

WSR 07-14-011
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Children's Administration)

[Filed June 22, 2007, 9:48 a.m., effective July 23, 2007]

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

Purpose: The department is amending WAC 388-15-009 What is child abuse or neglect? and 388-15-049 When must the department notify the alleged perpetrator of allegations of child abuse or neglect?, to meet the requirements from chapter 512, Laws of 2005 (ESSB 5922).

When effective, this permanent rule will supersede the emergency rule filed as WSR 07-10-057.

Citation of Existing Rules Affected by this Order: Amending WAC 388-15-009 and 388-15-049.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.050.

Other Authority: Chapter 26.44 RCW, RCW 74.13.031, and chapter 512, Laws of 2005.

Adopted under notice filed as WSR 07-08-095 on April 3, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: June 19, 2007.

Stephanie E. Schiller
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-15-098 and 02-17-045, filed 7/16/02 and 8/14/02, effective 2/10/03)

WAC 388-15-009 What is child abuse or neglect? Child abuse or neglect means the injury, sexual abuse, or sexual exploitation(~~(, negligent treatment, or maltreatment)~~) of a child by any person under circumstances which indicate that the child's health, welfare, ~~((and))~~ or safety is harmed, or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(1) Physical abuse means the nonaccidental infliction of physical injury or physical mistreatment on a child. Physical abuse includes, but is not limited to, such actions as:

- (a) Throwing, kicking, burning, or cutting a child;
- (b) Striking a child with a closed fist;
- (c) Shaking a child under age three;

- (d) Interfering with a child's breathing;
- (e) Threatening a child with a deadly weapon;
- (f) Doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks or which is injurious to the child's health, welfare ~~((and))~~ or safety.

(2) Physical discipline of a child, including the reasonable use of corporal punishment, is not considered abuse when it is reasonable and moderate and is inflicted by a parent or guardian for the purposes of restraining or correcting the child. The age, size, and condition of the child, and the location of any inflicted injury shall be considered in determining whether the bodily harm is reasonable or moderate. Other factors may include the developmental level of the child and the nature of the child's misconduct. A parent's belief that it is necessary to punish a child does not justify or permit the use of excessive, immoderate or unreasonable force against the child.

(3) Sexual abuse means committing or allowing to be committed any sexual offense against a child as defined in the criminal code. The intentional touching, either directly or through the clothing, of the sexual or other intimate parts of a child or allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in touching the sexual or other intimate parts of another for the purpose of gratifying the sexual desire of the person touching the child, the child, or a third party. A parent or guardian of a child, a person authorized by the parent or guardian to provide child-care for the child, or a person providing medically recognized services for the child, may touch a child in the sexual or other intimate parts for the purposes of providing hygiene, child care, and medical treatment or diagnosis.

(4) Sexual exploitation includes, but is not limited to, such actions as allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in:

- (a) Prostitution;
- (b) Sexually explicit, obscene or pornographic activity to be photographed, filmed, or electronically reproduced or transmitted; or
- (c) Sexually explicit, obscene or pornographic activity as part of a live performance, or for the benefit or sexual gratification of another person.

(5) Negligent treatment or maltreatment means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, on the part of a child's parent, legal custodian, guardian, or caregiver that shows a serious disregard of the consequences to the child of such magnitude that it creates a clear and present danger to the child's health, welfare, ~~((and))~~ or safety. A child does not have to suffer actual damage or physical or emotional harm to be in circumstances which create a clear and present danger to the child's health, welfare, ~~((and))~~ or safety. Negligent treatment or maltreatment includes, but is not limited, to:

- (a) Failure to provide adequate food, shelter, clothing, supervision, or health care necessary for a child's health, welfare, ~~((and))~~ or safety. Poverty and/or homelessness do not constitute negligent treatment or maltreatment in and of themselves;
- (b) Actions, failures to act, or omissions that result in injury to or which create a substantial risk of injury to the

physical, emotional, and/or cognitive development of a child; or

(c) The cumulative effects of ~~((consistent))~~ a pattern of conduct, behavior or inaction ~~((or behavior))~~ by a parent or guardian in providing for the physical, emotional and developmental needs of a child's, or the effects of chronic failure on the part of a parent or guardian to perform basic parental functions, obligations, and duties, when the result is to cause injury or create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child.

