water resources program within thirty days after completion of construction, alteration, or decommissioning. Submission of well report to consulting firms does not meet the well contractor's obligation of this section.

(b) This applies to all resource protection wells and geotechnical soil borings.

(c) The resource protection well and geotechnical soil boring report must be made on a form provided by the department, or a reasonable facsimile of the form, as approved by the department.

(d) Where applicable the report shall include the following information:

(i) Owner's name; operator/trainee name; operator/trainee license number; contractor registration number, drilling company name;

(ii) Tax parcel number;

(iii) Well location address;

(iv) Location of the well to at least 1/4, 1/4 section or smallest legal subdivision;

(v) Unique well identification tag number;

(vi) Construction date;

(vii) Start notification number;

(viii) Intended use of well;

(ix) The well depth, diameter, and general specifications of each well;

(x) Total depth of casing;

(xi) Well head elevation;

(xii) Drilling method;

(xiii) Seal material, seal location and type of placement used;

(xiv) Filter pack location; filter pack material used;

(xv) The thickness and character of each bed, stratum or formation penetrated by each well including identification of each water bearing zone;

(xvi) Casing gauge, diameter, stickup, type of material, and length, also of each screened interval or perforated zone in the casing;

(xvii) The depth to the static water level, as measured below the land surface; and

(xviii) Such additional factual information as may be required by the department.

(e) The well report must show the license number and signature of the person who constructed the well. If this is an unlicensed person, exempted under RCW 18.104.180(2), the report shall show the license number and signature of the licensed individual who witnessed the drilling. Resource protection well reports for wells constructed by trainees shall have the signature and license number of the trainee and licensed operator.

What are the surface protection requirements?

(11) All resource protection wells shall be capped and protected using one of the following methods:

(a) If the well is cased with metal and completed above the ground surface, you must attach a watertight cap with a lock to the top of the casing.

(b) If the well is not cased with metal and completed above the land surface, you must install a protective metal casing over and around the well. The protective casing shall extend at least six inches above the top of the well casing and be cemented at least two feet into the ground. A cap with lock shall be attached to the top of the protective casing.

(12) You shall protect the well(s) completed above ground from damage by:

(a) Cementing three metal posts, at least three inches in diameter, in a triangular array around the casing and at least two feet from it. Each post shall extend at least three feet above and below the land surface.

(b) A reinforced concrete pad may be installed to protect against and prevent frost heave. If installed, the concrete pad shall extend to a depth equal to anticipated frost depth. When a concrete pad is used, the well seal may be part of the concrete pad.

(13) If the well is completed below land surface, a watertight cap with a lock shall be attached to the top of the well casing. A metal monument or equivalent shall be installed over and around the well. The monument shall serve as a protective cover and be installed level with the land surface and be equipped with a waterproof seal to prevent the inflow of any water or contaminants. Drains will be provided, when feasible, to keep water out of the well and below the well cap. The cover must be designed to withstand the maximum expected loading.

(14) The protective measures may be waived or modified upon written approval from the department (a variance).

(15) If the well is damaged, the well protection measures and casing shall be repaired to meet the requirements of this chapter. If the well is damaged beyond repair, it shall be decommissioned in accordance with WAC 173-160-460.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-430 What are the minimum casing standards? The casing may not effect or interfere with the chemical, physical, radiological, or biological constituents of interest. The casing shall also withstand normal forces which act upon it during and after installation. All resource protection well casing shall conform to ASTM Standards, or at least 304 or 316 stainless steel, PTFE, or Schedule 40 PVC casing.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-450 What are the well sealing requirements? (1) All resource protection wells constructed shall have a continuous seal, which seals the annular space between the bore hole and the permanent casing. The seal shall be constructed to prevent interconnection of separate aquifers penetrated by the well, and shall provide casing stability. Except for environmental investigation wells, the seal shall have a minimum diameter of four inches larger than the nominal size of the permanent casing, and shall extend from land surface to the top of the filter pack. The filter pack shall be no less than one foot or greater than five feet above the screen interval. See Figure 7. Wells that are installed using direct push technology will follow the sealing guidelines of WAC 173-160-455.

(2) After the permanent casing has been set in final position, the filter pack (optional) and sealing material shall be placed in the open bore hole annular space that must be a minimum of four inches greater in diameter than the nominal size of the permanent casing. After installing the filter pack (optional) a layer of bentonite shall be placed on top of the filter pack to maintain separation between the seal material and the screened interval. Insure that placement will not disturb the filter pack. The remaining annular space shall be filled to land surface in a continuous operation with bentonite, neat cement, or cement grout. If a cement/bentonite slurry is used as the sealant, it shall be installed with a ((~~tremmie~~)) tremie tube and pumped from the top of the bentonite plug (above the filter pack) to land surface. Use only potable water to hydrate the mixture.

(3) The completed annular space shall fully surround the permanent casing, be evenly distributed, free of voids, and extend from the permanent casing to undisturbed or recompacted soil.

(4) All sealing materials used shall conform to one of the following minimum requirements:

(a) **Bentonite sealants:**

(i) Bentonite used to prepare slurries for sealing, or decommissioning shall be specifically designed for this purpose. At no time shall grout slurry contain materials that are toxic, polluting, develop odor or color changes, or serve as a micro-bacterial nutrient. All bentonite slurries shall be prepared and installed according to the manufacturer's instructions. All additives must be certified by a recognized certification authority such as NSF. Active solids content (bentonite) shall be twenty percent by weight or greater in all bentonite slurries.

(ii) Unhydrated bentonite—pelletized, granulated, powder, or chip bentonite may be used in the construction of seals or in decommissioning of resource protection wells. The bentonite material shall be specifically designed for sealing or decommissioning and be within the industry tolerances for dry western sodium bentonite. Polymer additives must be designed and manufactured to meet industry standards to be nondegrading and must not act as a medium which will support or promote the growth of micro-organisms. All unhydrated bentonite used for sealing or decommissioning must be free of organic polymers. Placement of bentonite shall conform to the manufacturer's specifications and result in a seal free of voids or bridges.

(b) **Cement sealants:**

(i) Neat cement consists of either portland cement types I, II, III, or high-alumina cement mixed with not more than six gallons of potable water per sack of cement (ninety-four pounds per sack).

(ii) Neat cement grout consists of neat cement with up to five percent bentonite clay added, by dry weight of the bentonite. Bentonite is to be added to improve flow qualities and compensate for shrinkage.

(iii) Concrete sealants consist of clean, hard and durable aggregate with not less than five sacks (ninety-four pounds per sack) of portland cement per cubic yard of concrete sealant and water.

(A) The maximum diameter of aggregate particles may not exceed 1 1/2 inches, but in any case may not exceed 1/5 the minimum width of the casing thickness.

(B) The ratio of coarse aggregate to fine aggregate (passing No. 4 U.S. Standard Sieve) must be approximately 1 1/2 to 1 by volume, but in any case, may not exceed 2 to 1 nor be less than 1 to 2.

(iv) Expanding agents, such as aluminum powder, may be used at a rate not exceeding 0.075 ounce (1 level teaspoon) per sack (ninety-four pounds per sack) of dry cement. The powder may not contain polishing agents. High-alumina cement and portland cement of any type must not be mixed together.

(5) This section may not preclude the use of new sealant materials which have been approved by the technical advisory group.

NEW SECTION

WAC 173-160-451 What are the minimum standards for direct push resource protection wells? (1) Resource protection wells that are installed using direct push technology shall comply with the applicable standards in these rules for reporting, casing, screening, development, surface protection, cleaning, tagging, and completion.

(2) Resource protection wells that are installed using direct push technology shall also comply with the following standards:

(a) Prepacked or sand packed screens shall be used. The sand pack or filter pack shall not extend more than three feet above the top or one foot below the bottom of the well screen; and

(b) The outside diameter of the bore hole shall be a minimum of one inch greater than the outside diameter of the well casing; and

(c) Granular bentonite shall not be used in the sealed interval below the static water level. Prepacked or slurry sealant is required below static level. Any sealing method used must result in a continuous and effective seal meeting the minimum sealing standards of this chapter; and

(d) Direct push wells shall not be constructed through more than one water bearing formation and the seal shall be from the top of the sand pack to land surface. Direct push wells shall not be greater than thirty feet in depth unless a variance is obtained. A request for a variance must be accompanied by a site-specific plan; and

(e) If the total probe depth exceeds the depth of the bottom of the screen it must be properly decommissioned to the bottom of the screen.

NEW SECTION

WAC 173-160-453 What are the minimum standards for construction of ground source heat pump borings? (1) General requirements.

(a) Applicability of minimum standards. The minimum standards set forth herein apply to all ground source heat pump borings as defined in WAC 173-160-111, constructed by a licensed operator.

(b) Prohibition against other uses. Ground source heat pump borings cannot be used for any purpose other than heat exchange. After completion, ground source heat pump borings shall not be converted to any other type of well except by written approval by the department. The operator shall ensure that the ground source heat pump boring is constructed according to this chapter.

(2) Location of ground source heat pump borings.

(a) A ground source heat pump boring shall not be located within one hundred feet from any water supply well.

(b) The setback from public water supply wells for ground source heat pump borings must comply with applicable department of health sanitary control zone regulations for the public water supply wells. Where the sanitary control zone is greater than one hundred feet the setback should reflect the expanded distance.

(c) Variances to the standard setback for water supply wells can be obtained when:

(i) The approved sanitary control zone for the public supply well is less than one hundred feet. Notification and concurrence is required from the department of health to insure that the new setback is consistent with the approved public water supply well sanitary control zone. Variances for public supply wells will be issued by the local or state health authority.

(ii) The water supply well is not a public water supply well and the reduced set back is adequate to protect against encroachment on the well and can provide adequate protection against potential contamination. The reduced set back shall be no more than seventy-five feet.

(d) No variance shall be approved for a setback less than the approved sanitary control zone for a water supply well, unless it can be demonstrated that the water supply well is

hydrogeologically protected from any potential threat posed by the closed-loop heat system.

(3) Construction standards for ground source heat pump borings. Site specific conditions shall be assessed to determine the best method and materials to be used for sealing the well annulus to protect the ground water.

(a) Casing material. If permanent casing is needed in a ground source heat pump boring, it must meet standards set out in WAC 173-160-201 for steel and for plastic.

(b) In a closed-loop ground source heat pump boring, the material used to make up the heat exchange loop that is placed into the ground must be able to withstand the normal forces which act upon it during and after construction. It shall be resistant to the corrosive effects of the surrounding formations, earth, water, and heat exchange fluids within the pipe.

(c) Pressure testing. Pressure testing will be done in accordance with manufacturer recommended specifications. The closed-loop assembly pipe within the bore hole shall not leak or cause contamination to the ground water.

(d) All fluids used in the construction and testing of ground source heat pump borings will be handled and utilized in a manner that does not contaminate the ground or surface waters of the state.

(e) Bore hole size. The hole size for ground source heat pump borings must be of sufficient size to allow placement of the heat exchange loop and, tremie pipe, but in no case shall the bore hole diameter be less than six inches when one inch loop pipe is installed. When a loop pipe greater than one inch is utilized, the size of the bore hole will be determined by ecology.

(f) Grouting of an uncased bore hole. Grouting (sealing) the bore hole of a ground source heat pump boring must be completed immediately after the heat exchange loop is installed to avoid cave in of the uncased hole. The near surface area where the ground source heat pump borings will be connected to a manifold to connect it to the closed-loop system may be filled with earth materials.

(i) Sealing must be done with an active solids content bentonite grout slurry (minimum twenty percent active solids by weight) per WAC 173-160-221. Use of controlled density fill (CDF) is prohibited.

(ii) Sealing material placed in the bore hole shall be uncontaminated; drilling fluids must be purged from the bore hole during the installation of the sealing material. Neither cuttings from the drilling process nor drilling fluid shall be used as bore hole sealing material.

(iii) Slurry mixes of bentonite grout shall be installed by pumping through a tremie pipe in a continuous operation using a positive displacement method. Polymer additives designed to retard swelling are acceptable for use with the bentonite grout per WAC 173-160-221 (1)(a). The tremie pipe will extend the full depth of the bore hole before pumping begins. Minimum slurry volume used must be equal to or exceed the calculated annulus volume of the bore hole. Grouting material shall surround all pipes remaining in the bore hole to land surface.

(g) Grouting of a permanently cased bore hole. Grouting of cased bore holes shall be sealed in accordance with this chapter.

Exception: When the casing is perforated from bottom to land surface and is pressure grouted in accordance with WAC 173-160-381 (1)(a).

(h) Unsuccessful installation of a ground source heat pump boring. If grouting is not successful, the department must preapprove an alternate completion of the ground source heat pump boring. If an alternate completion is not approved, the well must be properly decommissioned.

(i) An open-loop system must meet the construction standards of a water well. If the withdrawal of ground water exceeds the exemption requirements of RCW 90.44.050, a water right permit is required.

(j) It shall be the responsibility of the driller to properly construct the bore hole, pressure test the loop pipe, install the loop pipe, and grout the bore hole.

NEW SECTION

WAC 173-160-456 What are the minimum standards for construction of grounding wells? (1) General requirements. Grounding wells (cathodic protection wells or anode wells – These wells must be constructed in accordance with the provisions of Part One—General Requirements for Water Well Construction, chapter 173-160 WAC.

(2) Grounding wells shall be designed by an engineer, licensed in Washington state, trained in the design of corrosion protection wells.

(3) The internal materials used and size of element installed shall meet all industry standards for cathodic protection and anode wells.

(4) Grounding wells shall not pollute the waters of the state.

(5) If constructed within one hundred feet of a potential source of contamination, sealing is required to a minimum depth of fifty feet or the first significant confining layer, whichever is deeper, in accordance with WAC 173-160-241.

(6) Where the well construction regulations cannot be met, a variance may be requested.

(7) Grounding wells twenty-five feet in depth or less are exempt from these regulations, however, commingling of aquifers is still prohibited.

(8) Driven grounding rods installed to a depth of twenty-five feet or less are exempt from these regulations.

AMENDATORY SECTION (Amending Order 98-17, filed 9/2/98, effective 10/3/98)

WAC 173-160-460 What is the decommissioning process for resource protection wells? (1) Resource protection wells and geotech soil borings that were not constructed in accordance with these regulations, or for which a drilling report required under this section is missing, shall be decommissioned in one of the following ways:

(a) Perforate the casing from the bottom to land surface and pressure grout the casing.

(i) Perforations shall be at least four equidistant cuts per row, and one row per foot. Each cut shall be at least one and one-half inches long.

(ii) Apply enough pressure to force the sealing material through the perforations, filling any voids on the outside of the casing.

(iii) The remainder of the casing shall be filled with cement grout, neat cement, or bentonite slurry.

(b) Withdraw the casing and fill the bore hole with cement grout, neat cement, or bentonite as the casing is being withdrawn.

(2) ((~~If it can be~~)) Wells with an inside casing diameter equal to or greater than one inch and constructed in accordance with these regulations as verified through a field examination and review of the drilling report ((~~that the resource protection well was constructed in accordance with these regulations, it~~)) shall be decommissioned by:

(a) Filling the casing from bottom to land surface with bentonite, cement grout, or neat cement; and

(b) Placing a cap on the casing.

(3) Wells with an inside casing diameter less than one inch shall be decommissioned by pressure grouting the entire casing length.

(4) Vibrating wire piezometers installed per WAC 173-160-450 are exempt from these decommissioning procedures.

(5) Direct push wells shall be decommissioned in accordance with this section.

(6) Geotechnical soil borings, or boring, shall be decommissioned by sealing from bottom to land surface with bentonite, bentonite slurry, cement grout, or neat cement. Sealing material placed below the static water level shall be piped directly to the point of application or placed by means of a dump bailer or pumped through a tremie tube. If cement, neat cement grout, or neat cement is used to seal below the static water level in the well, the material shall be placed from the bottom up by methods that avoid segregation or dilution of the material. When used to place grout, the discharge end of the tremie tube shall be submerged in the grout to avoid breaking the seal while filling the annular space. Provided the material does not dilute or segregate and the resulting seal is free of voids, sealing material may be hand poured above the static water level.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-162-030 How are the words and phrases used in this chapter? (((~~(1) "Abandoned well" means a well that is unused, unmaintained, or is in such disrepair as to be unusable.~~

~~(2) "Access port" is a 1/2- to 2-inch tapped hole or tube equipped with a screw cap, which provides access to the inner casing, for measurement of the depth to water surface. An access port also means a removable wellcap.~~

~~(3) "Annular space" is the space between the surface or outer casing and the inner casing, or the space between the wall of the drilled hole and the casing.~~

~~(4) "Aquifer" is a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.~~

~~(5) "Artesian well" is a well tapping an aquifer bounded above and below by confining or impermeable rock or soil layers, or rock or soil layers of distinctly lower permeability than the aquifer itself. The water will rise in the well above the point of initial penetration (above the bottom of the confining or impermeable layer overlying the aquifer). This term includes both flowing and nonflowing wells.~~

~~(6) "Artificial gravel pack" is a mixture of gravel or sand placed in the annular space around the liner, perforated pipe, or well screen. A gravel pack is used to reduce the movement of finer material into the well and provide lateral support to the screen in unstable formations.~~

~~(7) "Artificial recharge" is the addition of water to an aquifer by activities of man, such as irrigation or induced infiltration from streams, or injection through wells, trenches, pits, and ponds.~~

~~(8) "Bentonite" is a mixture of swelling clay minerals, predominantly sodium montmorillonite.~~

~~(9) "Capped well" is a well that is not in use and has a watertight seal or cap installed on top of the casing.~~

~~(10) "Casing" is a pipe, generally made of metal or plastic, which is installed in the bore hole to maintain the opening.~~

~~(11) "Consolidated formation" means any geologic formation in which the earth materials have become firm and cohesive through natural rock forming processes. Such rocks commonly found in Washington include basalt, granite, sandstone, shale, conglomerate, and limestone. An uncased bore hole will normally remain open in these formations.~~

~~(12)~~)) See other definitions under chapter 173-160 WAC.

(1) "Constructing a well" or "construct a well" means:

(a) Boring, digging, drilling, or excavating a well;

(b) Installing casing, sheeting, lining, or well screens, in a well; ((~~or~~))

(c) Drilling a geotechnical soil boring; or

(d) Installing an environmental investigation well.

"Constructing a well" or "construct a well" includes the alteration of an existing well.

(((~~(13) "Contamination" has the meaning provided in RCW 90.48.020.~~

~~(14)~~)) (2) "Continuing education provider" is any person, organization, school or other entity involved in education that has received approval from the department for their continuing education plan and curriculum.

(3) "Continuing education unit" is one credit approved by the department for time spent participating in training or instruction in subject areas approved by the department.

(((~~(15) "Curbing" is a liner or pipe made of concrete, precast tile or steel installed in dug wells to provide a annular space between the well bore and the liner or pipe for sealing.~~

~~(16)~~)) (4) "Decommissioning" means to fill or plug a well so that it will not produce water, serve as a channel for movement of water or pollution, or allow the entry of pollutants into the well or aquifers.

(((~~(17)~~))) (5) "Department" means the department of ecology.

(((~~(18)~~))) (6) "Dewatering well" means a cased or lined excavation or boring that is intended to withdraw or divert ground water for the purpose of facilitating construction, stabilizing a land slide, or protecting an aquifer.

(((~~(19)~~))) (7) "Director" means director of the department of ecology.

(((~~(20) "Disinfection" or "disinfecting" is the use of chlorine, or other disinfecting agent or process approved by the department, in sufficient concentration and contact time adequate to inactivate coliform or other indicator organisms.~~

~~(21)~~))) (8) "Domestic water supply" is any water supply which serves a family residence(s).

(((~~(22) "Draw down" is the measured difference between the static ground water level and the ground water level induced by pumping.~~

~~(23) "Drilled well" is a well in which the hole is usually excavated by mechanical means such as rotary, cable tool, or auger drilling equipment.~~

~~(24)~~))) (9) "Driven well" is a well constructed by joining a "drive point" to a length of pipe, then driving the assembly into the ground.

(((~~(25)~~))) (10) "Dug well" is a well generally excavated with hand tools or by mechanical methods. The side walls may be supported by material other than standard weight steel casing.

(((~~(26) "Filter pack" means clean, well rounded, smooth, uniform, sand or gravel, which is placed in the annulus of the well between the bore hole wall and the liner, perforated pipe, or well screen to prevent formation material from entering the well.~~

~~(27) "Formation" means an assemblage of earth materials grouped together into a unit that is convenient for description or mapping.~~

~~(28)~~))) (11) "Environmental investigation well" means a cased hole intended or used to extract a sample or samples of ground water, vapor, or soil from an underground formation and which is decommissioned immediately after the sample or samples are obtained. An environmental investigation well is typically installed using direct push technology or auger boring and uses the probe, stem, auger, or rod as casing. An environmental investigation well is not a geotechnical soil boring.

(12) "Geotechnical information" means subsurface engineering properties used for the purpose of designing structures such as bridges, buildings, highways, pipelines, or for assessing slope stability.

(((~~(29)~~))) (13) "Geotechnical soil boring" or "boring" means an uncased well drilled for the purpose of obtaining soil samples to ascertain structural properties of the subsurface. ((~~Geotechnical soil boring includes auger borings, rotary borings, cone penetrometer probes and vane shear probes, or any other uncased ground penetration for geotechnical information.~~

~~(30)~~))) (14) "Ground source heat pump boring" means a vertical boring constructed for the purpose of installing a closed loop heat exchange system for a ground source heat pump.

(15) "Ground water" means and includes ground waters as defined in RCW 90.44.035.

(((~~(31) "Grout" is a fluid mixture of cement, bentonite, and water used to seal the annular space around or between well casings, or to decommission wells.~~

~~(32) "Impermeable" is a descriptive term for earth materials which have a texture or structure that does not permit fluids to perceptibly move into or through its pores or interstices.~~

~~(33)~~))) (16) "Grounding well" means a grounding electrode installed in the earth by the use of drilling equipment to prevent buildup of voltages that may result in undue hazards to persons or equipment. Examples are anode and cathode protection wells.

(17) "Instrumentation well" means a well in which pneumatic or electric geotechnical or hydrological instrumentation is permanently or periodically installed to measure or monitor subsurface strength and movement. Instrumentation well includes bore hole extensometers, slope indicators, pneumatic or electric pore pressure transducers, and load cells.

(((~~(34) "Liner" means any device inserted into a larger casing, screen, or bore hole as a means of maintaining the structural integrity of the well.~~

~~(35) "Lysimeter" means a well used to withdraw soil water or pore samples from subsurface soil or rock above the water table for chemical, physical, or biological testing.~~

~~(36)~~))) (18) "Monitoring well" means a well designed to obtain a representative ground water sample or designed to measure the water level elevations in either clean or contaminated water or soil.

(((~~(37) "Nested well" means the installation of more than one cased resource protection well in one bore hole. This does not preclude casing reductions.~~

~~(38)~~))) (19) "Observation well" means a well designed to measure the depth to the water or water level elevation in either clean or contaminated water or soil.

(((~~(39)~~))) (20) "Operator" means a person who:

(a) Is employed by a well contractor;

(b) Is licensed under this chapter; or

(c) Who controls, supervises, or oversees the construction of a well or who operates well construction equipment.

(((~~(40) "Permeability" is a measure of the ease of which liquids or gas move through a porous material.~~

~~(a) For water, this is usually expressed in units of centimeters per second or feet per day. Hydraulic conductivity is a term for water permeability.~~

~~(b) Soils and synthetic liners with a water permeability of 1 x 10[-7] cm/sec or less may be considered impermeable.~~

~~(41) "Piezometer" means a well designed to measure water level elevation at a specific depth beneath the water table.~~

~~(42) "Pollution" has the meaning provided in RCW 90.48.020.~~

~~(43) "Pressure grouting" is a method of forcing grout into specific portions of a well for sealing purposes.~~

~~(44) "PTFE" means polytetrafluoroethylene casing materials such as teflon. The use of the term teflon is not an endorsement for any specific PTFE product.~~

~~(45)~~))) (21) "Owner" or "well owner" means the person, firm, partnership, copartnership, corporation, association, other entity, or any combination of these, who owns the property on which the well is or will be constructed or has the right to the well by means of an easement, covenant, or other enforceable legal instrument for the purpose of benefiting from the well.

(22) "Public water supply" is any water supply intended or used for human consumption or other domestic uses, including source, treatment, storage, transmission and distribution facilities where water is furnished to any community, collection or number of individuals, available to the public for human consumption or domestic use, excluding water supplies serving one single-family residence and a system with four or fewer connections all of which serve residences on the same farm.