AMENDATORY SECTION (Amending WSR 02-15-098 and 02-17-045, filed 7/16/02 and 8/14/02, effective 2/10/03)

WAC 388-15-049 When must the department notify the ~~((alleged perpetrator))~~ parent, guardian or legal custodian of allegations of child abuse or neglect made against them? ((CPS)) The department must ~~((attempt to))~~ notify the ~~((alleged perpetrator))~~ parent, guardian or legal custodian of a child of the allegations of child abuse or neglect ~~((at the earliest point in the investigation that will not jeopardize the safety and protection of the child or the investigation process))~~ made against that person at the initial point of contact with that person, in a manner consistent with the laws maintaining the confidentiality of the persons making the allegations. Investigations of child abuse and neglect should be conducted in a manner that will not jeopardize the safety or protection of the child or the integrity of the investigation process.

AMENDATORY SECTION (Amending WSR 06-13-057, filed 6/16/06, effective 8/1/06)

WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district. Effective 0001 hours August 1, ~~((2006))~~ 2007, through 2400 hours July 31, ~~((2007))~~ 2008.

CLASSIFICATION

RATE

Fees for piloting of vessels in the inland waters and tributaries of Grays Harbor shall consist of the following:

Draft and Tonnage Fees:

Each vessel shall be charged according to its draft and tonnage for each vessel movement inbound to the Grays Harbor pilotage district, and for each movement outbound from the district.

Draft	\$ ((92.70)) <u>95.48</u> per meter
	or
	\$ ((28.25)) <u>29.10</u> per foot
Tonnage	\$ ((0.266)) <u>0.274</u> per net registered ton
Minimum Net Registered Tonnage	\$ ((930.00)) <u>958.00</u>
Extra Vessel (in case of tow)	\$ ((520.00)) <u>536.00</u>

WSR 07-14-014

PERMANENT RULES

BOARD OF

PILOTAGE COMMISSIONERS

[Filed June 22, 2007, 12:31 p.m., effective August 1, 2007]

Effective Date of Rule: August 1, 2007.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: All requirements necessary to amend the existing Grays Harbor pilotage district tariff as set forth in chapter 53.08 RCW have been met.

Purpose: To establish an annual tariff for pilotage services in the Grays Harbor pilotage district.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-185.

Statutory Authority for Adoption: RCW 88.16.035.

Adopted under notice filed as WSR 07-10-080 on May 1, 2007.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: June 14, 2007.

Peggy Larson
Administrator

CLASSIFICATION	RATE
Provided that, due to unique circumstances in the Grays Harbor pilotage district, vessels that call, and load or discharge cargo, at Port of Grays Harbor Terminal No. 2 shall be charged \$(5,150.00) <u>5,305.00</u> per movement for each vessel movement inbound to the district for vessels that go directly to Terminal No. 2, or that go to anchor and then go directly to Terminal No. 2, or because Terminal No. 2 is not available upon arrival that go to layberth at Terminal No. 4 (without loading or discharging cargo) and then go directly to Terminal No. 2, and for each vessel movement outbound from the district from Terminal No. 2, and that this charge shall be in lieu of only the draft and tonnage fees listed above.	
Boarding Fee:	
Per each boarding/deboarding from a boat or helicopter	\$(1,000.00) <u>1,030.00</u>
Harbor Shifts:	
For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage	\$(647.88) <u>667.00</u>
Delays per hour	\$(154.49) <u>159.00</u>
Cancellation charge (pilot only)	\$(258.22) <u>266.00</u>
Cancellation charge (boat or helicopter only)	\$(774.69) <u>798.00</u>
Pension Charge:	
Charge per pilotage assignment, including cancellations	\$(171.00) <u>174.00</u>
Travel Allowance:	
Transportation fee per assignment	\$55.00
Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid \$(903.82) <u>931.00</u> for each day or fraction thereof, and the travel expense incurred.	
Bridge Transit:	
Charge for each bridge transited	\$(283.61) <u>292.00</u>
Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam	\$(785.22) <u>809.00</u>
Miscellaneous:	
The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.	

WSR 07-14-018
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed June 22, 2007, 2:32 p.m., effective August 1, 2007]

Effective Date of Rule: August 1, 2007.

Purpose: The department is updating and clarifying sections in chapter 388-550 WAC relating to (1) hospital requirements for transplants and bariatric surgery; (2) inpatient chronic pain management and hospice services; (3) payment methods for Medicaid and SCHIP clients; (4) covered and noncovered outpatient services; (5) restrictions on hospital coverage; (6) revenue code categories and subcategories for outpatient and inpatient hospital services for dates of admission before August 1, 2007, and on and after August 1, 2007; (7) specific noncovered services; (8) authorization and utilization review of hospital services; (9) specialty services not requiring prior authorization; and (10) transplant coverage. In addition, the department is changing verbiage from "medical assistance administration (MAA)" to "the department," and "facility" to "hospital."

Citation of Existing Rules Affected by this Order:
Amending WAC 388-550-1200, 388-550-1300, 388-550-1350, 388-550-1400, 388-550-1500, 388-550-1600, 388-550-1700, 388-550-1800, 388-550-1900, 388-550-2100, 388-550-2200, 388-550-2301, 388-550-2500, and 388-550-2800.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Adopted under notice filed as WSR 07-10-104, 07-10-105, 07-10-106 on May 1, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-550-2800(1) (Table) Third column in table under "Process to adjust for third-party liability insurance and any other client responsibility":

Lesser of either the DRG billed amount minus the third-party payment amount and any client responsibility amount, or the ~~allowable~~, allowed amount, minus the third-party payment amount and any client responsibility amount.

The allowable minus the third-party payment amount and any client responsibility amount. (No change.)

For the "hold harmless" settlement, the lesser of The the billed amount minus the third-party payment amount and any client responsibility amount, or the allowable allowed

amount minus the third-party payment amount and any client responsibility amount. The payment made is the federal share only.

Lesser of either the billed amount minus the third-party payment amount and any client responsibility amount, or the single case rate allowed amount minus the third-party payment amount and any client responsibility amount.

Lesser of either the billed amount minus the third-party payment amount and any client responsibility amount, or the per diem allowed amount minus the third-party payment amount and any client responsibility amount.

Per diem allowed amount, and for some services...

The ~~allowable~~ allowed amount, subject to retrospective cost settlement...

Paid according to applicable...(No change.)

WAC 388-550-2900(1) (After table.) See WAC 388-550-4800 for payment methods used by the department for inpatient hospital services provided to clients eligible under state-administered programs. The department's policy for payment on state-administered program claims that involve third party liability (TPL) and/or client responsibility payments on claims is the same policy indicated in the table in subsection (1) in this section. However, to determine the department's payment on the claim, state-administered program rates, not medicaid or SCHIP rates, apply when comparing the lesser of either the billed amount minus the third-party payment and any client responsibility amount, or the allowed amount minus the third-party payment amount and any client responsibility amount.

A final cost-benefit analysis is available by contacting Larry Linn, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1856, fax (360) 753-9152, e-mail linnld@dshs.wa.gov.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 15, Repealed 0.

Date Adopted: June 21, 2007.

Stephanie E. Schiller
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-16 issue of the Register.

WSR 07-14-025
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Pharmacy)

[Filed June 25, 2007, 1:07 p.m., effective July 26, 2007]

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

Purpose: Amending WAC 246-863-095 Pharmacist's professional responsibilities and new WAC 246-869-010 Pharmacies' responsibilities. The purpose of the rules is to promote patient safety and access to health care by emphasizing the professional responsibilities of pharmacists and pharmacies. The rules clearly state the responsibilities of pharmacies to deliver timely, safe and appropriate medications.

Citation of Existing Rules Affected by this Order: Amending WAC 246-863-095 Pharmacist's professional responsibilities.

Statutory Authority for Adoption: RCW 18.64.005, 18.130.050.

Other Authority: RCW 18.64.165, 18.130.180.

Adopted under notice filed as WSR 07-05-055 on February 20, 2007.

A final cost-benefit analysis is available by contacting Doreen E. Beebe, Department of Health, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, phone (360) 236-4834, fax (360) 586-4359, e-mail doreen.beebe@doh.wa.gov.

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

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

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

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

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

Date Adopted: June 25, 2007.

Rebecca E. Hille
Board Chair

AMENDATORY SECTION (Amending WSR 96-02-005, filed 12/20/95, effective 1/20/96)

WAC 246-863-095 Pharmacist's professional responsibilities. (1) A pharmacist's primary responsibility is to ensure patients receive safe and appropriate medication therapy.

(2) A pharmacist shall not delegate the following professional responsibilities:

(a) Receipt of a verbal prescription other than refill authorization from a prescriber.

(b) Consultation with the patient regarding the prescription, both prior to and after the prescription filling and/or regarding any information contained in a patient medication

record system provided that this shall not ~~((preclude a))~~ prohibit pharmacy ~~((assistant))~~ ancillary personnel from providing to the patient or the patient's health care giver certain information where no professional judgment is required such as dates of refills or prescription price information.