(((~~(46) "PVC" means polyvinyl chloride a type of thermoplastic casing.~~

~~(47)~~)) (23) "Remediation well" means a well intended or used to withdraw ground water or inject water, air (for air sparging), or other solutions into the subsurface for the purpose of remediating, cleaning up, or controlling potential or actual ground water contamination.

(((~~(48)~~))) (24) "Resource protection well" means a cased boring intended or used to collect subsurface information or to determine the existence or migration of pollutants within an underground formation. Resource protection wells include monitoring wells, observation wells, piezometers, spill response wells, remediation wells, environmental investigation wells, vapor extraction wells, ground source heat pump boring, grounding wells, and instrumentation wells.

(((~~(49)~~))) (25) "Resource protection well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing resource protection wells or geotechnical soil borings.

(((~~(50)~~))) (26) "Spill response well" means a well used to capture or recover any spilled or leaked fluid which has the potential to, or has contaminated the ground water.

(((~~(51) "Static water level" is the vertical distance from the surface of the ground to the water level in a well when the water level is not affected by withdrawal of ground water.~~

~~(52) "Temporary surface casing" is a length of casing (at least four inches larger in diameter than the nominal size of the permanent casing) which is temporarily installed during well construction to maintain the annular space.~~

~~(53)~~)) (27) "Test well" is a well (either cased or uncased), constructed to determine the quantity of water available for beneficial uses, identifying underlying rock formations (lithology), and to locate optimum zones to be screened or perforated. If a test well is constructed with the intent to withdraw water for beneficial use, it must be constructed in accordance with the minimum standards for water supply wells, otherwise they shall be constructed in accordance with the minimum standards for resources protection wells. A water right permit, preliminary permit, or temporary permit shall be obtained prior to constructing a test well unless the anticipated use of water is exempt as provided in RCW 90.44.050. A "test well" is a type of "water well."

(((~~(54) "Tremie tube" is a small diameter pipe used to place grout, filter pack material, or other well construction materials in a well.~~

~~(55) "Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.~~

~~(56) "Unconsolidated formation" means any naturally occurring, loosely cemented or poorly consolidated earth material including such materials as uncompacted gravel, sand, silt and clay. Alluvium, soil, and overburden are terms frequently used to describe such formations.~~

~~(57)~~)) (28) "Vapor extraction well" means a well used to withdraw gases or vapors from soil, rock, landfill, or ground water or allow air or vapor to enter subsurface soil or rock for the purpose of remediating soil and/or ground water contamination.

(((~~(58)~~))) (29) "Water well" means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering or withdrawal of ground water. Water well includes ground source heat pump borings and grounding wells.

(((~~(59)~~))) (30) "Water well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing water wells.

(((~~(60)~~))) (31) "Well alterations" include(s), deepening, hydrofracturing or other operations intended to increase well yields or change the characteristics of the well. Well alterations does not include general maintenance, cleaning, sanitation, and pump replacement.

(((~~(61) "Well completion" means that construction has progressed to a point at which the drilling equipment has been removed from the site, or a point at which the well can be put to its intended use.~~

~~(62)~~)) (32) "Well contractor" means a resource protection well contractor and a water well contractor licensed and bonded under chapter 18.27 RCW.

(((~~(63)~~))) (33) "Well driller(s)" or "driller(s)" ((~~is synonymous with "operator(s)."~~

~~(64)~~)) means a resource protection well contractor or operator and a water well contractor or operator.

(34) "Well" means water wells, resources protection wells, ((~~instrumentation wells,~~)) dewatering wells, and geotechnical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for oil, natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-162-055 What types of operator licenses are available? ((~~Five~~)) Seven types of drilling licenses are available:

(1) Water well operator training license.

(2) Resource protection well operator training license.

(3) Resource protection well operator license.

(4) Water well operator license.

(5) Conditional licenses for water or resource protection well drilling.

(6) Retirement license for water and/or resource protection well drilling.

(7) Inactive license for water and/or resource protection well drilling.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-162-060 How do you qualify for each license? (1) **Training licenses.**

(a) You are qualified to receive either a water or a resource protection training license if you:

(i) Submit a completed application to the department on forms provided by the department and pay the department a ((~~twenty-five~~)) seventy-five dollar application fee; and

(ii) Have completed at least six hundred hours of drilling experience working under the direct supervision of a licensed operator who has held a Washington state water and/or resource protection well drilling license for at least three years; and

(iii) Have obtained six continuing education units as approved by the department; and

(iv) Pass a written examination as provided for in RCW 18.104.080; and

(v) Pass an on-site examination by the department; and

(vi) Present a statement by a person or persons licensed under this chapter, other than a trainee, signed under penalty of perjury as provided in RCW 9A.72.085, verifying that:

(A) The applicant has acquired a minimum of six hundred hours of field experience required under this chapter; and

(B) The operator has assumed liability for any and all well construction activities of the applicant while the applicant was gaining his/her six hundred hours of field experience. The operator shall not be subject to any penalties or orders that may be issued for wells constructed by the applicant that were not the responsibility of the operator to have direct supervision and control over; and

(C) A licensed operator, except a trainee, who will sponsor the trainee, has been identified on the signed statement. The licensed operator who will be sponsoring the trainee, shall assume liability for any and all well construction activities of the trainee accomplished under the operator's control during the period of the trainee's license; and

(vii) In obtaining a statement from a well operator(s) under (a)(vi) of this subsection, an applicant who has gained drilling experience under more than one operator shall submit a statement from each operator. It is not necessary to accumulate all qualifying experience under one operator. Field experience for which a statement of verification and liability cannot be obtained, shall not be used as qualifying experience under this section.

All statements shall be entered on forms provided by the department.

(b) **Terms and conditions of a training license.**

(i) A person with either a resource protection or a water well training license may construct only those types of wells for which they are licensed without being under the direct supervision of a licensed operator provided:

(A) A licensed operator is available by radio, telephone, or other means of communication; and

(B) The licensed operator can reach the drill site within one hour.

(ii) A trainee shall maintain a daily drilling log identifying all work accomplished that day. The log shall remain in the possession of the trainee at all times and shall be reviewed and initialed daily by the responsible licensed operator. The drilling log shall be available for review by department and county officials whose county has received delegated authority as provided in RCW 18.104.043.

(iii) The work documented and initialed in the drilling log ((~~may~~)) shall be used in your application for a license under the training program completed, licensing category of this chapter.

(iv) All verifiable work performed by a trainee under the control of a licensed operator may be carried over to subsequent operator(s) who assume liability for the trainee.

(v) A trainee may apply and qualify for ((~~only one type of~~)) both a resource protection ((~~or~~)) and a water well drilling((~~ of~~)) training license ((~~at a time~~)), provided they meet the provisions of WAC 173-162-060 (1)(a) for each license they apply for.

(2) **Water well or resource protection well operator licenses.**

A person shall be qualified to receive either a water or resource protection well operator license if you meet the requirements of one of the following categories:

(a) **New applicant category.**

((~~(i)~~)) **Applicants who have never held a well operator license ((~~and whose qualifying drilling experience was started after the effective date of this regulation~~)) qualify if they:**

((~~(A)~~)) (i) Submit a completed application to the department on forms provided by the department and pay the department a ((~~twenty-five~~)) seventy-five dollar application fee; and

((~~(B)~~)) (ii) Submit proof that they have acquired five thousand four hundred hours of drilling experience under the direct supervision of a licensed well operator. Experience gained as a licensed trainee may be applied towards the experience requirements of this subsection; and

((~~(C)~~)) (iii) Submit proof that they have obtained thirty-two continuing education units; and

((~~(D)~~)) (iv) Pass a written examination as provided for in RCW 18.104.080.

(v) The department shall evaluate and approve all qualifying experience and educational training. If your qualifying drilling experience under (a)((~~(i)(B)~~)) (ii) of this subsection is from another state, the department may require an on-site examination.

((~~(ii) Applicants who have never held a well operator license and who have obtained at least twelve months of qualifying drilling experience before the effective date of this regulation qualify to receive a license if they:~~

~~(A) Submit a complete application to the department; and~~

~~(B) Pay a twenty-five dollar fee; and~~

~~(C) Pass a written exam; and~~

~~(D) Show proof that they have completed a total of twenty-four months of drilling experience under a licensed operator. Your proof must show that you started working towards a drilling license prior to the effective date of this regulation, and that you have been diligently and continuously working towards obtaining a drilling license since you started. Proof shall consist of tax records, pay statements, or~~

~~other documentation showing that you were under the supervision of a licensed operator.~~

~~(E) The department shall evaluate and approve all qualifying drilling experience. If your drilling experience under (a)(ii)(D) of this subsection is from another state, the department may require an on-site examination.~~

~~(iii) Individuals who have been working towards obtaining a drilling license but have acquired less than twelve months of qualifying drilling experience prior to the effective date of this chapter, may apply their education and experience towards the requirements of a training license.~~))

(b) **Training program completed category.**

Applicants who have held a valid training license will be qualified to receive an operator license if they:

(i) Submit a completed application to the department on forms provided by the department and pay the department a ((~~twenty-five~~)) seventy-five dollar application fee; and

(ii) Submit proof that they have worked as a licensed trainee under the provisions of this chapter for at least three thousand six hundred hours; and

(iii) Have obtained fourteen continuing education units while working under the training program.

(c) **Licensed experience category.**

(i) **Applicants who have never held an operator license in Washington state qualify if they:**

(A) Submit a completed application to the department on forms provided by the department and pay the department a ((~~twenty-five~~)) seventy-five dollar application fee; and

(B) Hold a valid well operator license, or equivalent, in another state and can show proof that the license has been held for a period of at least three years. The department shall evaluate and approve all experience acquired by out-of-state licensed operators; and

(C) Have obtained thirty-two continuing ((~~educational~~)) education units as approved by the department; and

(D) Pass a written examination as provided for in RCW 18.104.080; and

(E) Passed an on-site examination by the department. The on-site examination may be waived by the department.

(F) Proof of licensing under (c)(i)(B) of this subsection shall be submitted with the application for license. Proof of drilling experience may include drilling logs, federal or state tax records; employment records; or other records acceptable to the department.

(ii) **Individuals, other than trainees, whose Washington operator license has been suspended, revoked, expired or whose license status has ((~~expired~~)) changed to retired or inactive may apply for a new license. These individuals qualify to receive a license if:**

(A) The terms of the order of suspension or revocation have been met; and

(B) They submit a completed application to the department on forms provided by the department and pay the department a ((~~twenty-five~~)) seventy-five dollar application fee; and

(C) They have obtained seven continuing ((~~educational~~)) education units for each year or portion of a year the license has been revoked, suspended, inactive, retired, or expired; and

(D) They pass a written examination as provided for in RCW 18.104.080; and

(E) They pass an on-site examination by the department.

(F) The written and/or on-site examination(s) under (c)(ii)(D) and (E) of this subsection may be waived by the department.

(3) Individuals who received an operator license for either water well or resource protection well drilling ((~~after the effective date of these regulations~~)) are qualified to receive the other license if they:

(a) Currently hold a valid well operator license under one of the categories in subsection (2) of this section((~~. The license must have been issued by the department after the effective date of these regulations~~)); and

(b) Submit a completed application to the department on forms provided by the department and pay a ((~~twenty-five~~)) seventy-five dollar application fee; and

(c) Pass a written examination; and

(d) Pass an on-site examination if their field experience was gained in another state. The department may waive the on-site examination.

(e) Submit proof of at least six hundred hours of additional well drilling experience for the other type of license you wish to obtain. **EXAMPLE** - You currently hold a water well operator license that was issued by the department after the effective date of these regulations. You also wish to be licensed to construct resource protection wells. You will qualify to receive the resource protection operator license by making an application, paying the fee, and showing proof of six hundred hours of resource protection well drilling experience, passing a written exam, and passing an on-site exam if your drilling experience was gained in another state. Proof of experience will consist of drilling reports showing you were the operator of record on at least fifteen resource protection wells, or other documentation showing experience approved by the department.

(4) **Conditional license.**

(a) A conditional license may be issued to a former licensed operator for the sole purpose of authorizing the well operator to comply with an order to correct a problem with a well. The terms of the license shall detail the extent and limitations placed on the well operator. This may include limitations of work to be completed on a specific well, license expiration, and any other limitation set by the department.

(b) A conditional license cannot be issued to a person who has never held an operator license issued under the provisions of this chapter.

(5) Retirement license.

(a) A person shall be qualified to receive a retirement license if you meet the following requirements:

(i) Submit a completed application to the department on forms provided by the department and pay the department a seventy-five dollar application fee; and

(ii) Hold a current active license for a minimum of ten years; and

(iii) Have no outstanding enforcement actions.

(b) The holder of a retirement license may not engage in any licensed activities. The holder of a retirement license may apply for a new license under 173-162-060(2).

(6) Inactive license.

(a) A person shall be qualified to receive an inactive license if you meet the following requirements:

(i) Submit a completed application to the department on forms provided by the department and pay the department a seventy-five dollar application fee; and

(ii) Show proof of inactive status based on military documents, hospitalization records, out of country drilling or other extraordinary circumstances as determined by the department; and

(iii) Hold a current active license; and

(iv) Have no outstanding enforcement actions.

(b) Extraordinary circumstances do not include failure to notify the department of a change of address; postal service error and domestic disputes (divorce or separation).

(c) The holder of an inactive license must resubmit an application to extend inactive license status at the end of each two-year period. The holder of an inactive license may not engage in any licensed activities. The holder of an inactive license may apply for a new license under WAC 173-162-060(2).

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-162-070 What application fees are required? Application fees are ((~~twenty-five~~)) seventy-five dollars for each operator or training license.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-162-075 How often do I need to renew my license? (1) Licenses issued under this chapter, except a training license, shall be renewed every two years.

(2) A training license shall be valid for a period of two years from the time it was originally issued. A training license cannot be renewed. However, a one-time extension may be granted upon show of good cause by the trainee. The limit of the extension shall be for no longer than twenty-four months ((~~and~~)). The trainee will be required to earn seven continuing education units for each year or portion of a year the license is held. The department may waive the continuing education requirement of this subsection. Each request will be evaluated on a case-by-case basis. A ((~~twenty-five~~)) seventy-five dollar fee will be charged for the extension.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-162-080 What are the conditions and cost of renewing a drilling license? (1) Between the 1993 legislation, Laws of 1997, chapter 387, and the adoption of these regulations implementing the legislation, the well operator licenses issued and renewed by the department met the requirements of the 1993 legislation and may be renewed for either a water well or resource protection well operator license or both as provided in subsection (2) of this section.

(2) A holder of a valid license may renew the license if they:

(a) Submit a completed application on forms ((~~provided~~)) approved by the department; and

(b) ((~~Except as provided in subsection (3) of this section,~~)) Show proof that they successfully completed fourteen continuing education units during the past twenty-four months of the license term. A minimum of two continuing education units out of the fourteen required units must be about Washington state drilling or licensing regulations; and

(c) Pay a ((~~twenty-~~)) seventy-five dollar renewal fee for each license they wish to renew.

(3) ((~~If you currently hold a valid operator license that was issued prior to the effective date of this regulation, you may renew that license and receive a water well operator license and/or a resource protection well operator license without meeting the requirements for continuing education until you apply for license renewal in the year 2000.~~

~~(4)~~)) If you fail to submit a completed application for renewal, the license shall expire at the end of its effective term. A complete application includes the submission of the renewal fee and proof of completion of the required continuing education.

((~~(5)~~)) (4) If your license has expired, you will have thirty days in which to renew it. The thirty-day extension period is to be used only to submit a late application and fee. It is not to be used to gain continuing education units. You must not engage in any licensed activities during this time. If you fail to submit your renewal application, fee, and proof of continuing education after the extension period has expired, you must apply for a new license as provided in this chapter.

((~~(6)~~)) (5) The department may refuse to renew a license if the license is currently suspended or revoked, or the licensee has not complied with an order issued by the department or has not paid a penalty imposed under RCW 18.104.155, unless the order or penalty is under appeal.

((~~(7)~~)) (6) Operators shall not construct or decommission a well after their license has expired.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-162-085 Continuing education. Ecology, with the assistance of the technical advisory group created in RCW 18.104.190, shall develop and administer a program for continuing education for the purpose of ensuring continued professional growth and competency of licensed operators.

((~~(1) What is continuing education?~~

~~Continuing education is your opportunity to gain additional knowledge into subjects that directly relate to the drilling profession. It is designed to enhance your drilling skills, keep you informed on technological advances, and keep you informed on current state and local regulations. The ultimate goal is to ensure the highest quality of professional drilling. Continuing education is required of every person applying for an operator license and for every driller renewing an operator license.~~

~~(2) How do I obtain the required continuing education credit?~~

~~(a) Continuing education may be obtained from a number of sources. The department as well as other state and local agencies may provide continuing education classes. Additionally, private organizations or individuals may also present approved classes for credit.~~

~~(b) The primary ways to receive credits will be:~~

~~(i) Attend and/or successfully complete classes, courses, workshops, or seminars that have been preapproved for credit; and/or~~

~~(ii) Have the class, course, workshop, or seminar you plan on attending or have attended evaluated by the technical advisory group and approved by the department for credit; and/or~~

~~(iii) Completion of correspondence courses will be considered and evaluated on a case-by-case basis.~~

~~(3) How will credit be assigned?~~

~~(a) The technical advisory group shall evaluate all courses, classes, workshops, or seminars and recommend assignment of continuing education credits. Their evaluation shall be reviewed by the department for approval.~~

~~(b) The following criteria shall be utilized to evaluate and assign credit:~~

~~(i) Course agenda and how well the subject relates to the business, technical, and/or regulatory aspects of well drilling and to the knowledge, skills, and abilities required in the well drilling profession.~~

~~(ii) Subject(s) difficulty.~~

~~(iii) Instructor qualifications.~~

~~(iv) Student course evaluations may be utilized to assign credit to courses.~~

~~(c) Course sponsors may have their courses preapproved by submitting a request to the department on forms provided by the department.~~

~~(d) Individuals planning on attending or who have attended classes, courses, workshops, or seminars that were not preapproved for credit must request a course evaluation and credit approval through the department on forms provided by the department.~~

~~(e) All courses, classes, workshops, or seminars must be open to anyone who wants to attend. This does not preclude a provider from imposing reasonable requirements for attendees such as fees and providing their own safety equipment.~~

~~(4) What types of general topics, workshops or seminars will be accepted?~~

~~(a) General subject areas include: Occupational health and safety; business and office skills; interpersonal skills; technical aspects associated with drilling; and other subject areas approved by the department.~~

~~(b) Workshops, seminars, classes, or courses conducted by professional associations, governmental agencies, private businesses, and individuals, may be accepted, provided the subject(s) meets the provisions of this chapter.~~

~~(5) How do I get credit for participating in a continuing education program?~~

~~(a) A person is qualified to receive continuing education credit upon showing proof of attendance at an approved class, course, workshop, or seminar.~~

~~(b) Proof includes: Certificates of completion; transcripts; attendance rosters; diplomas; or other documents approved by the department.~~

~~(6) General information on continuing education:~~

~~(a) Credits received during a renewal period that are in excess of the requirements cannot be used for any succeeding years. example: A driller earning 20 continuing educational credits during their two-year renewal period cannot apply the six credits towards a future renewal.~~

~~(b) Credits shall not be assigned to courses, workshops, classes, or seminars attended prior to July 1, 1993.~~

~~(c) It is the operator's/trainee's responsibility to track and maintain records of their continuing education credits.~~

~~(d) Continuing education units will not be required to renew an operator license prior to January 1, 2000.~~

~~(e) A person licensed for both water well and a resource protection well construction need only obtain fourteen continuing educational units per renewal period.~~

~~(f) A person applying to receive both a water well and resource protection well operator license need only meet the continuing education unit requirements for one license.~~)) (1) What is continuing education? Continuing education is your opportunity to gain additional knowledge into subjects that directly relate to the well drilling profession. It is designed to enhance your knowledge, drilling skills, and keep you informed on technological advances, as well as keeping you informed on current state and local regulations. The ultimate goal is to ensure the highest quality of professionalism in the well drilling industry. Continuing education is required of every person applying for an operator's license and for every licensed operator renewing their license. Continuing education units (CEUs) are earned by attending continuing education programs. Continuing education programs consist of approved training, classes, courses, workshops, offerings, correspondence instructions, or other means of providing instruction.

(2) How do I obtain required continuing education units?

(a) Except as provided for in this chapter, continuing education units will only be obtained from an approved continuing education provider (a continuing education provider is: Any person, organization, school or other entity involved in education and have received approval from the department for their continuing education plan and curriculum).

(b) The department shall maintain a current list of all continuing education providers and programs. This list will be available on the department's web page and/or by request.

(c) In order to receive continuing education units you must successfully complete continuing education programs. You must be present throughout the entire instructional period in order to be eligible to receive full credit.

(3) How do I become an approved continuing education provider? Persons, organizations, schools, and other entities that provide training and education must submit a continuing education plan to the department for approval. Upon approval of the plan, the requestor becomes an approved continuing education provider. The department may waive the requirement to have a continuing education plan for colleges, universities, or other entities that have an accreditation requirement of their own.

(a) What are the required elements of a continuing education plan? A continuing education plan must contain the following required elements:

(i) Contact information. Name of the person, organizations, schools, and other entities applying to become an approved continuing education provider. Their mailing address, telephone number(s), and e-mail address. Names of

a contact person(s), their mailing address, telephone number(s), and e-mail address.

(ii) Statement of qualifications. A statement of qualifications consists of a summary of the provider's experience in providing education programs; references; and lists of any licenses they hold and/or membership in any professional organizations.

(iii) Statement of resources. A statement of resources shall identify the location(s) of the continuing education program and the number of individuals required to put on the program.

(iv) Statement of organization. A statement of organization consists of a summary of how the courses will be advertised; number and frequency of classes offered during the year; a description of the method to be used to evaluate courses; a description of how attendance will be verified and reported to the department; a description of the type of proof of completion to be awarded to each student; and a cancellation policy.

(v) Statement of accountability. The statement of accountability shall justify the cost of the class and include a statement assuring delivery of courses by the provider.

(b) As provided for in this chapter, the department in consultation with the technical advisory group created in RCW 18.104.190 may waive the requirement for a provider to have a continuing education plan consistent with the goals of this WAC.

(4) How do I get credit for participating in a continuing education program and report units to the department?

(a) A person is qualified to receive continuing education units after the program has been evaluated and upon showing proof of attendance and completion of an approved continuing education program. Each continuing education provider is required to provide their students with documentation, approved by the department, showing successful completion of the program.

(b) All operators/trainees must report their continuing education units to the department prior to their license renewal date.

(c) The department will keep a record of the licensees' continuing education units as they are submitted. You may access your record through the department's web site or request a copy of your record.

(d) It is the individual's responsibility to track and maintain records of their continuing education units.

(5) General information on continuing education:

(a) Continuing education units received during a renewal period that are in excess of the requirements cannot be used for any succeeding years.

Example: A driller earning twenty continuing education units during their two-year renewal period cannot apply the six extra units towards any future renewal.

(b) New applicants may have continuing education units assigned for courses, workshops, classes, or seminars attended no more than five years prior to their application date.

(c) An individual licensed for both water well and resource protection well construction need only obtain fourteen continuing education units per renewal period.

(d) An individual applying for a new license for both a water well and resource protection well operator's license need only meet the continuing education unit requirements for one license.

(e) For new applicants or currently licensed individuals, two continuing education units must cover Washington state department of ecology laws and regulations provided by the department or their designee. This section will take effect one year from the effective date of this rule.

(6) What topics will be approved for continuing education programs? General topics include: Occupational health and safety; business and office skills; interpersonal skills; technical aspects associated with well design, construction, development, maintenance, and testing; geology and ground water sciences, safety, welding, HAZMAT training, first aid; and other topics relating directly to well construction and the ground water industry as approved by the department. The department may also request approved continuing education providers to cover certain topics in their continuing education plan based on trends or observations from department compliance officers.

(7) How will continuing education units be assigned?

(a) The following criteria shall be utilized when evaluating programs and assigning continuing education units.

(i) The subjects' relevance to the business, technical, and/or regulatory aspects of well drilling;

(ii) How well the subject will enhance the knowledge, skills, and abilities required in the well drilling profession;

(iii) Length of program; and

(iv) Final group selection.

The program syllabus must be reviewed in order to address these criteria.

(b) A program syllabus shall contain the following:

(i) Course title.

(ii) Instructor name(s).

(iii) Instructor qualifications.

(iv) Course length.

(v) Course outline, detailing specific subject material to be taught and testing schedule.

(vi) A statement regarding how the course pertains to the business, technical, regulatory, and safety aspects of well construction.

(vii) A statement regarding the goals and objectives of each class.

(viii) A statement that the class will be open to all who desire to attend.

(ix) Admission cost.

(x) A description of textbooks, supplemental readings, or materials such as safety equipment, calculators, or other items the attendee will need to provide.

(xi) The date and time of the course and driving directions.

(c) Based on the syllabus review, each continuing education program will be categorized into one of seven groups:

(i) Group one - Subjects that directly relate to the business, technical, regulatory, and safety aspects of well construction; and subjects that enhance ground water protection and increased professionalism within the drilling community.

(A) Washington well construction and licensing statutes and regulations.

(B) Construction methodology, well design, development, maintenance, and testing.

(C) Protection of the ground water resource.

(D) Hydrogeology and ground water science.

(E) Equipment operation and maintenance.

(F) Computer skills.

(G) Welding.

(H) Business management and office skills.

(I) Interpersonal skills.

(J) Occupational health and safety.

(K) Map reading skills.

(L) Local and state health regulations.

(M) DOT regulations.

(ii) Group two - Subjects that will improve the industries' knowledge and understanding of subjects related to ground water.

(iii) Group three - Subjects not covered under group one or two, but benefit the driller in their professional development.

(A) Vendor specific product/sales courses.

(B) Pumps.

(iv) Group four - Miscellaneous courses.

(A) College courses.

(B) Correspondence courses.

(C) Trade school courses that do not fall into another group.

(v) Group five - Attending conventions (trade show).

(A) Washington Ground Water Association.

(B) National Ground Water Association.

(C) Pacific Northwest Expo.

(D) Other state recognized conventions.

(vi) Group six - Preapproved classes.

(A) OSHA HAZWOPPER 40 hour basic course - 20 credits.

(B) OSHA HAZWOPPER 8 hour refresher - 4 credits.

(C) Red Cross 8 hour first aid/CPR - 4 credits.

(D) Others as approved by the department.

(vii) Group seven - Programs for which no credits are assigned.

(d) A program will be assigned continuing education unit(s) based on the group that best describes the training session and the published length of the training session.

The following is a unit value for each group:

Group one - One unit per hour.

Group two - One-half unit per hour.

Group three - One-quarter unit per hour.

Group four - Unit value equal to the education credit, not to exceed four continuing education units per license renewal period or trainee applicant. No more than eight for all other applicants.

Group five - One unit per convention.

Group six - As listed.

Group seven - No unit value.

(e) Operators/trainees who have attended continuing education programs that were not previously approved may receive continuing education units by providing an application to become a provider and class syllabus form to the department.

(f) Individuals may receive continuing education units for preparing and presenting classes as follows:

(i) No continuing education units will be assigned for class preparation/presentation to nondrilling audiences.

(ii) One continuing education unit per hour of presentation and one CEU per hour of preparation time. Continuing education units allowed for preparation time are limited to no more than twice the time it took to present the course. Example - one hour class, no more than two hours preparation time allowed. Total three CEUs.

(g) All continuing education programs must be open to anyone who wants to attend. This requirement does not preclude a provider from imposing reasonable requirements for attendees such as, but not limited to, fees, space limitations and providing their own safety equipment.

(8) What is the department's role in providing continuing education?

(a) The department shall approve all continuing education programs and assign continuing education units required by this chapter. The technical advisory group shall assist the department in their evaluation by reviewing continuing education programs and recommending assignment of continuing education units on classes referred to them by the department.

(b) The department will provide technical support including those meeting the requirements in subsection (5)(e) of this section, in the form of speakers and materials for use in continuing education programs to approved continuing education providers upon request and at their sole discretion.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-162-095 What should I know about the written and on-site examinations? The written and on-site examinations for licenses issued under this chapter are prepared, administered, and evaluated by the department.

(1) **What subjects will the written exam cover?** The examinations are prepared to test the knowledge and understanding of the following subjects:

(a) Washington state ground water laws as they relate to constructing and decommissioning wells;

(b) Sanitary standards for constructing wells;

(c) Types of well construction and decommissioning;

(d) Drilling techniques, tools and equipment;

(e) Geology (including soil and rock description) as it relates to well construction;

(f) Rules and regulations of the department relating to constructing a well, test pumping, and equipment maintenance;

(g) Preparation of intent forms, well reports, and requests for variances;

(h) Township and range location system as it relates to location of wells;

(i) Basic ground water hydraulics as it relates to well construction and protection of the resource; and

(j) Rules and regulations of the Washington state department of health relating to source approval and source protection of public drinking water systems.

(2) **What subjects will the on-site test cover?**

The on-site examination shall test the applicant's field skills and knowledge in the following areas:

(a) Safety.

(b) General knowledge of equipment operation.

(c) Equipment maintenance.

(d) Drilling knowledge.

(e) Well development.

(f) Implementation of the construction standards under chapter 173-160 WAC.

(3) **When and where are the written examinations given?**

(a) Examinations will be held at such a time and place as may be determined by the department, but not later than thirty days after the department accepts the completed application package consisting of:

(i) A completed application form with appropriate fee; and

(ii) Proof of required continuing education; and

(iii) Proof of required drilling experience.

(b) Upon receipt of a completed application package, the department shall notify you of the date, time and place of the next scheduled written examination. You shall notify the department at least twenty-four hours prior to your scheduled exam date if you cannot meet the examination schedule. Your notice shall include the reason(s) why you cannot meet the schedule. If you fail to notify the department, or fail to reschedule your exam within thirty days of your initial exam date, you will forfeit your application and fee. You must submit a new application and fee in accordance with WAC 173-162-060 if you wish to take the exam.

(c) If your application package is received after an examination has been scheduled and there is either insufficient time for the department to notify you of the time and place of the examination or you are unable to take the examination at the scheduled time, the thirty-day period will start from the scheduled examination date.

(4) **When and where are the on-site examinations given?**

(a) You must pass the written exam before you can take the on-site exam.

(b) If you are required to take an on-site examination you will receive an authorization form along with the confirmation of your written test results.

(c) ((~~Following the receipt of your test results, you will be responsible to select an authorized on-site advisor. The advisor will assist you and the department with coordinating the on-site examination. A list of the on-site advisors will be included with your test results.~~

~~(d)~~)) You((~~, the advisor,~~)) and the department will schedule a mutually agreed upon time and place for the on-site exam. RCW 18.104.080 requires that examinations be held within thirty days after a completed application is filed with the department. ((~~If this is not practical, you must notify the department and request an extension to the testing schedule. Your request shall include:~~

~~(i) The reason(s) why you cannot meet the schedule.~~

~~(ii) Acceptable reasons for rescheduling exams may include: Weather; availability of advisors or department staff; or health problems.~~

~~(e) Failure to complete the on-site exam within ninety days may result in having to reapply and reschedule another on-site exam.~~

~~(f)~~)) (d) You ((~~and the on-site advisor will~~)) shall arrange for all the equipment, materials, and location for the on-site examination.

((~~(g)~~)) (e) The department must be present during the on-site examination.

(5) **When will I be notified of the results of my written and on-site examination?**

The department shall notify you of your test results within ten days after each examination.

(6) **If I fail an exam, may I take a retest?**

(a) If you fail the written or on-site exam, you shall not be entitled to take the examination, or any parts of the examination for a period of thirty days from the date of your original examination.

(b) If you failed to pass the written exam, you are considered a new applicant in all respects.

(c) If you fail the on-site exam, you will be required to arrange a retest after a thirty-day waiting period. You will not be required to retake the written exam.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-162-140	What are the requirements to become an on-site testing advisor?

WSR 06-17-133
PROPOSED RULES
GAMBLING COMMISSION
[Filed August 22, 2006, 8:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-109.

Title of Rule and Other Identifying Information: Chapter 230-09 WAC, Fund-raising event rules.

Hearing Location(s): Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, (253) 851-5402, on October 13, 2006, at 9:30 a.m.

Date of Intended Adoption: October 13, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by October 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by October 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is rewriting its rules manual using plain English techniques. The rules manual has been divided into sections and is being rewritten a section at a time. Following are rules relating to all fund-raising events. These rules are written in plain talk and now numbered as chapter 230-09 WAC.

Statutory Authority for Adoption: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation and Enforcement: Rick Day, Director, Lacey, (360) 486-3446.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

August 21, 2006

Susan Arland

Rules Coordinator

Chapter 230-09 WAC

FUND-RAISING EVENT RULES

NEW SECTION

WAC 230-09-001 Purpose. Licensees may only hold fund-raising events (FREs) to raise funds for organizational purposes. Licensees must operate the FRE with a profit motive. A "profit motive" means a gambling activity conducted for purposes of obtaining funds for a charitable or nonprofit organization's programs. FRE licensees must make a good faith effort to ensure that the expenses paid for all phases of the FRE are less than the total gross receipts received.

NEW SECTION

WAC 230-09-005 Notify local law enforcement. Licensees must notify local law enforcement agencies in writing of the time and place of the FRE at least ten days before conducting the FRE.

NEW SECTION

WAC 230-09-010 Ten thousand dollars net receipts limit. (1) The calendar year net receipt limits of RCW 9.46.0233 apply to all FRE licensees. Net receipts are all wagers and bets received minus money used to purchase prizes and pay out cash prizes.

(2) Any licensees exceeding the calendar year net receipt limit must distribute excess net receipts within thirty days to another bona fide charitable or nonprofit organization that either:

(a) We license; or

(b) Meets the criteria set forth in RCW 9.46.0209.

NEW SECTION

WAC 230-09-015 Fund-raising events on December 31. Licensees who hold FREs which continue past midnight on December 31 into the new calendar year may treat each hour of the event held as if the hours had occurred solely in the calendar year recorded on their license application. These hours are counted in computing and applying limits on the net receipts and on the number of FREs, or consecutive hours of those FREs, in the calendar year for which the license was issued.

NEW SECTION

WAC 230-09-020 Post house rules. Licensees must develop house rules to govern the scope and manner of all gambling activities they will conduct during the FRE and prominently post these rules in the area where they will conduct the FRE. At a minimum, these rules must:

(1) State that single wagers must not exceed ten dollars. Raffle wagers may exceed ten dollars, but must not exceed the limits set forth in RCW 9.46.0277; and

(2) Prohibit tipping.

NEW SECTION

WAC 230-09-025 No wagering among participants. Licensees must not allow any participants at FREs to wager money or other items of value against any other participant, such as in side bets in poker, at the FRE.

NEW SECTION

WAC 230-09-030 Use chips or scrip. Licensees must use chips or scrip or coin for wagering at FREs. *Limited* FRE licensees must use chips and scrip only. Licensees must issue the chips or scrip only during and at the FRE itself. Licensees must not redeem chips or scrip after the FRE has concluded.

NEW SECTION

WAC 230-09-035 Prepare membership list. FRE licensees must prepare a list of all persons from their organizations participating in the management or operation of the FRE. The list must be available on the premises of the FRE and contain, at a minimum, the name, address, telephone number, and a brief statement signed by the chief executive officer certifying that each member listed is a full and regular member of the organization.

NEW SECTION

WAC 230-09-040 Separation of duties for central accounting system required. Licensees must set up and maintain a central accounting system in a format we prescribe for all activities conducted at the FRE. Licensees must obtain accounting forms from us. The central accounting system must provide for the following minimum separation of duties:

(1) A cashier to handle the beginning bank, provide chips to the games, redeem chips and cash checks for the players; and

(2) A runner to transport money, chips, and lock boxes between gambling stations at the event; and

(3) Floor supervisors to supervise not more than six gambling stations each and who must supervise the transfer of lock boxes and chips and change trays to the count room; and

(4) Gambling station operators to control the activity at a specific gambling station.

NEW SECTION

WAC 230-09-045 Counting money. Licensees must have an area for counting money separate from the area where gambling is taking place. Licensees must use the forms and format we prescribe for the count. Licensees must:

(1) Bring all money from the FRE to the counting area; and

(2) Assign three cashiers to count the money. Two cashiers must be in the counting area at all times money is present; and

(3) Have at least two cashiers verify the beginning count and sign the record; and

(4) Restrict access to the counting area to the cashiers and to the runner(s) who transport money or chips to or from those stations; and

(5) Transfer all money and chips to the counting area at the end of the day or event for final tabulation, reconciliation, and verification; and

(6) Have at least three bankers or cashiers verify the final tabulation and reconciliation and sign the verification.

NEW SECTION

WAC 230-09-050 Use lock boxes and money paddles. Licensees must have numbered games stations with separate lock boxes and money paddles for each station.

(1) The money paddle must remain in the lock box slot whenever it is not in use. The money slot of the lock box must not exceed three and one-half inches in length and one-half inch in width; and

(2) Dealers must exchange all currency presented by the players for coin or chips and the dealer must immediately place it in the lock box; and

(3) Licensees must keep the keys to all lock boxes in the counting area at all times; and

(4) Only cashiers may open the lock boxes and they must open them only in the counting area.

NEW SECTION

WAC 230-09-055 Maintain records of net receipts. Licensees must maintain records in sufficient detail to determine the net receipts of each gambling station operated. Licensees must:

(1) Record a reconciliation of the ending cash on hand to net receipts; and

(2) Deposit the ending cash on hand within two banking days of the conclusion of the fund-raising event and must include a validated deposit slip as part of the records; and

(3) Not spend any of the ending cash before the deposit.

NEW SECTION

WAC 230-09-060 Winners must be present and participating to win. Winners must be present and participating to win at a fund-raising event.

NEW SECTION

WAC 230-09-065 Use only full and regular members to operate the fund-raising event. (1) Licensees must use only full and regular members of the charitable or nonprofit organization to manage or assist in the operation of an FRE. "Full and regular membership" is defined in WAC 230-03-140.

(2) Licensees may also use "members" and "bona fide members" as defined in RCW 9.46.0261 to manage or assist in the operation of an FRE.

NEW SECTION

WAC 230-09-070 Compensation of other authorized employees. Generally, licensees must not pay people to work at an FRE. However, in the following circumstances, licensees may compensate people:

(1) Licensees may allow people who are not members of the organization to perform incidental functions, which we will not consider "management or operation" under RCW 9.46.120. These incidental functions include:

(a) Serving food and drink to participants in the FRE; or

(b) Parking cars; or

(c) Maintaining general crowd control and order at the FRE; or

(d) Detecting people cheating, as long as that employee is a commissioned law enforcement officer with the power to make arrests in the jurisdiction in which the FRE is being held or is the employee of a commercial securities service firm licensed to provide these services by the city, town, or county in which the FRE is being conducted; or

(e) Providing janitorial functions; or

(f) Supervising these people, as long as the licensee does not pay these employees more than the local prevailing level of payment for supervising at events other than FREs.

(2) Licensees may also furnish food and nonalcoholic beverages to full and regular members who volunteer as long as the food or drink does not exceed twenty dollars per volunteer per FRE.

(3) If a licensee's employee is also a full and regular member of the organization or its auxiliary and is not scheduled for assigned employee duties at the time of the FRE, the employee may assist in the FRE.

NEW SECTION

WAC 230-09-075 Workers must wear name tags. All fund-raising event workers must wear a name tag at all times. Name tags must include at least the member's first initial and last name or first name and first initial of the last name and the name of the organization.

PREMISES AND EQUIPMENT FOR FUND-RAISING EVENTS

NEW SECTION

WAC 230-09-080 Holding fund-raising events on commercial business premises. (1) Licensees may operate FREs on commercial business premises only if:

(a) The commercial business is closed to the public at all times during which the licensee conducts the FRE; or

(b) The portion of the business premises in which the licensee conducts the FRE is separate and apart from the portion used by the commercial business. In this rule, "separate and apart" means having a permanent or temporary partition. The partition must:

(i) Have not more than two designated openings to limit pedestrian flow; and

(ii) Provide a solid, distinct separation between the portion of the premises where the licensee conducts the FRE and the portion of the premises the commercial business uses.

(2) Licensees must not conduct an FRE on or within a commercial business premises while any other organization is conducting an FRE on or within the same commercial business premises.

NEW SECTION

WAC 230-09-085 Commercial business must not participate in fund-raising events. (1) Licensees must ensure the owners, managers, or employees of the commercial business premises used for the FRE do not participate in the operation of any of the FRE activities.

(2) Licensees must not hold an FRE on the premises of a commercial business if any of the licensee's officers are owners, managers, or employees of the commercial business.

NEW SECTION

WAC 230-09-090 Control of premises. Licensees must have, and exercise, complete control over the portion of the premises where the FRE takes place at all times they conduct the FRE. However, if the sale, service, or consumption of liquor is permitted in that portion of the premises, the liquor licensee or permittee must be responsible for compliance with liquor laws and regulations.

NEW SECTION

WAC 230-09-095 Using, leasing, or renting equipment. (1) FRE licensees must purchase, lease, or rent gambling equipment only from a licensed distributor or another FRE licensee.

(2) FRE licensees may sell their equipment to other FRE licensees or distributors.

(3) FRE licensees may loan or rent their own equipment for up to four events per year without obtaining an FRE equipment distributor license if:

(a) The FREs take place within the twelve calendar month period following the licensee's last FRE; and

(b) The licensee ensures their equipment is only used in FREs or other authorized activities, such as bingo.

(4) FRE equipment distributor licensees must sell, rent, or lease gambling equipment, premises, or services for use in an FRE on commercially reasonable terms.

(5) Licensees must make all rentals at a lump sum or hourly rate and rentals must not be based on a percentage of the income or profit from the FRE.

GAMBLING ACTIVITIES AUTHORIZED AT FUND-RAISING EVENTS

NEW SECTION

WAC 230-09-100 Pull-tabs authorized. Licensees must operate pull-tabs solely under their FRE license, not under a separate pull-tab license. If licensees sell pull-tabs, they must:

(1) Purchase the pull-tabs for specific use at FREs and record the identification and inspection services stamps on the form we provide; and

(2) Mix the pull-tabs and sell them out of a clear container. Licensees must not use a coin-operated dispensing device; and

(3) Use the manufacturer's set price for each specific series; and

(4) Have no more than three pull-tab series out for play at one time; and

(5) Sell all pull-tabs from a booth or similar confined area which prohibits public access to the pull-tabs; and

(6) Treat each pull-tab series as a separately numbered gambling station. Each series must have a separate corresponding lock box, money paddle, and chip tray for making change and payment of prizes. The attendant(s) on duty must immediately place all currency, coins, or chips used to purchase pull-tabs in the corresponding lock box. All change given back to players must be in the form of chips or coins from the chip tray; and

(7) Deface all winning pull-tabs when they are cashed in and put them in the corresponding lock box; and

(8) Pay winning pull-tabs in chips and coins only, or players may cash in winning pull-tabs for additional pull-tabs only from the same series; and

(9) Comply with all other rules and laws for pull-tabs in Title 230 WAC and chapter 9.46 RCW.

NEW SECTION

WAC 230-09-105 Processing pull-tabs after play. When attendants remove a series from play, a runner must take the series, including the flare, the corresponding lock box, and chip tray to the count room.

(1) Cashiers must immediately record all gross gambling receipts collected, prizes paid, and tabs sold and write the totals on the pull-tab accounting report we furnish according to the instructions attached; and

(2) After completing the count, cashiers must package or band winning pull-tabs separately and place them with the unused portion of that particular series in the original shipping container. The licensee must retain the used series for one year; and

(3) At the completion of the FRE, licensees must:

(a) Take all series still out for play to the count room and follow count room procedures; and

(b) Return all unopened pull-tab series to the licensed distributor who sold the series for a full refund. Licensees must not sell or operate the unopened series under their separate pull-tab license.

NEW SECTION

WAC 230-09-110 Punch boards not authorized. Fund-raising event licensees must not operate punch boards as part of the FRE.

NEW SECTION

WAC 230-09-115 Bingo authorized. Licensees must operate bingo solely under their FRE license, not under a separate bingo license. If licensees operate bingo, they must:

(1) Count income from bingo against the maximum net receipts authorized for FREs; and

(2) Comply with all of our rules for Class A, B, and C bingo.

NEW SECTION

WAC 230-09-120 Disposable bingo cards. (1) Licensees that have a separate bingo license and use disposable bingo cards at the FRE must follow the inventory control procedures for disposable cards in the bingo rules chapter.

(2) Licensees that do not have a separate bingo license must keep all unused disposable cards or packets as part of the FRE record. Licensees may return unused cards or packets to the distributor if there are no breaks in the consecutive card/audit numbers. Licensees must receive documentation from the distributor of the total number of cards or packets returned and the beginning and ending card/audit numbers.

NEW SECTION

WAC 230-09-125 Raffles authorized. (1) Licensees may operate raffles at FREs in one of two ways:

(a) **Solely under their fund-raising event license.** Licensees must conduct all aspects of the raffle during the FRE. Income from this raffle counts toward the FRE limits; or

(b) **Under a separate raffle license.** Licensees must sell all tickets for the raffle and deposit all tickets in the drawing receptacle before the FRE and hold the raffle drawing at the FRE. Income from this raffle counts toward the limits of the licensee's raffle class.

(2) For raffles conducted under an FRE license, licensees must:

(a) Not sell single FRE raffle tickets for more than twenty-five dollars per ticket; and

(b) Not require a person to buy more than one ticket; and

(c) Use consecutively numbered tickets; and

(d) Ensure that each ticket has a separate and equal chance to win; and

(e) Randomly draw the winning ticket; and

(f) Operate and account for raffles as independent gambling stations at the FRE; and

(g) Maintain records to verify gross sales of tickets; and

(h) Report all FRE raffle income, prizes awarded, and other expenses and these amounts count toward the maximum net receipts authorized for FREs.

NEW SECTION

WAC 230-09-130 Blackjack or "21" authorized. Licensees may operate blackjack or "21" at licensed FREs according to the following requirements:

(1) Dealers must deal all cards from a dealing shoe. The deal must begin with a shoe containing at least four full decks of cards and proceed until the cards are reshuffled, withdrawn for examination, or replaced. The shoe must then be refilled with at least four decks of cards and the process repeated; and

(2) Dealers must deal cards to the players face up on the table; and

(3) Players must not pick up, shuffle, or cut the cards; and

(4) Licensees must use only standard size playing cards; and

(5) Dealers may shuffle the cards using a device, apparatus, or mechanism.

JOINT FUND-RAISING EVENTS

NEW SECTION

WAC 230-09-135 Joining together with other licensees to conduct a fund-raising event. FRE licensees may jointly conduct an FRE if they:

(1) Do not exceed their individual FRE limit for the calendar year or a single event; and

(2) Prepare a list of all persons from their organizations participating in the management or operation of the FRE. The list must be available on the premises of the FRE and contain, at a minimum, the name, address, telephone number, and a brief statement signed by the chief executive officer certifying that each member listed is a full and regular member of the organization; and

(3) Keep records which clearly disclose the amount of money received and spent in connection with the joint FRE.

NEW SECTION

WAC 230-09-140 Lead organization responsibilities. The lead organization must:

(1) Be responsible for the central accounting system; and

(2) Comply with all recordkeeping and reporting rules; and

(3) Deposit the ending cash on hand; and

(4) Prepare and submit a fund-raising event report; and

(5) Disburse all funds due to any participating organizations by check within thirty days following the event.

LIMITED FUND-RAISING EVENTS

NEW SECTION

WAC 230-09-145 Limited fund-raising event defined. A limited FRE means:

(1) Only members and guests of the organization may participate in a limited FRE. A limited FRE is not open to the public; and

(2) Only merchandise prizes, not cash, are awarded; and

(3) The organization may hire a licensed FRE equipment distributor to provide the equipment and staff to operate gambling stations; and

(4) The organization may deduct the cost of equipment rental and services when calculating the FRE net receipts limits.

NEW SECTION

WAC 230-09-150 Operating a limited fund-raising event. (1) Licensees must:

(a) Require participants to purchase scrip with cash; and

(b) Exchange scrip at gambling stations for chips; and

(c) Allow only full and regular members to make cash transactions for scrip and maintain records during the FRE; and

(d) Disclose the prizes offered. The costs of prizes must not exceed fair market value. The organization may advertise the prize to the participants at the retail value; and

(e) Prevent the cost of all prizes from exceeding ten percent of the gross revenue of the event; and

(f) Comply with all other FRE rules.

(2) Licensees may allow unlimited wagering when using scrip.

NEW SECTION

WAC 230-09-155 Recordkeeping at limited fund-raising events. Limited FREs licensees must comply with WAC 230-06-070. In order to show compliance with FRE limits, licensees also must provide details regarding how much of the admission fees from the limited FRE they allocate to gambling scrip and how much they allocate to other activities, such as meals and entertainment.

NEW SECTION

WAC 230-09-160 Fund-raising event distributor rules at limited fund-raising events. (1) The FRE equipment distributor must not share in any way in the proceeds of the FRE.

(2) Employees of the FRE equipment distributor must:

(a) Wear a name tag with, at a minimum, their first name and the full name of the distributor; and

(b) Not handle cash transactions; and

(c) Not allow participants to purchase chips with cash.

NEW SECTION

WAC 230-09-165 Restrictions on gambling activities at limited fund-raising events. (1) Licensees must not sell pull-tabs at limited FREs.

(2) Licensees must ensure that participants play only for merchandise prizes.

(3) Licensees may allow participants to exchange chips or scrip for raffle tickets at the end of a limited FRE to determine who will win merchandise prizes.

(4) Licensees may only sell bingo cards to participants in exchange for scrip.

WSR 06-17-134

PROPOSED RULES

GAMBLING COMMISSION

[Filed August 22, 2006, 8:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-11-110.

Title of Rule and Other Identifying Information: Chapter 230-18 WAC, Promotional contests of chance not licensed by the Washington state gambling commission.

Hearing Location(s): Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, (253) 851-5402, on October 13, 2006, at 9:30 a.m.

Date of Intended Adoption: October 13, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by October 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by October 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is rewriting its rules manual using plain English techniques. The rules manual has been divided into sections and is being rewritten a section at a time. Following are rules relating to all promotional contests of chance. These rules are written in plain talk and now numbered as chapter 230-18 WAC.

Statutory Authority for Adoption: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation and Enforcement: Rick Day, Director, Lacey, (360) 486-3446.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

August 21, 2006

Susan Arland

Rules Coordinator

Chapter 230-18 WAC

PROMOTIONAL CONTESTS OF CHANCE NOT LICENSED BY THE WASHINGTON STATE GAMBLING COMMISSION

NEW SECTION

WAC 230-18-005 Telephone fees deemed "consideration." Participants may be required to place a telephone call to enter a promotional contest of chance, but additional fees such as those for a 1-900 number are "consideration" and are not authorized.

NEW SECTION

WAC 230-18-010 Promotional contests of chance similar to bingo. A business may offer a promotional contest of chance (PCOC) that is similar to bingo, commonly referred to as "no fee bingo."

(1) A business must not:

(a) Charge participants a direct or indirect fee to participate in the PCOC. Indirect fees include, but are not limited to, cover charges; and

(b) Operate the PCOC for no more than a total of three hours per day, twice per week. Participants must receive a bingo card immediately before the start of each game.

(2) A business must:

(a) Award only merchandise items, such as food, nonalcoholic beverages, hats, shirts, or other promotional items valued at less than twenty-five dollars each. The business must:

(i) Not substitute cash prizes for merchandise prizes; and

(ii) Not award prizes worth more than one hundred dollars per week or five thousand dollars per year; and

(iii) Record the names of winners and prize(s) won for each game; and

(b) Use recreational bingo cards that are not used in authorized bingo games.

NEW SECTION

WAC 230-18-015 Promotional game cards used in promotional contests of chance. (1) A business may use promotional game cards similar to pull-tabs as part of a promotional contest of chance (PCOC) if the game cards:

(a) Are readily distinguishable from other pull-tabs sold in the state of Washington; and

(b) Are designed and manufactured for a specific PCOC; and

(c) Clearly display the name of the sponsoring business or the promoted product(s); and

(d) Have no price per play on the card; and

(e) Have the official rules of play, including "no purchase necessary," printed on the back.

(2) We may seize PCOC game cards that violate these restrictions.

WSR 06-17-136
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed August 22, 2006, 9:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-105.

Title of Rule and Other Identifying Information: WAC 296-126-023 Payment interval, 296-128-035 Payment interval, and 296-131-010 Payment interval.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S118, Tumwater, WA, on October 2, 2006, at 1:30 p.m.

Date of Intended Adoption: October 31, 2006.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by October 2, 2006.

Assistance for Persons with Disabilities: Contact Sally Elliott by September 15, 2006, at yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to incorporate the payment interval administrative policy regarding the rules. By integrating the policy into rule and expanding the rule to clarify different payment intervals approaches, the payment interval rule will be easier to use, understand, and provide greater certainty and consistency without having to rely on additional documents. The amendments will:

1. Retain the requirement that employers must pay all wages at no longer than monthly intervals on regular pay days.

2. Continue to require an employer to implement a regular payroll system in which wages from up to seven days before pay day may be withheld if paying at a monthly interval.

3. Continue to require that paychecks must be mailed on the established pay day and funds provided by direct deposit or electronic means must be available on the established pay day.

4. Employers are required to pay wages no later than ten days after the end of the pay period, except for monthly payroll systems.

5. Allow employers to establish separate pay periods for regular and overtime wages plus commission and other specialty pay as long as workers are paid no later than the pay day for the following pay period.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapters 49.12, 49.30, and 49.46 RCW.

Statute Being Implemented: Chapters 49.12, 49.30, and 49.46 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Rich Ervin, Tumwater, Washington, (360) 902-5310; Imple-

mentation and Enforcement: Patrick Woods, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is specifically exempt from the SBEIS requirement because its intent is to clarify rule language without changing its effect (see RCW 19.85.025(2) referencing RCW 34.05.310 (4)(d)).

A cost-benefit analysis is not required under RCW 34.05.328. This rule is specifically exempt from the cost-benefit analysis requirement because its intent is to clarify rule language without changing its effect (see RCW 34.05.-310 (4)(d)).

August 22, 2006
Gary Weeks
Director

AMENDATORY SECTION (Amending Order 89-16, filed 10/24/89, effective 11/24/89)

WAC 296-126-023 Payment interval. ((~~All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days. To facilitate bookkeeping, an employer may implement a regular payroll system in which wages from up to seven days before pay day may be withheld from the pay period covered and included in the next pay period.~~)) (1) This rule shall apply to employers and employees subject to chapter 49.12 RCW.

Note: Employers and employees not subject to this regulation may still be subject to the payment interval requirements of WAC 296-128-035 or 296-131-010.

(2) Definitions:

(a) "Monthly interval" means a one-month time period between established pay days.

(b) "Pay day" means a specific day or date established by the employer on which wages are paid for hours worked during a pay period.

(c) "Payment interval" means the amount of time between established pay days. A payment interval may be daily, weekly, bi-weekly, semi-monthly or monthly.

(d) "Pay period" means a defined time frame for which an employee will receive a paycheck. A pay period may be daily, weekly, bi-weekly, semi-monthly or monthly.

(3) An employer shall pay all wages owed to an employee on an established regular pay day at no longer than monthly payment intervals. If federal law provides specific payment interval requirements that are more favorable to an employee than the payment interval requirements provided under this rule, federal law shall apply.

(4) If an employer pays wages on the basis of a pay period that is less than a month, the employer shall establish a regular pay day no later than ten calendar days after the end of the pay period, unless expressly provided otherwise by law.

Example 1: Employer establishes a weekly pay period. The workweek is from Sunday January 1 through Saturday January 7. Unless a different payment interval applies by law, the employer must pay wages no later than January 17.

Example 2: Employer establishes two semi-monthly pay periods (the first pay period covers the 1st day of the month to the 15th day of the month; the second pay period covers the 16th day of the month to the last day of the month). Unless a different payment interval applies by law, the employer must pay wages no later than the 25th day of the current month for the first pay period, and no later than the 10th day of the following month for the second pay period.

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

(6) An employer shall pay nonbase wages owed to an employee (including overtime, bonus pay, and other categories of specialty pay in addition to base pay) on the regular pay day for the pay period in which such nonbase wages were earned. If the correct amount of nonbase wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for nonbase wages; however, the payment of nonbase wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and in no event may payment be delayed beyond the pay period following the pay period in which the nonbase wages were earned.

Example: Employer establishes two semi-monthly pay periods (the first pay period covers the 1st day of the month to the 15th day of the month; the second pay period covers the 16th day of the month to the last day of the month). The employer pays a base hourly wage of fifteen dollars per hour, plus a ten percent commission. Unless a different payment interval applies by law, the employer must pay the base hourly wages no later than the 25th day of the month for the first pay period, and no later than the 10th day of the following month for the second pay period. The employer may pay the additional commission wages no later than the 10th day of the following month for commissions earned during the first pay period, and no later than the 25th day of the following month for commissions earned during the second pay period.

(7) Mailed paychecks shall be postmarked no later than the established pay day. If the established pay day falls on a weekend day or holiday when the business office is not open, mailed paychecks shall be postmarked no later than the next business day. Employers that pay employees by direct deposit or other electronic means shall ensure that such wage payments are made and available to employees on the established pay day.

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All base wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to base pay) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays base wages to covered employees at no less than the applicable minimum wage rate.

AMENDATORY SECTION (Amending Order 89-16, filed 10/24/89, effective 11/24/89)

WAC 296-128-035 Payment interval. ((~~All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days. To facilitate bookkeeping, an employer may implement a regular payroll system in which wages from up to seven days before pay day may be withheld from the pay period covered and included in the next pay period.~~)) (1) This rule shall apply to employers and employees subject to chapter 49.46 RCW.

Note: Employers and employees not subject to this regulation may still be subject to the payment interval requirements of WAC 296-126-023 or 296-131-010.

(2) Definitions:

(a) "Monthly interval" means a one-month time period between established pay days.

(b) "Pay day" means a specific day or date established by the employer on which wages are paid for hours worked during a pay period.

(c) "Payment interval" means the amount of time between established pay days. A payment interval may be daily, weekly, bi-weekly, semi-monthly or monthly.

(d) "Pay period" means a defined time frame for which an employee will receive a paycheck. A pay period may be daily, weekly, bi-weekly, semi-monthly or monthly.

(3) An employer shall pay all wages owed to an employee on an established regular pay day at no longer than monthly payment intervals. If federal law provides specific payment interval requirements that are more favorable to an employee than the payment interval requirements provided under this rule, federal law shall apply.

(4) If an employer pays wages on the basis of a pay period that is less than a month, the employer shall establish a regular pay day no later than ten calendar days after the end of the pay period, unless expressly provided otherwise by law.

Example 1: Employer establishes a weekly pay period. The workweek is from Sunday January 1 through Saturday January 7. Unless a different payment interval applies by law, the employer must pay wages no later than January 17.

Example 2: Employer establishes two semi-monthly pay periods (the first pay period covers the 1st day of the month to the 15th day of the month; the second pay period covers the 16th day of the month to the last day of the month). Unless a different payment interval applies by law, the employer must pay wages no later than the 25th day of the current month for the first pay period, and no later than the 10th day of the following month for the second pay period.

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

(6) An employer shall pay nonbase wages owed to an employee (including overtime, bonus pay, and other categories of specialty pay in addition to base pay) on the regular pay day for the pay period in which such nonbase wages were earned. If the correct amount of nonbase wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for nonbase wages; however, the payment of nonbase wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and in no event may payment be delayed beyond the pay period following the pay period in which the nonbase wages were earned.

Example: Employer establishes two semi-monthly pay periods (the first pay period covers the 1st day of the month to the 15th day of the month; the second pay period covers the 16th day of the month to the last day of the month). The employer pays a base hourly wage of fifteen dollars per hour, plus a ten percent commission. Unless a different payment interval applies by law, the employer must pay the base hourly wages no later than the 25th day of the month for the first pay period, and no later than the 10th day of the following month for the second pay period. The employer may pay the additional commission wages no later than the 10th day of the following month for commissions earned during the first pay period, and no later than the 25th day of the following month for commissions earned during the second pay period.

(7) Mailed paychecks shall be postmarked no later than the established pay day. If the established pay day falls on a

weekend day or holiday when the business office is not open, mailed paychecks shall be postmarked no later than the next business day. Employers that pay employees by direct deposit or other electronic means shall ensure that such wage payments are made and available to employees on the established pay day.

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All base wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to base pay) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays base wages to covered employees at no less than the applicable minimum wage rate.

AMENDATORY SECTION (Amending Order 89-15, filed 10/24/89, effective 11/24/89)

WAC 296-131-010 Payment interval. ((~~All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days, unless federal law requires more frequent pay intervals. To facilitate bookkeeping, an employer may implement a regular payroll system in which wages from up to seven days before pay day may be withheld from the pay period covered and included in the next pay period.~~)) (1) This rule shall apply to employers and employees engaged in agricultural labor as defined in RCW 50.04.150 and subject to WAC 296-131-001.

Note: Employers and employees not subject to this regulation may still be subject to the payment interval requirements of WAC 296-126-023 or 296-128-035.

(2) Definitions:

(a) "Monthly interval" means a one-month time period between established pay days.

(b) "Pay day" means a specific day or date established by the employer on which wages are paid for hours worked during a pay period.

(c) "Payment interval" means the amount of time between established pay days. A payment interval may be daily, weekly, bi-weekly, semi-monthly or monthly.

(d) "Pay period" means a defined time frame for which an employee will receive a paycheck. A pay period may be daily, weekly, bi-weekly, semi-monthly or monthly.

(3) An employer shall pay all wages owed to an employee on an established regular pay day at no longer than monthly payment intervals. If federal law provides specific payment interval requirements that are more favorable to an employee than the payment interval requirements provided under this rule, federal law shall apply.

(4) If an employer pays wages on the basis of a pay period that is less than a month, the employer shall establish a regular pay day no later than ten calendar days after the end of the pay period, unless expressly provided otherwise by law.

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(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

(6) An employer shall pay nonbase wages owed to an employee (including overtime, bonus pay, and other categories of specialty pay in addition to base pay) on the regular pay day for the pay period in which such nonbase wages were earned. If the correct amount of nonbase wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for nonbase wages; however, the payment of nonbase wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and in no event may payment be delayed beyond the pay period following the pay period in which the nonbase wages were earned.

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ing month for the second pay period. The employer may pay the additional commission wages no later than the 10th day of the following month for commissions earned during the first pay period, and no later than the 25th day of the following month for commissions earned during the second pay period.

(7) Mailed paychecks shall be postmarked no later than the established pay day. If the established pay day falls on a weekend day or holiday when the business office is not open, mailed paychecks shall be postmarked no later than the next business day. Employers that pay employees by direct deposit or other electronic means shall ensure that such wage payments are made and available to employees on the established pay day.

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All base wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to base pay) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays base wages to covered employees at no less than the applicable minimum wage rate.

WSR 06-17-144
PROPOSED RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed August 22, 2006, 1:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-02-035.

Title of Rule and Other Identifying Information: WAC 415-02-100 Retiree insurance premium deductions for retirees—Enrollment requirements.

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on September 27, 2006, at 2:30 p.m.

Date of Intended Adoption: September 28, 2006.

Submit Written Comments to: Leslie L. Saeger, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail leslies@drs.wa.gov, fax (360) 753-3166, by 5:00 p.m. on September 27, 2006.

Assistance for Persons with Disabilities: Contact Leslie L. Saeger by September 19, 2006, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To remove confusing language that was found during the department's routine rule review process.

Statutory Authority for Adoption: RCW 41.50.050(5).

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Saeger, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Dave Nelsen, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no effect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not one of the named departments in RCW 34.05.328.

August 22, 2006
Leslie L. Saeger
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-10-016, filed 4/21/00, effective 5/22/00)

WAC 415-02-100 Retiree insurance premium deductions for retirees—Enrollment requirements. The department will not accept requests by retirees of any of the systems which the department administers to deduct premiums for any kind of insurance from retirement allowances unless the provider has at least twenty-five such retirees enrolled in a withholding program. ((~~Any providers who have less than twenty-five retirees in their deduction program will have twelve months in which to secure at least twenty-five participants. Failing to acquire the required minimum within twelve months will result in suspension of the deduction program for such provider.~~)) Any qualified provider who drops below twenty-five participants will be suspended if they remain under twenty-five participants for ninety days.

WSR 06-17-151
PROPOSED RULES
FOREST PRACTICES BOARD

[Filed August 22, 2006, 3:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-20-996 [05-20-096].

Title of Rule and Other Identifying Information: Identifying perennial initiation points of nonfish perennial steams.

Hearing Location(s): Community Colleges of Spokane, Colville Center, 985 South Elm Street, Colville, WA, on September 28, 2006, at 5:00 p.m.; and at the CottonTree Inn,

2300 Market Street, Mount Vernon, WA, on October 12, 2006, at 5:00 p.m.

Date of Intended Adoption: November 1, 2006.

Submit Written Comments to: Patricia Anderson, Department of Natural Resources, Forest Practices Division, 1111 Washington Street S.E., P.O. Box 47012, Olympia, WA 98504-7012, e-mail forest.practicesboard@wadnr.gov, fax (360) 902-1428, by October 13, 2006.

Assistance for Persons with Disabilities: Contact Forest Practices Division at (360) 902-1400, by September 18, 2006, TTY (360) 902-1125.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 222-16-030(3) and 222-16-031(4) currently give an option to landowners to employ default basin sizes for western and eastern Washington on Type Np/Type 4 (perennial nonfish) streams. This was provided for landowners who cannot identify the uppermost point of perennial flow with simple, nontechnical observations.

A scientific study has been completed under the scientific-based adaptive management process (RCW 76.09.370 and WAC 222-12-045.) The study, *Type N Stream Demarcation Study, Phase I: Pilot Results*, indicates that the default basin sizes available for use in determining stream perennial initiation points are incorrect, i.e., they are too large. Therefore, the forest practices board is considering changes to WAC 222-16-030(3) and 222-16-031(4) that will:

- Eliminate the option to use a default basin size.
- Reference Forest Practices Board Manual Section 23 which will provide guidance on identifying the uppermost point of perennial flow on nonfish perennial streams. The guidance will include a method to use during the dry season, a method to use during the wet season, and a mapping method for landowners who do not have legal access to the channel head.

The rule amendments would affect landowners who would have used a default basin size to determine the demarcation between nonfish seasonal and nonfish perennial streams.

Reasons Supporting Proposal: The forest practices board adaptive management program found that the default basin sizes listed in WAC 222-16-030(3) and 222-16-031(4) are incorrect and cannot be scientifically supported as an optional method to determine perennial initiation points of nonfish streams.

Statutory Authority for Adoption: RCW 76.09.040.

Statute Being Implemented: RCW 76.09.370.

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

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jed Herman, 1111 Washington Street S.E., Olympia, (360) 902-1684; and Enforcement: Lenny Young, 1111 Washington Street S.E., Olympia, (360) 902-1744.

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

Small Business Economic Impact Statement

OBJECTIVES: The forest practices board will be considering permanent rule making that will result in the elimination of the default method for identifying perennial initiation points (PIPs) on nonfish bearing streams. The objectives of this economic analysis are to determine whether the benefits of the proposed rules exceed the costs, and whether the compliance costs of the proposed rules will disproportionately affect the state's small businesses.

The Administrative Procedure Act (chapter 34.05 RCW)[1] requires completion of a cost-benefit analysis (CBA) prior to rule adoption that demonstrates that probable benefits of the proposal exceed its probable costs and that it is the most cost-effective means of achieving the goal of the rule change. A small business economic impact statement (SBEIS) is required by the Regulatory Fairness Act (chapter 19.85 RCW)[2] to consider the impacts of state administrative rules on small businesses, defined as those with fifty or fewer employees. An SBEIS compares the costs of compliance for small businesses with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules.

This economic analysis combines the SBEIS and the CBA and complies with the legislative requirements for these analyses as part of the rule-making process.

HISTORICAL CONTEXT: The forests and fish rules established a water typing system that subdivides nonfish bearing streams (Type N) into two categories:

- ~~Perennial segments (~~Type Np waters are perennial nonfish streams.~~) do not go dry any time of a normal rainfall year (including "spatially intermittent" channels that may contain dry reaches below the uppermost point of perennial flow).~~
- ~~Seasonal segments (~~Type Ns waters are seasonal nonfish streams.~~) go dry "in a year of normal rainfall."~~

(See WAC 222-16-030 and 222-16-031 for complete definitions.)

Perennial stream segments are given special protection during forest practices activities as provided in WAC 222-30-021 (western Washington) and 222-30-022 (eastern Washington), including buffering of at least half of the Type Np stream length. On parcels of twenty acres or less, landowners with total parcel ownership of less than eighty forested acres are exempt from buffering requirements. Seasonal segments are subject to more limited protection. The identification of the point at which a Type Ns stream becomes a Type Np stream, known as the perennial initiation point (PIP), is therefore, an important component of forest practices applications.

Under certain circumstances, it is difficult if not impossible to determine PIPs in the field. These include cases where the applicant does not have access to relevant stream segments or during the wet season or in unusually wet or dry periods. To accommodate such situations, WAC 222-16-030(3) and 222-16-031(4) include~~s~~ a default method for identifying a PIP "if the uppermost point of perennial flow cannot be identified with simple, nontechnical observations." The default method locates the PIP at the point along the channel where the contributing basin area is:

(a) At least thirteen acres in the western Washington sitka spruce coastal zone (coastal zone);

(b) At least fifty-two acres in other locations in western Washington; or

(c) At least three hundred acres in eastern Washington.

It was agreed during the forests and fish negotiations that determining PIPs "will require a better understanding of the natural variability of the spatially intermittent component of perennial streams." (Forests and Fish Report, Appendix B (B.1)(e)(iii), April 1999) A study was subsequently initiated through the ~~Washington State~~ Forest Practices Board's Cooperative Monitoring, Evaluation and Research Committee (CMER) to gather data to "refine the demarcation of perennial and seasonal Type N streams."[3] Ten "cooperators" (seven tribal, one state agency, and two timber industry) collected field data at 224 Type N streams in nine study areas ~~on the Westside of the Cascade Crest~~ in western Washington and six ~~on the Eastside~~ in eastern Washington. The study found that observed basin areas were smaller than the forests and fish rules default basin areas (described in WAC 222-16-030 and 222-16-031). The CMER study found that median observed basin areas for the coastal, western and eastern default regions were two, seven and thirty-six acres, and average observed basin areas were eight, twenty-four and one hundred eighteen acres, respectively. These findings suggest that some PIPs determined by the default method will be downstream of the true PIP, possibly resulting in inadequate buffering.

In light of the study findings, forests and fish policy recommended elimination of the default method, to be replaced by language that refers landowners to forest practices board Manual Section 23, which is under development.

PROPOSED RULES SUMMARY: The proposed rule making replaces language in WAC 222-16-030(3) and 222-16-031(4) that provides default basin sizes with language that refers landowners to board manual Section 23, "Guidelines to Identify Perennial Streams and Locate Divisions Between Stream Types," currently under development. The board manual provides methodology to locate the uppermost point of perennial flow in Type Np water during the seasonal low-flow period and the wet period, as well as an alternative in cases where the landowner does not have access to the full reach of a Type Np stream. No changes are proposed to stream classification~~, the definition of PIPs,~~ or to the protections that are provided to riparian areas.

ECONOMIC ANALYSIS: To comply with the Administrative Procedure Act and Regulatory Fairness Act this analysis identifies potentially affected industries, defines small and large businesses and determines if there is a disproportionate economic impact on small businesses, in which case the Regulatory Fairness Act requires that the cost imposed by the rule on small businesses be reduced where legal and feasible to meet the rule's objective. If steps are not taken to reduce the costs on small businesses, the agency must provide reasonable justification.

Potentially Affected Industries: The rule-complying community affected by the proposal is businesses that own or control the cutting rights on forest land or those with the right to dispose of the timber.

Small Businesses Versus Large Businesses: The Regulatory Fairness Act defines a "small business" as one with fifty or fewer employees. Forest ownership acreage is generally a more appropriate metric for characterizing small businesses in the timber industry. Small businesses are identified in this economic analysis as those meeting the state's eligibility criteria for small forest landowner status in the forestry riparian easement program; generally those who harvest less than two million board feet per year. All other private landowners are categorized as "large businesses" for purposes of this analysis.

Benefits and Costs Included in the Analysis: The costs of the rule change are measured as the potential loss of timber revenue, based on an estimate of the timber acreage affected by the rule making. Benefits are defined as the value of protecting the habitat, but are not quantified, as there is no known research that quantifies the benefits of protecting non-fish bearing riparian habitat that is applicable to Washington. Methodology is further discussed below.

Involvement of Concerned Stakeholders: This rule making is the result of the forests and fish adaptive management process described in WAC 222-12-045. This is a formal process including scientists and policy makers who represent stakeholders of Washington forest practices: Landowners of large and small forest land acreage, environmental and conservation organizations, tribal organizations, federal and state natural resource agencies, and Washington counties.

Upon completion of the *Type N Stream Demarcation Study,* and forests and fish policy's petition of the forest practices board to conduct rule making, DNR's forest practices division held stakeholder meetings to encourage participation in rule development. Those meetings took place on April 11, May 12, and May 18, 2006. Representatives from all forests and fish stakeholder groups were invited to attend these meetings; in general, representatives from all groups participated in one or more of them.

METHODS OF ANALYSIS: The goal of the rule making is to accurately identify perennial initiation points (PIPs). As such, it is meant to correct an inaccuracy in current practice and does not increase regulatory burden. In practice, however, it will decrease the amount of harvestable timber in riparian areas, thus affecting those timber harvesters who would have utilized the alternative default method.

This analysis estimates the acreage and value of timber that will not be harvested annually because of the rule change. The estimate is based on a random survey of forest practices applications (FPAs) and an in-house GIS analysis of the expected change in the location of PIPs. Findings have been extrapolated statewide. The effects on small businesses (small forest landowners) are highlighted where appropriate.

Fifty FPAs submitted during the period June 1, 2005, through May 31, 2006, were randomly selected from each of DNR's six regions. Foresters were asked to report on the fol lowing:

- Landowner designation (small forest landowner or industry).
- Presence of Type Np water.
- Zone (coastal, western, or eastern).
- Method used to calculate PIP (field or default).

- Total length of Type Np waters.

Summary statistics generated from the surveys include the proportion of large versus small forest landowners, the percentage of FPAs where Type Np water was present, the percentage of FPAs that utilized the default method for identifying PIPs, and whether small forest landowners were more or less likely to utilize the default method. (See Table 1.)

For the GIS analysis, we randomly selected three basins and applied the default basin methodology to determine the PIP. We then applied the findings of the CMER study and identified a revised PIP. Based on this analysis, we calculated the percentage change in a typical Type Np stream length for each of the three zones. We then applied the change in Type Np stream length reported in the survey to those applications utilizing the default method. We scaled this to an annual statewide estimate based on the number of FPAs in each region to produce an annual estimate of the additional stream length that would be affected by the proposed rule change. We then estimated the additional buffering acreage required and the resulting financial loss of timber harvest.

ANALYSIS OF COSTS:

Survey Results: The results of the survey of FPAs are summarized in Table 1. A large majority of FPAs from the northeast region were from small forest landowners (SFLs), while for the other regions, most FPAs were from large forest landowners. Less than one-quarter of the FPAs had Type Np water on site; the proportion was highest (36%) in the Pacific Cascade region and lowest (14%) in the northeast region.

Table 1: Survey results

	Number of FPAs	Applicant size				Type Np water on-site			
		Large		Small		Yes		No	
		FPA	Percent	FPA	Percent	FPA	Percent	FPA	Percent
Olympic	50	39	78%	11	22%	9	18%	41	82%
Northwest	50	29	58%	21	42%	12	24%	38	76%
South Puget Sound	50	42	84%	8	16%	9	18%	41	82%
Pacific Cascade	50	39	78%	11	22%	18	36%	32	64%
Northeast	50	11	22%	39	78%	7	14%	43	86%
Southeast	50	36	72%	14	28%	12	24%	38	76%
Total	300	196	65%	104	35%	67	22%	233	78%

We further analyzed the sixty-seven FPAs with Type Np water on site (see the first columns of Tables 2 and 3). We dropped twelve FPAs that did not include harvest activity from further consideration. Highlights from the analysis are as follows:

- The majority of FPAs with Type Np water on site (twenty-nine out of fifty-five) were in the western Washington zone; of the remainder, nine were in the coastal zone and seventeen in the eastern Washington zone.
- SFLs accounted for thirteen, or 24%, of these FPAs.
- The default method was utilized by ten (18%) of these FPAs; SFLs were more likely to use the default method (38%) than were large applicants (12%).
- Of the 134,715 feet of Type Np stream length measured in these FPAs, 15,900 feet w~~as~~ere in FPAs that utilized the default method, accounting for 12% of the total. More than half (53%) of this stream length was in FPAs from SFLs.

Table 2: Timber harvest (in one year) associated with FPAs with Type Np water on-site

	Number of FPAs with Np water (survey results)	Number of FPAs with Np water (statewide extrapolation)
Total FPAs	**55**	**1042**
By zone		
Coastal	9	179
Western WA	29	684
Eastern WA	17	179
By applicant size		
Large	42	862
Small	13	180
By applicant size and PIP determination method		
Large – Field	35~~7~~	~~780~~ 800
Large – Default	~~7~~ 5	~~82~~ 62
Small – Field	8	87
Small – Default	5	93
Total – Field	**~~43~~ 5**	**~~86~~ 87**
Total – Default	**~~12~~ 0**	**~~17~~ 55**

The survey results suggest that small forest landowners were significantly more likely to use the default method in the surveyed FPAs than were larger landowners.

Table 3: FPA stream length (in feet) with Type Np water on-site

		Total Np stream length (survey results)	Total Np stream length (statewide extrapolation)
By applicant size and PIP determination method			
Large	Field	100,255	1,804,971
	Default	7,500	82,266
Small	Field	18,560	160,064
	Default	8,400	158,150
Total		**134,715**	**2,205,451**

Statewide Estimation of Type Np Stream Length: We extrapolated the survey results statewide by weighting the findings based on the frequency of FPAs from DNR regions during the period covered by the survey (June 1, 2005, through May 31, 2006). The number of FPAs filed varied considerably among DNR regions, from 1,773 in the Pacific Cascade region to three hundred in the southeast region. The second column in Tables 2 and 3 provides this extrapolation. We estimate the following based on this extrapolation:

- Annually, 1,042 FPAs are approved that include Type Np water on site; of these, 66% are in the western Washington zone, and 17% are in each of the coastal and eastern Washington zones.
- SFLs account for 17% of statewide FPAs and 14% of the total Type Np stream length.
- Default methodology is utilized by 15% of the FPAs, but of the estimated one hundred eighty small forest landowners' FPAs with Type Np water, 52% utilize the default method.
- Over 2.2 million ~~board~~ feet of Type Np stream length are included in FPAs annually.
- 240,416 feet of Type Np stream length is included in FPAs that utilize the default method, accounting for 11% of the total.

Statewide Estimation of the Change in Type Np Stream Length Due to Rule Making: GIS modeling was performed on typical basins in the coastal, western and eastern zones to estimate the change in Type Np stream length, resulting in multipliers for the three zones that measure this change. We adjusted the estimated Type Np stream length in FPAs by these multipliers, providing a statewide estimation of the change in Type Np stream length due to rule making.

GIS Analysis of Changes in Type Np Stream Length: We estimated the change in Type Np stream length by locating default PIPs based on applying average observed basin areas from the CMER report. We selected three basins for analysis, one each from the coastal, westside and eastside zones[4]. We calculated PIPs for each of the streams in the basin based on the existing default criteria, as well as the criteria presented in the CMER study. Results are presented in Table 4.

Table 4: Results of the GIS analysis

	Coastal zone	Western zone	Eastern zone
WRIA Basin Number	20	23	59
Number of Np streams in basin	9	22	46
Existing default basin size (acres)	13	52	300
Type Np stream length (feet)	11,324	11,935	37,736
CMER study default basin size (acres)	8	22	118
Type Np stream length (feet)	14,612	33,630	127,131
Additional Type Np stream length (feet)	3,288	21,695	89,395
Percent change (multiplier)	29%	182%	237%

Decreasing the default basin size from thirteen to eight acres has a relatively minimal affect in the Coastal Zone, increasing Type Np stream length by 29%. The results in the other zones are substantial. Decreasing the default basin size from fifty-two to twenty-two acres in the western Washington zone almost triples the average Type Np stream length, and decreasing it from three hundred to one hundred eighteen acres in eastern Washington more than triples the average Type Np stream length. These results are significantly affected by the large number of stream segments that were typed as Ns in their entirety above Type F stream junctions using the default method in the western and eastern zones - almost two-thirds (63%) of the streams in the eastern zone, and almost half (46%) in the western zone.

It is important to note that~~,~~ although this analysis was based on applying existing default basin methodology, and utilizing the findings of the CMER study for comparative basin sizes, there are no plans to utilize this criteria in rule making. We are assuming in this analysis that this criteria accurately identifies PIPs for estimation purposes only.

Estimating Additional Type Np Stream Length Statewide: We estimated the additional Type Np stream length that would be subject to buffering annually by multiplying the extrapolated statewide stream length presented in Table 3 by the additional Type Np stream length multipliers presented in Table 4. This analysis is based on only the ten FPAs in the survey that utilized the default method to find PIPs; therefore, based on GIS analysis, it is not statistically robust. For this reason, we are not presenting summary information categorized by DNR region or zone. In order to fulfill the requirements of the Regulatory Fairness Act, we have presented small forest landowner findings separately.

Of the ten subject FPAs, one applicant was eligible for the twenty-acre exemption, and is not subject to forests and fish riparian rules, leaving us with nine FPAs for further analysis.

The steps involved in estimating the affected acreage (presented in Table 5) are as follows:

- We estimated the additional stream length by multiplying the ~~statewide~~ stream length for each of the subject FPAs by the multipliers in Table 4, and scaled this to statewide.
- Assuming that 100% of the additional Type Np stream length would be buffered in eastern Washington (which

is standard procedure), and 50% would be buffered in western Washington, we multiplied the additional stream length calculated above by 100% in eastern Washington and 50% in western Washington.

- We converted these figures into square feet by multiplying by one hundred, producing the Type Np buffer requirement.
- We converted square footage into acreage by dividing by 43,560.

Table 5: Acreage and timber value affected annually by the rule making

	Total	Small forest landowner	Large forest landowner
Statewide Np stream length utilizing current default method (in feet)	208,466	126,200	82,266
Additional Np stream length due to rule making (in feet)	433,495	274,201	159,294
Additional buffered stream length due to rule making (in feet)	333,280	233,014	100,266
Additional buffer~~, in~~ (in square feet)	33,328,046	23,301,440	10,026,606
Additional buffer~~,~~ (in acres)	765	535	230
Timber value	$1,243,960	$786,849	$457,111

Although this is a rough estimation, it provides insight into the scale of the effects of the proposed rule change. We estimate that seven hundred sixty-five acres of additional buffering statewide will be required annually by the proposed rule change, the majority of which (five hundred thirty-five acres) will be small forest landowner acreage. The accuracy of this estimate depends on a number of factors, primarily whether the ten FPAs in our analysis are representative of statewide FPAs. We also made assumptions regarding buffering. We assumed that eastern Washington applicants will buffer all Type Np stream length (this is common practice in eastern Washington). In western Washington, upstream buffering may not be required if stream sections are already buffered in the vicinity of sensitive sites (e.g., unstable slopes and alluvial fans). Countering this, many applicants buffer the entire Type Np stream length. We compromised at 50% buffering.

Estimating the value of timber that will not be harvested due to the proposed rule change: We assumed that all of the newly buffered acreage would have been harvested by the applicant, and utilized average values for merchantable timber of $2,500 per acre in western Washington and $1,250 in eastern Washington[5]. The first of these assumptions is an overstatement, as some harvests are partial or thinnings, particularly in eastern Washington. The second assumption is probably an understatement, since applicants are more likely to be harvesting mature tree stands that would have a higher per-acre value.

The total estimated timber value that will not be harvested annually due to the proposed rule change is $1.2 million; small forest landowners account for 63% of this amount.

Small Business Impacts: Our analysis indicates that small forest landowners are more likely to utilize the default method for calculating PIPs. We estimate that the foregone timber revenue will be approximately $787,000 per year from SFLs, compared to $457,000 for large forest landowners, resulting in a disproportionate affect on small businesses.

Compliance costs for small businesses are partially mitigated by participation in the forestry riparian easement program (FREP), which disbursed $8 million to small forest landowners during the 2005-07 biennium. The FREP compensates eligible small forest landowners in exchange for a fifty-year easement on "qualifying timber." Landowners cannot cut or remove the qualifying timber during the easement period. The landowner still owns the property and retains full access, but has "leased" the trees and their associated riparian function to the state. Participating landowners are compensated at 50% of the value of the qualifying timber, and they are compensated fully for any portion exceeding the regulatory impact of 19.1%.

BENEFITS: The benefits of buffering riparian areas include:

- Stream stability
- Nutrient removal
- Pollution prevention
- Stream temperature regulation
- Erosion control
- Flood control
- Recreation
- Wildlife habitat.

Some of these benefits are avoided costs, such as natural filtration as a replacement for more costly pollution control, and others reflect environmental amenity values. A number of studies have been completed that value some of these aspects, including flood mitigation, value of fisheries, recreation expenditures, and willingness to pay to protect habitat for individual species. Unfortunately, we did not find any studies that valued riparian buffers in general. Compounding problems associated with this dearth of information, we cannot apply the findings of studies that valued specific aspects of riparian buffers on fish-bearing streams to nonfish bearing streams. Likewise, we cannot estimate the marginal benefits of protecting additional riparian buffers on nonfish bearing streams. However, we can generally assume that the benefits of buffering riparian areas are considerable.

CONCLUSION: This economic analysis estimates the costs of the proposed rule making on an annual basis. Costs are defined as the estimated timber harvest revenue that could have taken place if the provisions of the proposed rule change were not in place. We estimated costs by surveying one year's worth of FPAs to determine the frequency of use of the default method to identify PIPs, scaling our findings to the level of annual statewide timber harvesting. We then applied GIS-based modeling to determine the degree of change in Type Np stream length in FPAs that would have used the default method, and the additional buffering this would require. We estimate that an additional seven hundred sixty-five acres would be buffered annually, including five hundred thirty-five small forest landowner acres. The total estimated timber value that will not be harvested annually due to the proposed rule change is $1.2 million, with small forest land-

owners accounting for $787,000, or 63%, of this. Participation in the forestry riparian easement program (FREP) can mitigate a significant portion of these costs for small forest landowners.

An estimated one hundred fifty-five out of one thousand forty-two FPAs used the default instead of field verification. As discussed in the report, this analysis necessitated a number of assumptions that were not field tested; in addition, the number of FPAs that utilized the default method (n=10) was too small to be statistically robust. These findings should therefore be considered at best as providing an indication of the scale of the effects of the proposed rule change.

Benefits are identified but not quantified due to the lack of relevant information. Under these circumstances, we can generally conclude that the benefits of buffering riparian areas are considerable; whether they are greater than the costs to affected timber harvesters in this case is inconclusive. Consideration should also be given to the distribution of costs and benefits. While the benefits accrue generally, the costs are borne by a limited number of forest practices applicants.

REFERENCES:

Palmquist, R. 2005. **Type N Stream Demarcation Study Phase I: Pilot Results.** Washington State Cooperative Monitoring, Evaluation, and Research Committee (CMER), Olympia, Washington. 61p.

Palone, R. and Todd, A. 1997. **Chesapeake Bay Riparian Handbook: A Guide for Establishing and Maintaining Riparian Forest Barriers.** USDA Forest Service. Radnor, PA. NA-TP-02-97.

Paterson, R. and Boyle, K. 2005. **Costs and Benefits of Riparian Forest Management: A Literature Review.** Industrial Economics, Inc. 20p.

[1] For CBA requirements, see RCW 34.05.328 - the Washington state legislature.

[2] For SBEIS requirements, see RCW 19.85.040 - the Washington state legislature.

[3] Type N Stream Demarcation Study Phase I: Pilot Results. CMER, 2005.

[4] Although these basins were carefully chosen to be representative of each zone, the results of our analysis are not statistically significant.

[5] These values were provided to us by DNR product sales and leasing staff.

A copy of the statement may be obtained by contacting Gretchen Robinson, Department of Natural Resources, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@wadnr.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Gretchen Robinson, Department of Natural Resources, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@wadnr.gov.

August 21, 2006
Pat McElroy
Chair

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-16-030 Water typing system. Until the fish habitat water type maps described below are adopted by the board, the Interim Water Typing System established in WAC 222-16-031 will continue to be used. The department in cooperation with the departments of fish and wildlife, and ecology, and in consultation with affected Indian tribes will classify streams, lakes and ponds. The department will prepare water type maps showing the location of Type S, F, and N (Np and Ns) Waters within the forested areas of the state. The maps will be based on a multiparameter, field-verified geographic information system (GIS) logistic regression model. The multiparameter model will be designed to identify fish habitat by using geomorphic parameters such as basin size, gradient, elevation and other indicators. The modeling process shall be designed to achieve a level of statistical accuracy of 95% in separating fish habitat streams and nonfish habitat streams. Furthermore, the demarcation of fish and nonfish habitat waters shall be equally likely to over and under estimate the presence of fish habitat. These maps shall be referred to as "fish habitat water typing maps" and shall, when completed, be available for public inspection at region offices of the department.

Fish habitat water type maps will be updated every five years where necessary to better reflect observed, in-field conditions. Except for these periodic revisions of the maps, on-the-ground observations of fish or habitat characteristics will generally not be used to adjust mapped water types. However, if an on-site interdisciplinary team using nonlethal methods identifies fish, or finds that habitat is not accessible due to naturally occurring conditions and no fish reside above the blockage, then the water type will be immediately changed to reflect the findings of the interdisciplinary team. The finding will be documented on a water type update form provided by the department and the fish habitat water type map will be updated as soon as practicable. If a dispute arises concerning a water type the department shall make available informal conferences, as established in WAC 222-46-020 which shall include the departments of fish and wildlife, and ecology, and affected Indian tribes and those contesting the adopted water types.

The waters will be classified using the following criteria:

*(1) **"Type S Water"** means all waters, within their bankfull width, as inventoried as "shorelines of the state" under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW including periodically inundated areas of their associated wetlands.

*(2) **"Type F Water"** means segments of natural waters other than Type S Waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat or are described by one of the following four categories:

(a) Waters, which are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type F Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Waters, which are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality. The department may allow additional harvest beyond the requirements of Type F Water designation provided the department determines after a landowner-requested on-site assessment by the department of fish and wildlife, department of ecology, the affected tribes and interested parties that:

(i) The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

(ii) Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;

(c) Waters, which are within a federal, state, local, or private campground having more than 10 camping units: Provided, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit, trail or other park improvement;

(d) Riverine ponds, wall-based channels, and other channel features that are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:

(i) The site must be connected to a fish habitat stream and accessible during some period of the year; and

(ii) The off-channel water must be accessible to fish.

(3) **"Type Np Water"** means all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall((~~. However, for the purpose of water typing, Type Np Waters~~)) and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. ((~~If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see board manual section 23), then Type Np Waters begin at a point along the channel where the contributing basin area is:~~

~~(a) At least 13 acres in the Western Washington coastal zone (which corresponds to the Sitka spruce zone defined in Franklin and Dyrness, 1973);~~

~~(b) At least 52 acres in other locations in Western Washington; or~~

~~(c) At least 300 acres in Eastern Washington.~~)) See board manual section 23 for guidance if the uppermost point of perennial flow cannot be identified with simple, nontechnical observations.

(4) **"Type Ns Water"** means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np Water. Ns Waters must be physically connected by an aboveground channel system to Type S, F, or Np Waters.

*(5) For purposes of this section:

(a) "Residential unit" means a home, apartment, residential condominium unit or mobile home, serving as the principal place of residence.

(b) "Camping unit" means an area intended and used for:

(i) Overnight camping or picnicking by the public containing at least a fireplace, picnic table and access to water and sanitary facilities; or

(ii) A permanent home or condominium unit or mobile home not qualifying as a "residential unit" because of part time occupancy.

(c) "Public accommodation facility" means a business establishment open to and licensed to serve the public, such as a restaurant, tavern, motel or hotel.

(d) "Natural waters" only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.

(e) "Seasonal low flow" and "seasonal low water" mean the conditions of the 7-day, 2-year low water situation, as measured or estimated by accepted hydrologic techniques recognized by the department.

(f) "Channel width and gradient" means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States geological survey topographic maps (see board manual section 23).

(g) "Intermittent streams" means those segments of streams that normally go dry.

(h) "Fish habitat" means habitat which is used by any fish at any life stage at any time of the year, including potential habitat likely to be used by fish which could be recovered by restoration or management and includes off-channel habitat.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-16-031 Interim water typing system. Until the fish habitat water type maps mentioned above are available, waters will be classified according to the interim water typing system described below. If a dispute arises concerning a water type, the department shall make available informal conferences, which shall include the departments of fish and wildlife, ecology, and affected Indian tribes and those contesting the adopted water types. These conferences shall be established under procedures established in WAC 222-46-020.

For the purposes of this interim water typing system see the following table:

Water Type Conversion Table

Permanent Water Typing	Interim Water Typing
Type "S"	Type 1 Water
Type "F"	Type 2 and 3 Water
Type "Np"	Type 4 Water
Type "Ns"	Type 5 Water

*(1) **"Type 1 Water"** means all waters, within their ordinary high-water mark, as inventoried as "shorelines of the state" under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW, but not including those waters' associated wetlands as defined in chapter 90.58 RCW.

*(2) **"Type 2 Water"** means segments of natural waters which are not classified as Type 1 Water and have a high fish, wildlife, or human use. These are segments of natural waters and periodically inundated areas of their associated wetlands, which:

(a) Are diverted for domestic use by more than 100 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and only considered Type 2 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type 2 Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality. The department may allow additional harvest beyond the requirements of Type 2 Water designation provided by the department of fish and wildlife, department of ecology, the affected tribes and interested parties that:

(i) The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

(ii) Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;

(c) Are within a federal, state, local or private campground having more than 30 camping units: Provided, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit.

(d) Are used by fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have highly significant fish populations:

(i) Stream segments having a defined channel 20 feet or greater within the bankfull width and having a gradient of less than 4 percent.

(ii) Lakes, ponds, or impoundments having a surface area of 1 acre or greater at seasonal low water; or

(e) Are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:

(i) The site must be connected to a fish bearing stream and be accessible during some period of the year; and

(ii) The off-channel water must be accessible to fish through a drainage with less than a 5% gradient.

*(3) **"Type 3 Water"** means segments of natural waters which are not classified as Type 1 or 2 Waters and have a moderate to slight fish, wildlife, or human use. These are segments of natural waters and periodically inundated areas of their associated wetlands which:

(a) Are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type 3 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Are used by fish for spawning, rearing or migration. The requirements for determining fish use are described in the board manual section 13. If fish use has not been determined:

(i) Waters having any of the following characteristics are presumed to have fish use:

(A) Stream segments having a defined channel of 2 feet or greater within the bankfull width in Western Washington; or 3 feet or greater in width in Eastern Washington; and having a gradient of 16 percent or less;

(B) Stream segments having a defined channel of 2 feet or greater within the bankfull width in Western Washington; or 3 feet or greater within the bankfull width in Eastern Washington, and having a gradient greater than 16 percent and less than or equal to 20 percent, and having greater than 50 acres in contributing basin size in Western Washington or greater than 175 acres contributing basin size in Eastern Washington, based on hydrographic boundaries;

(C) Ponds or impoundments having a surface area of less than 1 acre at seasonal low water and having an outlet to a fish stream;

(D) Ponds of impoundments having a surface area greater than 0.5 acre at seasonal low water.

(ii) The department shall waive or modify the characteristics in (i) of this subsection where:

(A) Waters have confirmed, long term, naturally occurring water quality parameters incapable of supporting fish;

(B) Snowmelt streams have short flow cycles that do not support successful life history phases of fish. These streams typically have no flow in the winter months and discontinue flow by June 1; or

(C) Sufficient information about a geomorphic region is available to support a departure from the characteristics in (i) of this subsection, as determined in consultation with the department of fish and wildlife, department of ecology, affected tribes and interested parties.

*(4) **"Type 4 Water"** means all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall((~~. However, for the purpose of water typing, Type 4 Waters~~)) and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. ((~~If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see board manual, section 23), then Type 4 Waters begin at a point along the channel where the contributing basin area is:~~

~~(a) At least 13 acres in the Western Washington coastal zone (which corresponds to the Sitka spruce zone defined in Franklin and Dyrness, 1973);~~

~~(b) At least 52 acres in other locations in Western Washington;~~

~~(c) At least 300 acres in Eastern Washington.~~)) See board manual section 23 for guidance if the uppermost point of perennial flow cannot be identified with simple, nontechnical observations.

*(5) **"Type 5 Waters"** means all segments of natural waters within the bankfull width of the defined channels that are not Type 1, 2, 3, or 4 Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of the year and are not located downstream from any stream reach that is a Type 4 Water. Type 5 Waters must be physically connected by an above-ground channel system to Type 1, 2, 3, or 4 Waters.

*(6) For purposes of this section:

(a) "Residential unit" means a home, apartment, residential condominium unit or mobile home, serving as the principal place of residence.

(b) "Camping unit" means an area intended and used for:

(i) Overnight camping or picnicking by the public containing at least a fireplace, picnic table and access to water and sanitary facilities; or

(ii) A permanent home or condominium unit or mobile home not qualifying as a "residential unit" because of part time occupancy.

(c) "Public accommodation facility" means a business establishment open to and licensed to serve the public, such as a restaurant, tavern, motel or hotel.

(d) "Natural waters" only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.

(e) "Seasonal low flow" and "seasonal low water" mean the conditions of the 7-day, 2-year low water situation, as measured or estimated by accepted hydrologic techniques recognized by the department.

(f) "Channel width and gradient" means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States geological survey topographic maps. (See board manual section 23.)

WSR 06-17-152
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed August 22, 2006, 3:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-11-180.

Title of Rule and Other Identifying Information: WAC 458-20-254 Recordkeeping.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on September 26, 2006, at 9:30 a.m.

Date of Intended Adoption: October 4, 2006.

Submit Written Comments to: Richard Cason, P.O. Box 47453, Olympia, WA 98504-7453, e-mail RichardC@dor.wa.gov, fax (360) 586-5543, by September 26, 2006.

Assistance for Persons with Disabilities: Contact Sandy Davis at (360) 725-7499 no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing changes to WAC 458-20-254 (Rule 254) to recognize that an increasing number of businesses are conducting business and maintaining records electronically. The proposed rule defines the requirements for the maintenance and retention of books, records, and other sources of information when the information is created, maintained, or generated through various computer, electronic, and/or imaging process and systems.

Reasons Supporting Proposal: The proposed rule provides guidance in retaining electronic records and providing electronic records to the department. The requirements of the proposed rule are in line with the provisions of the MTC's model recordkeeping and retention regulation and Internal Revenue Service guidelines.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.32.070.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Cason, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 664-0331; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

August 22, 2006
Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending Order 89-6, filed 5/16/89)

WAC 458-20-254 Recordkeeping. (((~~(1) Every person liable for an excise tax imposed by the laws of the state of Washington for which the department of revenue has primary or secondary administrative responsibility, i.e., Title 82 RCW, and, chapters 67.28 (hotel/motel tax), 70.93 (litter tax), 70.95 (tax on tires), and 84.33 RCW (forest excise tax), shall keep complete and adequate records from which the department may determine any tax for which such person may be liable.~~

~~(2) General requirements.~~

(a) It is the duty of each taxpayer to prepare and preserve all books of record in a systematic manner conforming to accepted accounting methods and procedures. Records are to be kept, preserved, and presented upon request of the department which will demonstrate:

(i) The amounts of gross receipts and sales from all sources, however derived, including barter or exchange transactions, whether or not such receipts or sales are taxable. These amounts must be supported by original source documents including but not limited to all purchase and sales invoices and contracts or such other documents as may be necessary to substantiate gross receipts and sales;

(ii) The amounts of all deductions, exemptions, or credits claimed through supporting documentation required by statute or administrative rule, or such other supporting documentation necessary to substantiate the deduction, exemption, or credit.

(b) The records kept, preserved and presented must include the normal books of account maintained by an ordinary prudent business person. Such records may include general ledgers, sales journals, cash receipts journals, check registers, and purchase journals, together with all bills, invoices, cash register tapes, or other documents of original entry supporting the books of account entries. The records shall include all federal and state tax returns and reports and all schedules or work papers used in the preparation of tax reports or returns.

(c) All such records shall be open for inspection and examination at any time by the department, upon reasonable notice, and shall be kept and preserved for a period of five years. RCW 82.32.070

(3) Microfilm and/or microfiche. Records may be microfilmed or microfiched, such as general books of accounts including cash books, journals, voucher registers, ledgers and like documents provided the microfilmed and/or microfiched records are authentic, accessible, and readable, and all of the following requirements are fully satisfied:

(a) Appropriate facilities are provided to preserve the films or fiche for the periods such records are required to be open to examination and to provide transcriptions of any information on film or fiche required to verify tax liability.

(b) All microfilmed or microfiched data must be indexed, cross referenced, and labeled to show beginning and ending numbers and beginning and ending alphabetical listings of all documents included.

(c) Taxpayers must make available upon request of the department, a reader/printer in good working order at the examination site for reading, locating, and reproducing any record that is maintained on microfilm or microfiche.

(d) Taxpayers must set forth in writing the procedures governing the establishment of a microfilm or microfiche system and the names of persons who are responsible for maintaining and operating the system with appropriate authorization from the boards of directors, general partner(s), or owner(s), whichever is applicable.

(e) The microfilm or microfiche system must be complete and must be used consistently in the regularly conducted activity of the business.

(f) Taxpayers must establish procedures with the appropriate documentation so that an original document can be traced through the microfilm or microfiche system.

(g) Taxpayers must establish internal procedures for microfilm or microfiche inspection and quality assurance.

(h) Taxpayers must keep a record identifying where, when, by whom, and on what equipment the microfilm or microfiche was produced.

(i) When displayed on a microfilm or microfiche reader (viewer) or reproduced on paper, the material must be legible and readable. For this purpose, legible means the quality of a letter or numeral which enables the reader to identify it positively and quickly to the exclusion of all other letters or numerals. Readable means the quality of a group of letters or numerals recognizable as words or complete numbers.

(j) All production of microfilm or microfiche and the processing duplication, quality control, storage, identification, and inspection thereof must meet industry standards as set forth by the American National Standards Institute, National Micrographics Association, or National Bureau of Standards.

(4) Automated data process system. An automated data process (ADP) accounting system may be used to provide the records required to verify tax liability. All ADP systems used for this purpose must include a method for producing legible and readable records to verify tax liability, reporting, and payment. The following requirements apply to any taxpayer who maintains records on an ADP system:

(a) ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are done, the system must have the capability to reconstruct these transactions.

(b) A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. In the cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall be written out periodically.

(c) The audit trail shall be so designed that the details underlying the summary accounting data may be identified and made available to the department and that supporting documents, such as sales invoices, purchase invoices, credit memoranda, and like documents are readily available.

(d) A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

(i) The application being preformed;

(ii) The procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and,

(iii) The controls used to insure accurate and reliable processing.

(e) Important changes in an ADP accounting system or any part thereof, together with their effective dates, shall be noted to preserve an accurate chronological record of such changes.

~~(f) Adequate record retention facilities shall be available for the storage of such information, printouts and all supporting documents.~~

~~(5) Out-of-state businesses. An out-of-state business which does not keep the necessary records within this state may either produce within this state such records as are required for examination by the department, or, permit the examination of the records by the department at the place where the records are kept. RCW 82.32.070, see also, WAC 458-20-215.~~

~~(6) Failure of taxpayer to maintain and disclose complete and adequate records. Any person who fails to comply with the requirements of RCW 82.32.070 or this section shall be forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department based upon any period for which such books, records, and invoices have not been so kept and preserved. RCW 82.32.070~~)) (1) **Introduction.** This section defines the requirements for the maintenance and retention of books, records, and other sources of information. It also addresses these requirements where all or a part of the taxpayer's books and records are received, created, maintained, or generated through various computer, electronic, and/or imaging processes and systems.

(2) **Definitions.** For purposes of this section, the following definitions will apply:

(a) "Data base management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a data base.

(b) "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized structured electronic format.

(c) "Hard copy" means any documents, records, reports or other data printed on paper.

(d) "Machine-sensible record" means a collection of related information in any electronic format (e.g., data base management systems, EDI technology, automated data process systems, etc.). Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

(e) "Records" means all books, data, documents, reports, or other information, including those received, created, maintained, or generated through various computer, electronic, and/or imaging processes and systems.

(f) "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

(3) **Recordkeeping requirements—General.**

(a) Every taxpayer liable for a tax or fee imposed by the laws of the state of Washington for which the department of revenue ("department") has primary or secondary administrative responsibility, e.g., Title 82 RCW, chapter 67.28 RCW (hotel/motel tax), chapter 70.95 RCW (fee on tires), and chapter 84.33 RCW (forest excise tax), must keep complete and adequate records from which the department may determine any tax liability for such taxpayer.

(b) It is the duty of each taxpayer to prepare and preserve all records in a systematic manner conforming to accepted accounting methods and procedures. Such records are to be kept, preserved, and presented upon request of the department or its authorized representatives which will demonstrate:

(i) The amounts of gross receipts and sales from all sources, however derived, including barter or exchange transactions, whether or not such receipts or sales are taxable. These amounts must be supported by original source documents or records including but not limited to all purchase invoices, sales invoices, contracts, and such other records as may be necessary to substantiate gross receipts and sales.

(ii) The amounts of all deductions, exemptions, or credits claimed through supporting records or documentation required by statute or administrative rule, or other supporting records or documentation necessary to substantiate the deduction, exemption, or credit.

(iii) The payment of retail sales tax or use tax on capital assets, supplies, articles manufactured for your own use, and other items used by the taxpayer as a consumer.

(iv) The amounts of any refunds claimed. These amounts must be supported by records as may be necessary to substantiate the refunds claimed. Refer to WAC 458-20-229 for information on the refund process.

(c) The records kept, preserved, and presented must include the normal records maintained by an ordinary prudent business person. Such records may include general ledgers, sales journals, cash receipts journals, bank statements, check registers, and purchase journals, together with all bills, invoices, cash register tapes, and other records or documents of original entry supporting the books of account entries. The records must include all federal and state tax returns and reports and all schedules, work papers, instructions, and other data used in the preparation of the tax reports or returns.

(d) If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon request of the department. However, the taxpayer is not prohibited from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, although this does not eliminate the requirement that they provide access to machine-sensible records, if requested.

(e) Machine-sensible records used to establish tax compliance must contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request.

(f) At the time of an examination, the retained records must be capable of being retrieved and converted to a readable record format, as required in subsection (6) of this section.

(g) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(4) **Record retention period.** All records must be open for inspection and examination at any time by the department, upon reasonable notice, and must be kept and preserved for a period of five years. RCW 82.32.070

(5) **Failure to maintain or disclose records.** Any taxpayer who fails to comply with the requirements of RCW 82.32.070 or this section is forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department based upon any period for which such books, records, and invoices have not been so kept, preserved, or disclosed. RCW 82.32.070

(6) **Electronic records.**

(a) **Electronic data interchange requirements.**

(i) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

(ii) The taxpayer may capture the information at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists and make them available to the department. In this example, the taxpayer need not retain its EDI transaction for tax purposes if the vendor master file contains the required information.

(b) **Electronic data processing systems requirements.** The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this section.

(c) **Internal controls.**

(i) Upon the request of the department, the taxpayer must provide a description of the business process that created the retained records. Such description must include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(ii) The taxpayer must be capable of demonstrating:

(A) The functions being performed as they relate to the flow of data through the system;

(B) The internal controls used to ensure accurate and reliable processing; and

(C) The internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(iii) The following specific documentation is required for machine-sensible records retained pursuant to this section:

(A) Record formats or layouts;

(B) Field definitions (including the meaning of all codes used to represent information);

(C) File descriptions (e.g., data set name); and

(D) Detailed charts of accounts and account descriptions.

(7) **Access to machine-sensible records.**

(a) The manner in which the department is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(b) Such access will be provided in one or more of the following manners:

(i) The taxpayer may arrange to provide the department with the hardware, software and personnel resources to access the machine-sensible records.

(ii) The taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the machine-sensible records.

(iii) The taxpayer may convert the machine-sensible records to a standard record format specified by the department, including copies of files, on a magnetic medium that is agreed to by the department.

(iv) The taxpayer and the department may agree on other means of providing access to the machine-sensible records.

(8) **Storage-only imaging systems.**

(a) For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this section to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents which may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(b) Microfilm, microfiche and other storage-only imaging systems must meet the following requirements:

(i) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche or other storage-only imaging system must be maintained and made available upon request. Such documentation must, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(ii) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for a period of five years.

(iii) Upon request by the department, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.

(iv) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(v) All data stored on microfilm, microfiche or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

(vi) There must be no substantial evidence that the microfilm, microfiche, or other storage-only imaging system lacks authenticity or integrity.

(9) **Effect on hard-copy recordkeeping requirements.**

(a) The provisions of this section do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations, except as otherwise provided in this section. Hard-copy records may be retained on a recordkeeping medium as provided in subsection (8) of this section.

(b) If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hard-copy records need not be created.

(c) Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this section.

(d) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(e) Nothing in this section prevents the department from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

(10) **Out-of-state businesses.** An out-of-state business which does not keep the necessary records within this state may either produce within this state such records as are required for examination by the department or permit the examination of the records by the department or its authorized representatives at the place where the records are kept. RCW 82.32.070.

WSR 06-17-154
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed August 22, 2006, 4:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-15-120.

Title of Rule and Other Identifying Information: Amending WAC 308-30-020 Maximum fees that may be charged by notaries public.

Hearing Location(s): Department of Licensing, Room 102, 405 Black Lake Boulevard, Olympia, WA 98502, on September 27, 2006, at 3:00 p.m.

Date of Intended Adoption: September 29, 2006.

Submit Written Comments to: Linda Mead, Program Manager, P.O. Box 9027, Olympia, WA 98507-9027, e-mail Notaries@dol.wa.gov, fax (360) 586-4414, by September 25, 2006.

Assistance for Persons with Disabilities: Contact Linda Mead by September 20, 2006, TTY (360) 664-8885 or (360) 664-1550.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To increase the fees a notary may charge for services performed. State law currently limits the fee a notary public can charge to $5 for each notarial act, a limit established in 1985. The proposed fee is a maximum of $10 for each notarial act, plus mileage and copying costs.

Reasons Supporting Proposal: Costs of doing business have increased since 1985.

Statutory Authority for Adoption: RCW 42.44.190.

Statute Being Implemented: RCW 42.44.190.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Margaret Vogeli, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1530; Implementation: Linda Mead, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1531; and Enforcement: Nancy Skewis, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1446.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is not one of the named agencies.

August 23 [22], 2006
Nancy Skewis
Administrator

AMENDATORY SECTION (Amending WSR 93-05-009, filed 2/5/93, effective 3/8/93)

WAC 308-30-020 ((~~Maximum fees that may be charged by notaries public.~~)) What fees may a notary public charge? ((~~A notary public need not charge fees for notarial services. When fees are charged, notaries shall display in a prominent place, at the place of business, to the public, an English language schedule of fees for notarial acts. No part of the displayed notarial fee schedule may be printed in smaller than 10 pt. type. The following are the maximum fees that may be charged by notaries public for the following services:~~

~~(1) Witnessing or attesting a signature with or without seal or stamp, five dollars.~~

~~(2) Taking acknowledgment, or verification upon oath or affirmation, five dollars for the first two persons and five dollars for each additional person.~~

~~(3) Certifying or attesting a copy, with or without seal or stamp, five dollars.~~

~~(4) Receiving or noting a protest of a negotiable instrument, five dollars.~~

~~(5) Being present at demand, tender, or deposit, and noting the same, besides mileage at the rate of one dollar per mile, five dollars.~~

~~(6) For copying any instrument or record, per page, besides certificate and seal or stamp, one dollar for the first page and twenty-five cents for each remaining page.~~

~~(7) Administering an oath or affirmation, five dollars.~~

~~(8) Certifying that an event has occurred or an act has been performed, five dollars.~~)) (1) The maximum fees a notary may charge for notarial acts are:

NOTARIAL ACT	FEE
Witnessing or attesting a signature	$10.00
Taking acknowledgement or verification upon oath or affirmation	$10.00
Certifying or attesting a copy	$10.00
Receiving or noting a protest of a negotiable instrument	$10.00
Being present at demand, tender, or deposit, and noting the same	$10.00
Administering an oath or affirmation	$10.00
Certifying that an event has occurred or an act has been performed	$10.00

(2) A notary public need not charge for notarial acts. A notary who chooses to charge for notarial acts shall conspicuously display in their place of business, or present to each customer outside their business, an English-language schedule of fees for notarial acts. No part of the displayed notarial fee schedule may be printed in smaller than 10-point type.

(3) A notary may charge actual costs of copying any instrument or record.

(4) A notary may charge a travel fee when traveling to perform a notarial act if:

(a) The notary and the person requesting the notarial act agree upon the travel fee in advance of the travel; and

(b) The notary explains to the person requesting the notarial act that the travel fee is in addition to the notarial fee in subsection (1) of this section and is not required by law.

WSR 06-17-155
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed August 22, 2006, 4:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-10-031.

Title of Rule and Other Identifying Information: Amending WAC 388-148-0010 What definitions do I need to know to understand this chapter? and 388-148-0120 What incidents involving children must I report?; and adopting new WAC 388-148-0123 What are my reporting responsibilities when a child is missing from care?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097), on September 26, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 27, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., September 26, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by September 22, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 388-148-0120 Details what events involving children placed in licensed placements must be reported to the division of licensing resources. Included in these events is when youth "run away."

The introduction of WAC 388-148-0123 will serve to shorten reporting timelines and clarify who a licensed placement provider needs to contact when a child becomes missing or leaves their care.

WAC 388-148-0120 will be revised to remove subsection (3)(e) "runaways" from the WAC, which will be addressed in greater detail in WAC 388-148-0123.

The revision of WAC 388-148-0010 will add children's administration's (CA) new definition of "children missing from care."

Reasons Supporting Proposal: CA has implemented a new policy that targets children who have been taken or leave care without authorization. We anticipate that these changes will improve all systems ability to respond effectively to children and youth when missing from care, which will reduce the time they are exposed to risk.

Statutory Authority for Adoption: RCW 74.15.030, 74.08.090, chapters 74.13, 74.15 RCW.

Statute Being Implemented: RCW 74.15.030, chapters 74.13, 74.15 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: Department of social and health services, children's administration, division of program and policy, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Tim Kelly, Children's Administration, Division of Program and Practice Improvement, 1115 Washington Street S.E., Olympia, WA 98504, (360) 902-7772; and Enforcement: Mike Tornquist, Children's Administration, Field Operations, Licensed Resources, 1115 Washington Street S.E., Olympia, WA 98504, (360) 902-8348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Children's Administra-

tion has determined there are minimal or no costs associated with this change.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Tim Kelly, 1115 Washington Street S.E., Olympia, WA 98504, phone (360) 902-7772, fax (360) 902-7903, e-mail ketd300@dshs.wa.gov.

August 17, 2006
Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-08-073, filed 4/5/04, effective 5/6/04)

WAC 388-148-0010 What definitions do I need to know to understand this chapter? The following definitions are for the purpose of this chapter and are important to understand these rules:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or mistreatment of a child where the child's health, welfare and safety are harmed.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and/or emotional condition.

"Capacity" means the maximum number of children that a home or facility is licensed to care for at a given time.

"Care provider" means any licensed or certified person or organization or staff member of a licensed organization that provides twenty-four-hour care for children.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child. Case managers are responsible for implementing the child's case plan, assisting in achieving those goals, and assisting with day-to-day problem solving.

"Certification" means:

(1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that it meets the minimum licensing requirements; or

(2) Department licensing of a child-placing agency to certify that a foster home meets licensing requirements.

"Children" or **"youth,"** for this chapter, means individuals who are:

(1) Under eighteen years old, including expectant mothers under eighteen years old; or

(2) Up to twenty-one years of age and pursuing a high school, equivalent course of study (GED), or vocational program;

(3) Up to twenty-one years of age with developmental disabilities; or

(4) Up to twenty-one years of age if under the custody of the Washington state juvenile rehabilitation administration.

"Child-placing agency" means an agency licensed to place children for temporary care, continued care or adoption.

"Crisis residential center (CRC)" means an agency under contract with DSHS that provides temporary, protective care to children in a foster home, regular (semi-secure) or secure group setting.

"Compliance agreement" means a written licensing improvement plan to address deficiencies in specific skills, abilities or other issues of a fully licensed home or facility in order to maintain and/or increase the safety and well-being of children in their care.

"DCFS" means the division of children and family services.

"DDD" means division of developmental disabilities.

"Department" means the department of social and health services (DSHS).

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources.

"Firearms" means guns or weapons, including but not limited to the following: BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, and shotguns.

"Foster-adopt" means placement of a child with a foster parent(s) who intends to adopt the child, if possible.

"Foster home or foster family home" means person(s) licensed to regularly provide care on a twenty-four-hour basis to one or more children in the person's home.

"Full licensure" means an entity meets the requirements established by the state for licensing or approved as meeting state minimum licensing requirements.

"Group care facility for children" means a location maintained and operated for a group of children on a twenty-four-hour basis.

"Group receiving center" or **"GRC"** means a facility providing the basic needs of food, shelter, and supervision for more than six children placed by the department, generally for thirty or fewer days. A group receiving center is considered a group care program and must comply with the group care facility licensing requirements.

"Hearing" means the administrative review process.

"I" refers to anyone who operates or owns a foster home, staffed residential home, and group facilities, including group homes, child-placing agencies, maternity homes, day treatment centers, and crisis residential centers.

"Infant" means a child under one year of age.

"License" means a permit issued by the department affirming that a home or facility meets the minimum licensing requirements.

"Licensor" means:

(1) A division of licensed resources (DLR) employee at DSHS who:

(a) Approves licenses or certifications for foster homes, group facilities, and child-placing agencies; and

(b) Monitors homes and facilities to ensure that they continue to meet minimum health and safety requirements.

(2) An employee of a child-placing agency who:

(a) Attests that foster homes supervised by the child-placing agency meets licensing requirements; and

(b) Monitors those foster homes to ensure they continue to meet the minimum licensing standards.

"Maternity service" as defined in RCW 74.15.020.

"Medically fragile" means the condition of a child who has a chronic illness or severe medical disabilities requiring regular nursing visits, extraordinary medical monitoring, or on-going (other than routine) physician's care.

"Missing child" means:

(1) Any child up to eighteen years of age for whom Children's Administration (CA) has custody and control (not including children in dependency guardianship) and:

(a) The child's whereabouts are unknown; and/or

(b) The child has left care without the permission of the child's caregiver or CA.

(2) Children who are missing are categorized under one of the following definitions:

(a) **"Taken from placement"** means that a child's whereabouts are unknown, and it is believed that the child is being or has been concealed, detained or removed by another person from a court-ordered placement and the removal, concealment or detainment is in violation of the court order;

(b) **"Absence not authorized, whereabouts unknown"** means the child is not believed to have been taken from placement, did not have permission to leave the placement, and there has been no contact with the child and the whereabouts of the child is unknown; or

(c) **"Absence not authorized, whereabouts known"** means that a child has left his or her placement without permission and the social worker has some contact with the child or may periodically have information as to the whereabouts of the child.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at-risk youth or children in need of services, and their parents.

"Nonambulatory" means not able to walk or traverse a normal path to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Probationary license" means a license issued as part of a disciplinary action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies to minimum licensing requirements.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include anti-psychotic, antidepressants and anti-anxiety medications.

"Relative" means a person who is related to the child as defined in RCW 74.15.020 (4)(a)(i), (ii), (iii), and (iv) only.

"Respite" means brief, temporary relief care provided to a child and his or her parents, legal guardians, or foster parents with the respite provider fulfilling some or all of the functions of the care-taking responsibilities of the parent, legal guardian, or foster parent.

"Secure facilities" means a crisis residential center that has locking doors and windows, or secured perimeters intended to prevent children from leaving without permission.

"Service plan" means a description of the services to be provided or performed and who has responsibility to provide or perform the activities for a child or child's family.

"Severe developmental disabilities" means significant disabling, physical and/or mental condition(s) that cause a child to need external support for self-direction, self-support and social participation.

"Social service staff" means a clinician, program manager, case manager, consultant, or other staff person who is an employee of the agency or hired to develop and implement the child's individual service and treatment plans.

"Staffed residential home" means a licensed home providing twenty-four-hour care for six or fewer children or expectant mothers. The home may employ staff to care for children or expectant mothers. It may or may not be a family residence.

"Standard precautions" is a term relating to procedures designed to prevent transmission of bloodborne pathogens in health care and other settings. Under standard precautions, blood or other potentially infectious materials of all people should always be considered potentially infectious for HIV and other pathogens. Individuals should take appropriate precautions using personal protective equipment like gloves to prevent contact with blood or other bodily fluids.

"Washington state patrol fire protection bureau" or **"WSP/FPB"** means the state fire marshal.

"We" or **"our"** refers to the department of social and health services, including DLR licensors and DCFS social workers.

"You" refers to anyone who operates a foster home, staffed residential home, and group facilities, including group homes, maternity programs, day treatment programs, crisis residential centers, group receiving centers, and child-placing agencies.

AMENDATORY SECTION (Amending WSR 04-08-073, filed 4/5/04, effective 5/6/04)

WAC 388-148-0120 What incidents involving children must I report? (1) You or your staff must report the incidents contained in WAC 388-148-0120(2), as soon as possible and in no instance later than forty-eight hours to your local:

(a) Children's administration intake staff, and

(b) The child's social worker or case manager.

(2) The incidents to be reported include:

(a) Any reasonable cause to believe that a child has suffered child abuse or neglect;

(b) Any violations of the licensing or certification requirements where the health and safety of a foster child is at risk and the violations are not corrected immediately;

(c) Death of a child;

(d) Any child's suicide attempt that results in injury requiring medical treatment or hospitalization;

(e) Any use of physical restraint that is alleged improperly applied or excessive;

(f) Sexual contact between two or more children that is not considered typical play between preschool age children;

(g) Any disclosures of sexual or physical abuse by a child in care;

(h) Physical assaults between two or more children that result in injury requiring off-site medical attention or hospitalization;

(i) Physical assaults of foster parent or staff by children that result in injury requiring off-site medical attention or hospitalization;

(j) Any medication that is given incorrectly and requires off-site medical attention; or

(k) Serious property damage or other significant licensing requirement that is a safety hazard and is not immediately corrected or may compromise the continuing health and safety of children.

(3) You or your staff must report the following incidents as soon as possible or in no instance later than forty-eight hours, to the child's social worker, if the child is in the department's custody or to the case manager if placed with a child-placing agency program:

(a) Suicidal/homicidal ideations, gestures, or attempts that do not require professional medical treatment;

(b) Unexpected health problems outside the anticipated range of reactions caused by medications, that do not require professional medical attention;

(c) Any incident of medication incorrectly administered;

(d) Physical assaults between two or more children that result in injury but did not require professional medical attention;

(e) ((~~Runaways;~~

~~(f)~~)) Any emergent medical or psychiatric care that requires off-site attention; and

(((~~(g)~~)) (f) Use of prohibited physical restraints for behavior management as described in WAC 388-148-0485.

(4) Programs providing care to medically fragile children who have nursing care staff on duty may document the incidents described in WAC 388-148-0120 (3)(b)(c) in the facility daily logs, rather than contacting the social worker or case manager, if agreed to in the child's ISSP.

NEW SECTION

WAC 388-148-0123 What are my reporting responsibilities when a child is missing from care? (1) As soon as you have reason to know a child in your care is missing as defined in WAC 388-148-0010, or has refused to return to or remain in your care, or whose whereabouts are otherwise unknown, you or your staff are required to notify the following:

(a) The child's assigned social worker, if the child is in the department's custody;

(b) CA intake, if the social worker is not available or it is after normal business hours; or

(c) The case manager if the child is placed by a child-placing agency program.

(2) You or your staff are required to contact local law enforcement if the child is missing as defined in WAC 388-148-0010 within six hours. However, if one or more of the following factors are present, you must contact law enforcement immediately:

(a) The child has been, or is believed to have been, taken from placement as defined in WAC 388-148-0010;

(b) The child has been, or is believed to have been, lured from placement or to have left placement under circumstances that indicate the child may be at risk of physical or sexual assault or exploitation;

(c) The child is age thirteen or younger;

(d) The child has one or more physical or mental health conditions that if not treated daily will place the child at severe risks;

(e) The child is pregnant or parenting and the infant/child is believed to be with him or her;

(f) The child has severe emotional problems (e.g., suicidal ideations) that if not treated will place the child at severe risk;

(g) The child has a developmental disability that impairs the child's ability to care for him/herself;

(h) The child has a serious alcohol and/or substance abuse problem; or

(i) The child is at risk due to circumstances unique to that child.

After contacting local law enforcement, the Washington State Patrol's (WSP) Missing Children Clearinghouse must also be contacted and informed that the child is missing from care. The telephone number for the Clearinghouse is 1 (800) 543-5678.

(3) If the child leaves school or has an unauthorized absence from school, the caregiver should consult with the social worker to assess the situation and determine when law enforcement should be called. If any of the factors listed in subsections (2)(a) through (h) of this section are present, the caregiver and the social worker may decide it is appropriate to delay notification to law enforcement for up to four hours after the end of the school day to give the child the opportunity to return on their own.

(4) The caregiver will provide the following information to law enforcement and to the social worker when making a missing child report, if available:

(a) When the child left;

(b) Where the child left from;

(c) What the child was wearing;

(d) Any known behaviors or interactions that may have precipitated the child's departure;

(e) Any possible places the child may go to;

(f) Any special physical or mental health conditions or medications that affect the child's safety;

(g) Any known companions who may be aware of and involved in the child's absence;

(h) Other professionals, relatives, significant adults or peers who may know where the child would go; and

(i) A recent photo of the child.

(5) The caregiver should obtain the number of the missing person report and provide that number to CA staff.

WSR 06-17-173
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES
(Board of Boiler Rules)

[Filed August 23, 2006, 9:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-13-078.

Title of Rule and Other Identifying Information: Board of boiler rules—Substantive (chapter 296-104 WAC).

Hearing Location(s): Department of Labor and Industries, 950 Broadway, Suite 200, Tacoma, WA, on November 8, 2006, at 10:00 a.m.

Date of Intended Adoption: November 21, 2006.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by 5:00 p.m. on November 8, 2006.

Assistance for Persons with Disabilities: Contact Sally Elliott by October 15, 2006, yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to make clarification and technical changes to the Board of boiler rules—Substantive (chapter 296-104 WAC) based on actions and requests of the board of boiler rules.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 70.79.030, 70.79.040, 70.79.150, 70.79.290, 70.79.330, and 70.79.350.

Statute Being Implemented: Chapter 70.79 RCW.

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

Name of Proponent: Board of boiler rules, governmental.

Name of Agency Personnel Responsible for Drafting: Board of Boiler Rules, Tumwater, Washington, (360) 902-5270; Implementation and Enforcement: Linda Williamson, Tumwater, Washington, (360) 902-5270.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The board of boiler rules has considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined that they do not require a small business economic impact statement because the costs associated with the proposed rules will not place a more than minor impact on any business or contractor and/or they are exempted by law (see RCW 19.85.025 referencing RCW 34.05.310(4)) from the small business economic impact requirements.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared because the costs associated with the proposed changes are exempted by law since the proposed changes are updating the rule for clarification (see RCW 19.85.025 referencing RCW 34.05.-310 (4)).

August 23, 2006
Craig Hopkins, Chair
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 04-21-069, filed 10/19/04, effective 1/1/05)

WAC 296-104-010 Administration—What are the definitions of terms used in this chapter? "Agriculture purposes" shall mean any act performed on a farm in production of crops or livestock, and shall include the storage of such crops and livestock in their natural state, but shall not be construed to include the processing or sale of crops or livestock.

"Attendant" shall mean the person in charge of the operation of a boiler or unfired pressure vessel.

"Automatic operation of a boiler" shall mean automatic unattended control of feed water and fuel in order to maintain the pressure and temperature within the limits set. Controls must be such that the operation follows the demand without interruption. Manual restart may be required when the burner is off because of low water, flame failure, power failure, high temperatures or pressures.

"Board of boiler rules" or **"board"** shall mean the board created by law and empowered under RCW 70.79.010.

"Boiler and unfired pressure vessel installation/reinstallation permit," shall mean a permit approved by the chief inspector before starting installation or reinstallation of any boiler and unfired pressure vessel within the jurisdiction of Washington.

Owner/user inspection agency's, and Washington specials are exempt from "boiler and unfired pressure vessel installation/reinstallation permit."

"Boilers and/or unfired pressure vessels" - below are definitions for types of boilers and unfired pressure vessels used in these regulations:

- **"Condemned boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that has been inspected and declared unsafe or disqualified for further use by legal requirements and appropriately marked by an inspector.
- **"Hot water heater"** shall mean a closed vessel designed to supply hot water for external use to the system. All vessels must be listed by a nationally recognized testing agency and shall be protected with an approved temperature and pressure safety relief valve and shall not exceed any of the following limits:

* Pressure of 160 psi (1100 kpa);
* Temperature of 210 degrees F (99°C);
* Capacity of 120 U.S. gallons (454 liters);
* Input of 200,000 BTU/hr (58.58 kw). Note that if input exceeds 200,000 BTU/hr (58.58 kw), other terms defined in this section may apply.
* Hot water heaters exceeding 200,000 BTU/hr (58.58 kw) must be ASME code stamped.

- **"Low pressure heating boiler"** shall mean a steam or vapor boiler operating at a pressure not exceeding 15 psig or a boiler in which water or other fluid is heated and intended for operation at pressures not exceeding 160 psig or temperatures not exceeding 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy ((~~including~~)), excluding lined hot water heaters supplying potable ((~~water heaters~~)) hot water for external use to the system.
- **"Nonstandard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that does not bear marking of the codes adopted in WAC 296-104-200.
- **"Power boiler"** shall mean a boiler in which steam or other vapor is generated at a pressure of more

than 15 psig for use external to itself or a boiler in which water or other fluid is heated and intended for operation at pressures in excess of 160 psig and/or temperatures in excess of 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy.

- **"Reinstalled boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel removed from its original setting and reset at the same location or at a new location without change of ownership.
- **"Rental boiler"** shall mean any power or low pressure heating boiler that is under a rental contract between owner and user.
- **"Second hand boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel of which both the location and ownership have changed after primary use.
- **"Standard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel which bears the marking of the codes adopted in WAC 296-104-200.
- **"Unfired pressure vessel"** shall mean a closed vessel under pressure excluding:

* Fired process tubular heaters;
* Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices where the primary design considerations and/or stresses are derived from the functional requirements of the device;
* Piping whose primary function is to transport fluids from one location to another;
* Those vessels defined as low pressure heating boilers or power boilers.

- **"Unfired steam boiler"** shall mean a pressure vessel in which steam is generated by an indirect application of heat. It shall not include pressure vessels known as evaporators, heat exchangers, or vessels in which steam is generated by the use of heat resulting from the operation of a processing system containing a number of pressure vessels, such as used in the manufacture of chemical and petroleum products, which will be classed as unfired pressure vessels.

"Certificate of competency" shall mean a certificate issued by the Washington state board of boiler rules to a person who has passed the tests as set forth in WAC 296-104-050.

"Certificate of inspection" shall mean a certificate issued by the chief boiler inspector to the owner/user of a boiler or unfired pressure vessel upon inspection by an inspector. The boiler or unfired pressure vessel must comply with rules, regulations, and appropriate fee payment shall be made directly to the chief boiler inspector.

"Code, API-510" shall mean the Pressure Vessel Inspection Code of the American Petroleum Institute with addenda and revisions, thereto made and approved by the institute which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, ASME" shall mean the boiler and pressure vessel code of the American Society of Mechanical Engineers with addenda thereto made and approved by the council of the society which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, NBIC" shall mean the National Board Inspection Code of the National Board of Boiler and Pressure Vessel Inspectors with addenda and revisions, thereto made and approved by the National Board of Boiler and Pressure Vessel Inspectors and adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Commission" shall mean an annual commission card issued to a person in the employ of Washington state, an insurance company or a company owner/user inspection agency holding a Washington state certificate of competency which authorizes them to perform inspections of boilers and/or unfired pressure vessels.

"Department" as used herein shall mean the department of labor and industries of the state of Washington.

"Director" shall mean the director of the department of labor and industries.

"Domestic and/or residential purposes" shall mean serving a private residence or an apartment house of less than six families.

"Existing installations" shall mean any boiler or unfired pressure vessel constructed, installed, placed in operation, or contracted for before January 1, 1952.

"Inspection certificate" see "certificate of inspection."

"Inspection, external" shall mean an inspection made while a boiler or unfired pressure vessel is in operation and includes the inspection and demonstration of controls and safety devices required by these rules.

"Inspection, internal" shall mean an inspection made when a boiler or unfired pressure vessel is shut down and handholes, manholes, or other inspection openings are open or removed for examination of the interior. An external ultrasonic examination of unfired pressure vessels less than 36" inside diameter shall constitute an internal inspection.

"Inspector" shall mean the chief boiler inspector, a deputy inspector, or a special inspector.

- **"Chief inspector"** shall mean the inspector appointed under RCW 70.79.100 who serves as the secretary to the board without a vote.
- **"Deputy inspector"** shall mean an inspector appointed under RCW 70.79.120.
- **"Special inspector"** shall mean an inspector holding a Washington commission identified under RCW 70.79.130.

"Nationwide engineering standard" shall mean a nationally accepted design method, formulae and practice acceptable to the board.

"Operating permit" see "certificate of inspection."

"Owner" or **"user"** shall mean a person, firm, or corporation owning or operating any boiler or unfired pressure vessel within the state.

"Owner/user inspection agency" shall mean an owner or user of boilers and/or pressure vessels that maintains an established inspection department, whose organization and inspection procedures meet the requirements of a nationally recognized standard acceptable to the department.

"Place of public assembly" or **"assembly hall"** shall mean a building or portion of a building used for the gather-

ing together of 50 or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, or dining or waiting transportation. This shall also include child care centers (those agencies which operate for the care of thirteen or more children), public and private hospitals, nursing and boarding homes.

"Special design" shall mean a design using nationwide engineering standards other than the codes adopted in WAC 296-104-200 or other than allowed in WAC 296-104-230.

AMENDATORY SECTION (Amending WSR 02-23-036, filed 11/13/02, effective 12/14/02)

WAC 296-104-170 Inspection—When are shop inspections required? Shop inspections shall be as required in the standards of construction as adopted in WAC 296-104-200. Only inspectors holding a national board commission with the appropriate endorsements ((~~and a commission issued by the state of Washington~~)) shall make shop inspections in this state. Supervisors of inspectors who perform shop inspections in the state need only a National Board Commission with the appropriate endorsements.

Upon request from a boiler or pressure vessel manufacturer holding an ASME Certificate of Authorization within the jurisdiction, the department shall provide inspection services as required by the ASME Code. The manufacturer receiving such inspection services shall reimburse the department for the time and expenses in accordance with the fee schedule established in WAC 296-104-700.

AMENDATORY SECTION (Amending WSR 05-22-092, filed 11/1/05, effective 1/1/06)

WAC 296-104-200 Construction—What are the standards for new construction? The standards for new construction are:

(1) ASME Boiler and Pressure Vessel Code, 2004 edition, with addenda Sections I, III, IV, VIII, Division 1, 2, 3, X, XII;

(2) ASME PVHO-1 2002-2003 Safety Standard for Pressure Vessels for Human Occupancy; and

(3) ASME CSD-1 ((~~2002~~)) 2004 edition with addenda (as referenced in WAC 296-104-302); and

(4) NFPA 85 Boiler and Combustion Systems Hazards Code 2004 edition (for use with boilers with fuel input ratings of 12, 500,000 BTU/hr) or greater; and

(5) Standards of construction approved by the chief inspector and meeting the National Board Criteria for Registration of Boilers, Pressure Vessels and Other Pressure Retaining Items.

These codes and standards may be used on or after the date of issue and become mandatory twelve months after adoption by the board as specified in RCW 70.79.050(2). ASME Code Cases may be approved for use when accepted by the chief inspector. The board recognizes that the ASME Code states that new editions of the code become mandatory on issue and that subsequent addenda become mandatory six months after the date of issue. For nuclear systems, components and parts the time period for addenda becoming mandatory is defined in the Code of Federal Regulations.

AMENDATORY SECTION (Amending WSR 96-21-081, filed 10/16/96, effective 11/16/96)

WAC 296-104-255 Installation—((~~Clearance at top of~~)) What are the required clearances for boilers((~~.~~))? When boilers are replaced or new boilers installed in either existing or new buildings, ((~~a minimum clearance as specified below shall be provided between the top of boiler proper and ceiling~~)) sufficient access must be provided for inspection, maintenance, operations, and repair. Required clearances shall be:

(1) ((~~Power~~)) Minimum clearance on top of boilers having a steam generating capacity in excess of 5,000 pounds per hour or having a heating surface in excess of 1,000 sq. ft. or input in excess of 5,000,000 btu per hour((~~. Clearance~~)) shall be 7 feet.

(2) ((~~Low pressure heating~~)) Minimum clearance on top of boilers which exceed any one of the following limits: 5,000,000 btu input; 5,000 lbs. steam per hour capacity or 1,000 sq. ft. heating surface; and power boilers which do not exceed any of the following limits: 5,000,000 btu input; 5,000 lbs. steam per hour capacity or 1,000 sq. ft. heating surface; ((~~and all boilers with manholes on top of boiler except those described in paragraph (1) above~~)) shall be . . . . 3 feet.

(3) ((~~Low pressure heating~~)) Minimum clearance on top of boilers which do not exceed the above limits and miniature boilers; shall be . . . . . 2 feet.

(4) Minimum clearance from manhole openings and any wall, ceiling, or piping that will prevent a person from entering the boiler shall be . . . . . 5 feet.

(5) Minimum clearances at sides, front and back wall shall be the manufacturers' recommendations, but in no case less than eighteen inches.

AMENDATORY SECTION (Amending WSR 04-21-069, filed 10/19/04, effective 1/1/05)

WAC 296-104-502 Repairs—What are the requirements for nonnuclear boilers and unfired pressure vessel repairs and alterations? Repairs and alterations to nonnuclear boilers and pressure vessels shall be made in accordance with the rules of the National Board Inspection Code (NBIC) as adopted in WAC 296-104-102. Additionally, repairs and alterations to nonstandard boilers and pressure vessels, as addressed in WAC 296-104-215, must be authorized by the chief inspector.

Repairs and alterations may be made by an organization ((~~authorized by the jurisdiction and~~)) in possession of a valid Certificate of Authorization for use of the "R" symbol stamp, issued by the National Board provided such repairs/alterations are within the scope of the authorization.

Owner/user special inspectors may only accept repairs and alterations to boilers and unfired pressure vessels operated by their respective companies per RCW 70.79.130.

Documentation of repairs and alterations, in accordance with the requirements of the National Board Inspection Code (NBIC) as adopted in WAC 296-104-102, shall be submitted to the department.

AMENDATORY SECTION (Amending WSR 04-21-069, filed 10/19/04, effective 1/1/05)

WAC 296-104-520 Repairs—What are the requirements for repair of nonnuclear safety devices? (1) The resetting, repairing, and restamping of safety valves and relief valves shall be done by a qualified ((~~manufacturer or~~)) valve repair organization holding a valid ((~~"V," "UV," or~~)) "VR" Certificate of Authorization issued by the National Board of Boiler and Pressure Vessel Inspectors. ((~~Section IV safety valves shall be repaired only by the valve manufacturer.~~)) ASME valve manufacturers holding a valid "V," "HV," and "UV" Certificate(s) of Authorization may also do this work provided they also have a valid "VR" Certificate of Authorization issued by the National Board.

(2) With jurisdictional approval, boiler and pressure vessel owners/users, ((~~however,~~)) may authorize external adjustments ((~~to be made~~)) to bring their installed safety valves and relief valves, ((~~except Section IV safety valves,~~)) back to the stamped set pressure when performed by the owner/user's trained, qualified, regular, and full-time employees ((~~or this adjustment shall be witnessed and approved by a National Board Commissioned Inspector~~)). Refer to Appendix "J" of the National Board Inspection Code as referenced in WAC 296-104-102 for guidelines ((~~in~~)) regarding training ((~~and qualifying~~)), documentation, and the implementation of a quality system for the owner/user employees. All such external adjustments shall be resealed with a metal tag showing the identification of the organization making the adjustments and the date. If any valve repairs are required, they shall be done by a qualified "VR" certificate holder.

(3) Repairing of noncode relief or safety valves shall not be allowed, except as specified below. Noncode liquid relief valves installed prior to 1-1-85 shall be repaired by an organization holding a valid ((~~"V," "UV," or~~)) "VR" Certificate of Authorization, but need not be stamped.

AMENDATORY SECTION (Amending WSR 98-22-024, filed 10/28/98, effective 11/28/98)

WAC 296-104-540 Repairs—What are the requirements for nuclear repairs of safety devices? All nuclear ((~~components~~)) pressure retaining items shall be safeguarded by safety devices, as specified in the ASME Section III ((~~Code~~)), Division 1, Class 1, 2, and 3.

(1) The resetting, repair, and restamping of these safety devices shall be performed only by organizations holding a valid ((~~ASME "N"~~)) National Board "NR" and "VR" Certificate of Authorization to repair ASME Section III Code safety devices. The repair work shall be documented on the applicable NR-1/NVR-1 form. All repair/replacement activities performed under the "NR" Certificate of Authorization must be in accordance with the provisions of the NBIC, ASME Section XI, and the rules of the jurisdiction.

(2) Nuclear plant owners with an approved ASME Section XI program, may authorize ((~~resetting, repairing or replacement of their safety devices~~)) external adjustments to bring their installed safety valves and relief valves back to the stamped set pressure when performed by the owner's/user's trained, qualified, regular, and full-time employees. Refer to Appendix "J" of the National Board Inspection Code as referenced in WAC 296-104-102 for guidelines regarding training, documentation, and implementation of a quality system for the owner/user employees.

(3) ((~~Resetting, repairing or replacement activities shall be witnessed and approved by an inspector, with appropriate National Board endorsements.~~)) All such external adjustments shall be resealed with a metal tag showing the identification of the organization making the adjustments and the date.

(4) ((~~All repaired safety devices shall be resealed showing the identification of the organization making the repair and the date.~~)) If any valve repairs are required, they shall be done by a qualified "VR" and "NR" certificate holder.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-104-256	Installation—What are the required clearances for boilers?

WSR 06-17-174
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 23, 2006, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-11-059.

Title of Rule and Other Identifying Information: WAC 388-450-0185 Does the department count all of my income to determine my eligibility and benefits for Basic Food?, 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food?, and 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097), on September 26, 2006, at 10:00 a.m.

Date of Intended Adoption: No earlier than September 27, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., September 26, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by September 22, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

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

standards used to determine eligibility and monthly benefit levels for the Washington Basic Food program and the Washington combined application project (WASHCAP) program.

The proposed changes update the standard deduction for Basic Food, the maximum shelter deduction for households that do not include a person with a disability, gross income standards, net income standards, 165% standard, and the maximum benefit amount for Basic Food and WASHCAP households with no net income. These rules will also be filed by emergency adoption effective October 1, 2006, because federal implementation timeframes do not allow sufficient time to make the changes using the regular adoption process.

Reasons Supporting Proposal: Under 7 C.F.R. 273.9 and the approved waiver the department uses to administer the WASHCAP program, the department must update the standards contained in these rules on an annual basis. The United States Department of Agriculture, Food and Nutrition Services (FNS) provides the updated standards on or near the first day of August each year to be effective with the new federal fiscal year each October.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.-050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.9.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 725-4116.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients by setting standards used to determine eligibility and benefit levels for the Washington Basic Food program and WASHCAP programs.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to….rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

August 17, 2006

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-21-101, filed 10/18/05, effective 11/18/05)

WAC 388-450-0185 Does the department count all of my income to determine my eligibility and benefits for Basic Food? We subtract the following amounts from your assistance unit's (AU's) countable income before we determine your Basic Food benefit amount:

(1) A standard deduction based on the number of people in your AU under WAC 388-408-0035:

Eligible and ineligible AU members	Standard deduction
1	$134
2	$134
3	$134
4	$((~~134~~)) 139
5	$((~~157~~)) 162
6 or more	$((~~179~~)) 186

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense as described below:

(a) The dependent care must be needed for AU member to:

(i) Keep work, look for work, or accept work;

(ii) Attend training or education to prepare for employment; or

(iii) Meet employment and training requirements under chapter 388-444 WAC.

(b) We subtract allowable dependent care expenses that are payable to someone outside of your AU:

(i) Up to two hundred dollars for each dependent under age two; and

(ii) Up to one hundred seventy-five dollars for each dependent age two or older.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) Legally obligated current or back child support paid to someone outside of your AU:

(a) For a person who is not in your AU; or

(b) For a person who is in your AU to cover a period of time when they were not living with you.

(6) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 05-21-101, filed 10/18/05, effective 11/18/05)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food? The department calculates your shelter cost income deduction as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or mortgage payments you make ahead of time as an allowable cost. We count the following expenses as an allowable shelter cost in the month the expense is due:

(a) Monthly rent, lease, and mortgage payments;

(b) Property taxes;

(c) Homeowner's association or condo fees;

(d) Homeowner's insurance for the building only;

(e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

(i) AU intends to return to the home;

(ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and

(iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (5) from your AU's gross income. The result is your AU's net income.

(3) Finally, we subtract one-half of your AU's net income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of four hundred seventeen dollars if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over four hundred seventeen dollars.

AMENDATORY SECTION (Amending WSR 05-21-101, filed 10/18/05, effective 11/18/05)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food? If your assistance unit (AU) meets all other eligibility requirements for Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

EFFECTIVE 10-1-((~~05~~))2006

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	$((~~1037~~)) 1062	$((~~798~~)) 817	$((~~152~~)) 155	$((~~1316~~)) 1348
2	((~~1390~~)) 1430	((~~1070~~)) 1100	((~~278~~)) 284	((~~1765~~)) 1815
3	((~~1744~~)) 1799	((~~1341~~)) 1384	((~~399~~)) 408	((~~2213~~)) 2283
4	((~~2097~~)) 2167	((~~1613~~)) 1667	((~~506~~)) 518	((~~2661~~)) 2750
5	((~~2450~~)) 2535	((~~1885~~)) 1950	((~~601~~)) 615	((~~3109~~)) 3218
6	((~~2803~~)) 2904	((~~2156~~)) 2234	((~~722~~)) 738	((~~3558~~)) 3685
7	((~~3156~~)) 3272	((~~2428~~)) 2517	((~~798~~)) 816	((~~4006~~)) 4153
8	((~~3509~~)) 3640	((~~2700~~)) 2800	((~~912~~)) 932	((~~4454~~)) 4620
9	((~~3863~~)) 4009	((~~2972~~)) 3084	((~~1026~~)) 1049	((~~4903~~)) 5088
10	((~~4217~~)) 4378	((~~3244~~)) 3368	((~~1140~~)) 1166	((~~5532~~)) 5556
Each Additional Member	+((~~354~~)) 369	+((~~272~~)) 284	+((~~114~~)) 117	+((~~449~~)) 468

Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

WSR 06-17-175
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 23, 2006, 9:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-11-059.

Title of Rule and Other Identifying Information: WAC 388-450-0195 Utility allowances for Basic Food programs, 388-492-0040 Can I choose whether I get WASHCAP food benefits for Basic Food benefits?, and 388-492-0070 How are my WASHCAP benefits calculated?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097), on September 26, 2006, at 10:00 a.m.

Date of Intended Adoption: No earlier than September 27, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on September 26, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by September 22, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules provide standards used to determine monthly benefit levels for the Washington Basic Food program and the Washington combined application project (WASHCAP) program. The rules also indicate when a WASHCAP-eligible household may choose to participate in the Basic Food program.

The proposed changes update utility standards for Basic Food, the WASHCAP high cost shelter standard, the WASHCAP low cost shelter standard, the WASHCAP shelter threshold, and the standard for WASHCAP-eligible persons can choose to participate in the Basic Food based on high shelter costs. These rules will also be filed by emergency adoption effective October 1, 2006, because federal implementation timeframes do not allow sufficient time to make the changes using the regular adoption process.

Reasons Supporting Proposal: 7 C.F.R. 273.9 (d)(6)(iii)(B) and the approved waiver the department uses to administer the WASHCAP program requires the department to update the standards contained in these rules on an annual basis. The department updates the standards based on the consumer price index (CPI) and adopts new standards effective with the new federal fiscal year each October.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.-050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.9.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 725-4116.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients by setting standards used to determine benefit levels for the Washington Basic Food program and WASHCAP and sets a standard to determine if WASHCAP-eligible persons may choose to participate in Basic Food.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to….rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

August 23, 2006
Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-10-056, filed 5/1/06, effective 6/1/06)

WAC 388-450-0195 Utility allowances for Basic Food programs. (1) For Basic Food, **"utilities"** include the following:

(a) Heating or cooling fuel;

(b) Electricity or gas;

(c) Water or sewer;

(d) Well or septic tank installation/maintenance;

(e) Garbage/trash collection; and

(f) Telephone service.

(2) The department uses the amounts below if you have utility costs separate from your rent or mortgage payment. We add your utility allowance to your rent or mortgage payment to determine your total shelter costs. We use total shelter costs to determine your Basic Food benefits.

(a) If you have heating or cooling costs, you get a standard utility allowance (SUA) that depends on your assistance unit's size.

Assistance Unit (AU) Size	Utility Allowance
1	$((~~307~~)) 298
2	$((~~316~~)) 307
3	$((~~325~~)) 316
4	$((~~334~~)) 325
5	$((~~344~~)) 334
6 or more	$((~~353~~)) 343

(b) If your AU does not qualify for the SUA and you have any two utility costs listed above, you get a limited utility allowance (LUA) of two hundred ((~~forty-two~~)) thirty-eight dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of ((~~thirty-nine~~)) thirty-eight dollars.

AMENDATORY SECTION (Amending WSR 05-18-036, filed 8/30/05, effective 10/1/05)

WAC 388-492-0040 Can I choose whether I get WASHCAP food benefits or Basic Food benefits? You can choose to have Basic Food benefits instead of WASHCAP food benefits when:

(1) Your nonutility shelter costs as defined in WAC 388-450-0190 (1)(a) through (d) are more than five hundred ((~~forty-four~~)) sixty-seven dollars a month;

(2) Your out-of-pocket medical expenses are more than thirty-five dollars a month; or

(3) You chose to have Basic Food benefits instead of WASHCAP benefits prior to January 1, 2005.

AMENDATORY SECTION (Amending WSR 05-17-155, filed 8/22/05, effective 10/1/05)

WAC 388-492-0070 How are my WASHCAP food benefits calculated? We calculate your food benefits as follows:

(1) We begin with your gross income.

(2) We subtract one hundred thirty-four dollars from your gross income to get your countable income.

(3) We figure your shelter cost based on information we receive from Social Security Administration (SSA), unless you report a change as described under WAC 388-492-0080. If you pay:

(a) Three hundred ((~~twenty-nine~~)) forty-two dollars or more a month for shelter, we use three hundred ((~~forty~~)) fifty-four dollars as your shelter cost; or

(b) Less than three hundred ((~~twenty-nine~~)) forty-two dollars for shelter, we use one hundred ((~~sixty-four~~)) seventy-one dollars as your shelter cost; and

(c) We add the current limited utility allowance under WAC 388-450-0195 to determine your total shelter cost.

(4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.

(5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.

(6) We figure your WASHCAP food benefits (allotment) by:

(a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

(c) If you are eligible for WASHCAP, you will get at least ten dollars in food benefits each month.

WSR 06-17-176
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed August 23, 2006, 9:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-14-043.

Title of Rule and Other Identifying Information: WAC 388-410-0020 What happens if I get more food assistance benefits than I am supposed to get?, 388-410-0025 Am I responsible for an overpayment in my assistance unit? 388-410-0030 How does the department calculate and set up my Basic Food overpayment?, and 388-410-0033 How and when does the department collect a food assistance overpayment?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097), on September 26, 2006, at 10:00 a.m.

Date of Intended Adoption: No earlier than September 27, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on September 26, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by September 22, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update rules on establishing and collecting overpayments for Basic Food and the Washington combined application project (WASHCAP) to be consistent with federal requirements for the food stamp program under 7 C.F.R. 273.18, Claims against households.

Reasons Supporting Proposal: The United States Department of Agriculture, Food and Nutrition Service adopts regulations for states to administer the food stamp program. The amendments under this filing are to comply with federal requirements on claims against households as required under 7 C.F.R. 273.18.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.-050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.18.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 725-4616.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by establishing eligibility rules incorporating federal requirements for establishing and collecting overpaid benefits provided under the Washington Basic Food program and WASHCAP food assistance program. The rule impacts whether or not persons who received more benefits than they were entitled to receive have an overpayment and how the department collects overpaid benefits.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to….rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." These rules incorporate federal requirements for how, based on client eligibility, the department establishes and collects overpaid benefits from the Washington Basic Food program and WASHCAP food assistance consistent with Title 74 RCW and Title 7 C.F.R. Part 273.18.

August 23, 2006
Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-06-090, filed 3/1/02, effective 4/1/02)

WAC 388-410-0020 What happens if I ((~~get~~)) receive more ((~~food assistance~~)) Basic Food or WASHCAP benefits than I am supposed to ((~~get~~)) receive? (1) If you ((~~get~~)) receive more ((~~assistance~~)) Basic Food or WASHCAP benefits than you were supposed to ((~~get~~)) receive, your assistance unit (AU) has ((~~a food assistance~~)) an overpayment. There are three types of ((~~food assistance~~)) overpayments:

(a) **Administrative error overpayment:** When you received too many benefits because the department made a mistake.

(b) **Inadvertent household error overpayment:** When you received too many benefits because you made a mistake or didn't understand what you were supposed to do.

(c) **Intentional program violation (IPV) overpayment:** When you received too many benefits because you broke a food stamp rule on purpose. If you have an IPV, you could be disqualified from receiving ((~~food assistance~~)) Basic Food or WASHCAP benefits under chapter 388-446 WAC.

(2) ((~~The department~~)) We must ((~~set up and start collecting~~)) discover an overpayment within certain time frames for us to establish and collect an overpayment. If we do not ((~~meet both of the time frames~~)) discover that you received too many benefits within the timeframe described below based on the type of overpayment ((~~your AU has~~)), we will not set up an overpayment:

(a) **Administrative error overpayment:**	(b) **Inadvertent household error overpayment:**	(c) **Intentional program violation overpayment:**
We must discover the overpayment within twelve months of the date you were overpaid((~~; and~~)).	We must discover the overpayment within twenty-four months of the date you were overpaid((~~; and~~)).	We must discover the overpayment within seventy-two months of the date you were overpaid((~~; and~~)).
((~~We must mail your household a recovery demand letter and overpayment calculation within twenty-four months of the date that we discovered you were overpaid.~~))	((~~We must mail your household a recovery demand letter and overpayment calculation within twenty-four months of the date that we discovered you were overpaid.~~))	((~~We must mail your household a recovery demand letter and overpayment calculation within twenty-four months of the date that were discovered you were overpaid.~~))

AMENDATORY SECTION (Amending WSR 02-06-090, filed 3/1/02, effective 4/1/02)

WAC 388-410-0025 Am I responsible for an overpayment in my assistance unit? If your assistance unit (AU) ((~~gets~~)) received more ((~~food assistance~~)) Basic Food or WASHCAP benefits than it was supposed to ((~~get~~)) receive, your AU has an overpayment. If you have an overpayment, ((~~the department determines~~)) we determine the amount you were overpaid and ((~~sets~~)) set up a claim to recover this overpayment.

(1) We set up an overpayment for the full amount your AU was overpaid for every adult AU member at the time your AU was overpaid.

(2) Each adult member is responsible for the whole overpayment until we recover the entire amount of the overpayment. We do not collect more than the amount your AU was overpaid.

(3) If we determine you are responsible for an overpayment, you are responsible for the overpayment even if you are now in a different AU than you were when you had the overpayment.

AMENDATORY SECTION (Amending WSR 03-21-027, filed 10/7/03, effective 12/1/03)

WAC 388-410-0030 How does the department calculate and set up my Basic Food or WASHCAP overpayment? (1) ((~~The department calculates~~)) We calculate the amount of your Basic Food or WASHCAP overpayment by counting the difference between:

(a) The benefits your assistance unit (AU) received; and

(b) The benefits your AU should have received.

(2) To calculate the benefits your AU should have received, we determine what we would have authorized if we:

(a) Had correct and complete information; and

(b) Followed all the necessary procedures to determine your AU's eligibility and benefits.

(3) If you did not report your earned income as required under WAC 388-418-0005 and WAC 388-418-0007, you do not ((~~get~~)) receive the earned income ((~~disregard~~)) deduction under WAC 388-450-0185 when we calculate your overpayment amount.

(4) If we paid you ((~~were underpaid~~)) too few Basic Food or WASHCAP benefits for a period of time, we will use ((~~these benefits~~)) the amount we underpaid your AU to reduce your overpayment if:

(a) We have **not** already issued you benefits to replace what you were underpaid; and

(b) We have **not** used this amount to reduce another overpayment.

(5) We **must** set up an inadvertent household error or administrative error overpayment if:

(a) We discovered the overpayment through the federal quality control process;

(b) You currently ((~~get~~)) receive Basic Food or WASHCAP benefits; or

(c) The overpayment is over one hundred twenty-five dollars and you do not currently ((~~get~~)) receive Basic Food or WASHCAP benefits.

(6) ((~~We do not set up inadvertent household error or administrative error overpayment if:~~

~~(a) We cannot find the responsible AU members; or~~

~~(b) We have~~)) If you have an inadvertent household error that we referred ((~~your inadvertent household error~~)) for prosecution or an administrative disqualification hearing, we will not set up and start collecting the overpayment if doing so could negatively impact this process.

(7) We set up an intentional program violation overpayment based on the results of an administrative disqualification hearing (chapter 388-02 WAC) unless:

(a) Your AU has repaid the overpayment; or

(b) ((~~We cannot find the responsible AU members; or~~

~~(c)~~)) We have referred your inadvertent household error for prosecution and collecting the overpayment could negatively impact this process.

AMENDATORY SECTION (Amending WSR 02-06-090, filed 3/1/02, effective 4/1/02)

WAC 388-410-0033 How and when does the department collect a ((~~food assistance~~)) Basic Food or WASHCAP overpayment? (1) When we set up an overpayment because you received more Basic Food or WASHCAP benefits than you were supposed to receive, we start to collect the benefits you were overpaid. This includes when we:

(a) Modify an established overpayment to an amount we would not have to set up under WAC 388-410-0030(5); or

(b) Set up an overpayment that we do not have to set up under WAC 388-410-0030(5).

(2) You can repay your overpayment by:

(a) Paying the entire amount at once;

(b) Having us take the amount of your overpayment out of your EBT account;

(c) Making regular ((~~installments~~)) payments under ((~~a payment schedule as specified~~)) a scheduled repayment agreement as described in subsection ((~~(3)~~)) (4) of this section; or

(d) Having your current ((~~food assistance~~)) Basic Food or WASHCAP benefits reduced.

((~~(2)~~)) (3) If you have an inactive EBT account and we cancelled ((~~food assistance~~)) Basic Food or WASHCAP benefits in the account under WAC 388-412-0025, we use the cancelled ((~~funds~~)) benefits to reduce the amount of your overpayment.

((~~(3)~~)) (4) If your AU currently ((~~gets food assistance~~)) receives Basic Food or WASHCAP benefits, you can repay your overpayment by making monthly ((~~installments that you agree on with the department~~)) payments. The ((~~agreement~~)) payments must be more than we would recover through us reducing your benefits. Your AU or the department can request a change to the agreement if necessary.

((~~(4)~~)) (5) If you are responsible for repaying an administrative or inadvertent household error overpayment, we automatically reduce your monthly benefits ((~~if you do not~~)) unless you:

(a) Pay the overpayment all at once;

(b) Set up a repayment agreement with us; or

(c) Request a ((~~fair~~)) hearing and continued benefits within ninety days of the date you received your collection action notice.

((~~(5)~~)) (6) If you are responsible for an intentional program violation (IPV) overpayment, you must tell us how you want to repay this overpayment within ten days of the date you ((~~get~~)) receive your collection action notice. If you do not do this, we will reduce your current monthly benefits.

((~~(6)~~)) (7) If you ((~~get~~)) receive ongoing ((~~food assistance~~)) Basic Food or WASHCAP benefits, we can reduce your monthly benefits to repay the overpayment. We do not reduce your first ((~~food assistance~~)) Basic Food or WASHCAP allotment when we first approve your application for ((~~food assistance~~)) benefits.

(a) If you have an administrative or inadvertent household error overpayment, we reduce your benefits by the greater of:

(i) Ten percent of your monthly benefits; or

(ii) Ten dollars per month.

(b) If you have an IPV overpayment, we reduce your benefits by the greater of:

(i) Twenty percent of your monthly benefits; or

(ii) Twenty dollars per month.

((~~(7)~~)) (8) If you do not meet the terms of a repayment agreement with the department, we automatically reduce your current ((~~food assistance~~)) benefits unless you:

(a) ((~~Catch up with all overdue payments~~)) Pay all overdue payments to bring your repayment agreement current; or

(b) Ask us to consider a change to the repayment schedule.

((~~(8)~~)) (9) If ((~~you no longer get food assistance, we will refer your overpayment for federal collection if the~~)) your overpayment claim is past due for one hundred eighty or more days, we refer your overpayment for federal collection. A federal collection includes reducing your income tax refund, social security benefits, or federal wages. We do not count your overpayment as past due if you:

(a) Repay the entire overpayment by the due date; ((~~or~~))

(b) Have your monthly benefits reduced to repay the overpayment; or

(c) Meet the requirements of your scheduled repayment agreement.

((~~(9)~~)) (10) If you no longer ((~~get food assistance~~)) receive Basic Food or WASHCAP benefits, we can garnish your wages, file a lien against your personal or real property, attach other benefits, or otherwise access your property to collect the overpayment amount.

((~~(10)~~)) (11) We suspend collection on an overpayment if:

(a) We cannot find the responsible AU members; or

(b) The cost of collecting the overpayment would likely be more than the amount we would recover.

(((~~(11)~~))) (12) We can negotiate the amount of an overpayment if the amount you offer is close to what we could expect to ((~~get~~)) receive from you before we can no longer legally collect the overpayment from you.

(((~~(12)~~))) (13) We write off unpaid overpayments and release any related liens when:

(a) We can not possibly collect any more funds;

(b) We agreed to accept a partial payment that left an unpaid balance after this payment; or

(c) There is an unpaid balance left after an overpayment case has been suspended for three consecutive years unless a collection may be possible through the Treasury Offset Program.

(((~~(13)~~))) (14) If your AU has an overpayment from another state, we can collect this overpayment if the state where you were overpaid does not plan to collect it and they give us the following:

(a) A copy of the overpayment calculation and overpayment notice made for the client; and

(b) Proof that you received the overpayment notice.

WSR 06-17-184
PROPOSED RULES
DEPARTMENT OF HEALTH
(Occupational Therapy Practice Board)
[Filed August 23, 2006, 10:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-08-092 and 04-11-096.

Title of Rule and Other Identifying Information: WAC 246-847-080 Examinations, 246-847-115 Limited permits, and 246-847-120 Foreign trained applicants.

Hearing Location(s): Red Lion Hotel on the River, 909 North Hayden Island Drive, Glisan Room, Portland, OR 97217, on October 6, 2006, at 1:00 p.m.

Date of Intended Adoption: October 6, 2006.

Submit Written Comments to: Vicki Brown, Program Manager, Occupational Therapy Practice Board, P.O. Box 47867, Olympia, WA 98504-7867, e-mail vicki.brown@doh.wa.gov, web site http://www3.doh.wa.gov/policyreview/, fax (360) 664-9077, by September 18, 2006.

Assistance for Persons with Disabilities: Contact Vicki Brown, Program Manager, by September 22, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 246-847-080 Examinations, the American Occupational Therapy Association (AOTA) no longer administers the examination. It is now administered by the National Board for Certification in Occupational Therapy (NBCOT).

WAC 246-847-115 Limited permits, on-line testing was developed and implemented in 2003 by the National Board for Certification in Occupational Therapy (NBCOT).

WAC 246-847-120 Foreign trained applicants, foreign trained applicants from foreign institutions who pass the National Board for Certification in Occupational Therapy (NBCOT) exam have met the education and experience requirements for licensure.

Reasons Supporting Proposal: Amendments clarify language and streamline application process: NBCOT administers national exam, AOTA no longer administers; removes language referring to eligibility to take next exam, exam now administered on-line providing greater flexibility, exam was administered twice a year and now is available every month; allows passage of national exam to serve as education and experience requirement from unrecognized schools, removes requirement to submit education and training documentation, eliminates duplication of effort for foreign trained as NBCOT reviews when applicant takes national exam.

Statutory Authority for Adoption: RCW 18.59.130 and 18.59.060.

Statute Being Implemented: RCW 18.59.130.

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

Name of Proponent: Department of health, occupational therapy practice board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Vicki Brown, Program Manager, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4865.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency did not complete a small business economic impact statement under RCW 19.85.030 (1)(a) because the proposed rules do not impose more than minor costs to the industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Vicki Brown, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4865, fax (360) 664-9077, e-mail vicki.brown@doh.wa.gov.

August 21, 2006
Vicki Brown
Program Manager

AMENDATORY SECTION (Amending Order 394B, filed 9/1/93, effective 10/2/93)

WAC 246-847-080 Examinations. (1) The ((~~current series of the American Occupational Therapy Certification Board~~)) examination administered by the National Board for Certification in Occupational Therapy or its successor/predecessor organization shall be the official examination for licensure as an occupational therapist or as an occupational therapy assistant.

(2) ((~~The examination for licensure as an occupational therapist shall be conducted twice a year.~~

~~(3) The examination for licensure as an occupational therapy assistant shall be conducted twice a year.~~

~~(4) The program manager of the board shall negotiate with the American Occupational Therapy Certification Board for the use of the certification examination.~~

~~(5) The examination shall be conducted in accordance with the American Occupational Therapy Certification Board security measures and contract.~~

~~(6) Applicants shall be notified of the examination results in accordance with the procedures developed by the American Occupational Therapy Certification Board.~~

~~(7) Examination scores will not be released except as authorized by the applicant in writing.~~

~~(8)~~)) To be eligible for a license, applicants must attain a passing score on the examination ((~~administered by the American Occupational Therapy Certification Board~~)) determined by the National Board for Certification in Occupational Therapy or its successor/predecessor organization.

AMENDATORY SECTION (Amending Order 394B, filed 9/1/93, effective 10/2/93)

WAC 246-847-115 Limited permits. (1) An applicant is eligible for a limited permit when they have met the criteria described under RCW 18.59.040(7)((~~, provided the applicant takes the first examination for which he or she is eligible~~)).

(2) An applicant who fails the examination may be granted a one time extension of the limited permit.

(3) An applicant who successfully passes the examination for licensure and who has a valid limited permit through the department of health at the time the examination results are made public shall be deemed to be validly licensed under the limited permit for the next thirty calendar days.

AMENDATORY SECTION (Amending Order 112B, filed 2/12/91, effective 3/15/91)

WAC 246-847-120 ((~~Foreign trained~~)) Applicants from unrecognized educational programs. ((~~An applicant obtaining education and training at foreign institutions shall submit the following information for the board's consideration in determining whether or not to waive the education and experience requirements for licensure, pursuant to RCW 18.59.070(1):~~

~~(1) An official description of the education program at the educational institution and if the description is not in English, then an English translation signed by the translator shall be submitted with the official description;~~

~~(2) An official transcript of the applicant's grades from the educational institution and if the transcript is not in English, then an English translation signed by the translator shall be submitted with the official transcript;~~

~~(3) Applicant's affidavit containing the following information:~~

~~(a) Location and dates of employment as an occupational therapist or occupational therapy assistant for up to three years immediately prior to the date of application;~~

~~(b) Description of capacity in which applicant was employed, including job titles and description of specific duties;~~

~~(c) Description of nature of clientele; and~~

~~(d) Name and title of direct supervisors;~~

~~(4) Written job description for each employment as an occupational therapist or occupational therapy assistant for up to three years immediately prior to the date of application;~~

~~(5) Signed, written statements from all employers or direct supervisors for up to three years immediately prior to the date of application containing the following information:~~

~~(a) Dates of applicant's employment;~~

~~(b) Description of applicant's specific duties; and~~

~~(c) Employer or direct supervisor's title;~~

~~(6) If the applicant graduated from the educational institution within the three years immediately prior to the application, the applicant shall obtain a signed, written statement from the applicant's program director at the educational institution discussing the applicant's fieldwork experience at the educational institution.~~)) (1) An applicant who has passed the approved National Certification Examination as defined in WAC 246-847-080, is considered to have met the education and experience requirements of RCW 18.59.050.

(2) Written verification of passing scores or verification of current certification must be submitted to the department directly from the National Board for Certification in Occupational Therapy or its successor/predecessor organization.

(3) After reviewing the information submitted, the board may require submission of additional information necessary for purposes of clarifying the information previously submitted.