(c) Consultation with the prescriber regarding the patient and the patient's prescription.

(d) Extemporaneous compounding of the prescription ~~((provided that))~~, however, bulk compounding from a formula and IV admixture products prepared in accordance with chapter 246-871 WAC may be performed by a ~~((level A))~~ pharmacy ~~((assistant))~~ technician when supervised by a pharmacist.

(e) Interpretation of data in a patient medication record system.

(f) Ultimate responsibility for all aspects of the completed prescription and assumption of the responsibility for the filled prescription, such as: Accuracy of drug, strength, labeling, proper container and other requirements.

(g) Dispense prescriptions to patient with proper patient information as required by WAC 246-869-220.

(h) Signing of the poison register and the Schedule V controlled substance registry book at the time of sale in accordance with RCW 69.38.030 and WAC 246-887-030 and any other item required by law, rule or regulation to be signed or initialed by a pharmacist.

(i) Professional communications with physicians, dentists, nurses and other health care practitioners.

~~((2))~~ (j) Decision to not dispense lawfully prescribed drugs or devices or to not distribute drugs and devices approved by the U.S. Food and Drug Administration for restricted distribution by pharmacies.

(3) Utilizing personnel to assist the pharmacist.

(a) The responsible pharmacist manager shall retain all professional and personal responsibility for any assisted tasks performed by personnel under his or her responsibility, as shall the pharmacy employing such personnel. The responsible pharmacist manager shall determine the extent to which personnel may be utilized to assist the pharmacist and shall assure that the pharmacist is fulfilling his or her supervisory and professional responsibilities.

(b) This does not preclude delegation to an intern or extern.

(4) It is considered unprofessional conduct for any person authorized to practice or assist in the practice of pharmacy to engage in any of the following:

(a) Destroy unfilled lawful prescription;

(b) Refuse to return unfilled lawful prescriptions;

(c) Violate a patient's privacy;

(d) Discriminate against patients or their agent in a manner prohibited by state or federal laws; and

(e) Intimidate or harass a patient.

NEW SECTION

WAC 246-869-010 Pharmacies' responsibilities. (1)

Pharmacies have a duty to deliver lawfully prescribed drugs or devices to patients and to distribute drugs and devices approved by the U.S. Food and Drug Administration for restricted distribution by pharmacies, or provide a therapeuti-

cally equivalent drug or device in a timely manner consistent with reasonable expectations for filling the prescription, except for the following or substantially similar circumstances:

(a) Prescriptions containing an obvious or known error, inadequacies in the instructions, known contraindications, or incompatible prescriptions, or prescriptions requiring action in accordance with WAC 246-875-040.

(b) National or state emergencies or guidelines affecting availability, usage or supplies of drugs or devices;

(c) Lack of specialized equipment or expertise needed to safely produce, store, or dispense drugs or devices, such as certain drug compounding or storage for nuclear medicine;

(d) Potentially fraudulent prescriptions; or

(e) Unavailability of drug or device despite good faith compliance with WAC 246-869-150.

(2) Nothing in this section requires pharmacies to deliver a drug or device without payment of their usual and customary or contracted charge.

(3) If despite good faith compliance with WAC 246-869-150, the lawfully prescribed drug or device is not in stock, or the prescription cannot be filled pursuant to subsection (1)(a) of this section, the pharmacy shall provide the patient or agent a timely alternative for appropriate therapy which, consistent with customary pharmacy practice, may include obtaining the drug or device. These alternatives include but are not limited to:

(a) Contact the prescriber to address concerns such as those identified in subsection (1)(a) of this section or to obtain authorization to provide a therapeutically equivalent product;

(b) If requested by the patient or their agent, return unfilled lawful prescriptions to the patient or agent; or

(c) If requested by the patient or their agent, communicate or transmit, as permitted by law, the original prescription information to a pharmacy of the patient's choice that will fill the prescription in a timely manner.

(4) Engaging in or permitting any of the following shall constitute grounds for discipline or other enforcement actions:

(a) Destroy unfilled lawful prescription.

(b) Refuse to return unfilled lawful prescriptions.

(c) Violate a patient's privacy.

(d) Discriminate against patients or their agent in a manner prohibited by state or federal laws.

(e) Intimidate or harass a patient.

WSR 07-14-031

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed June 26, 2007, 11:23 a.m., effective July 27, 2007]

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

Purpose: The department inadvertently omitted repealing WAC 388-535-1265 at the time it adopted new WAC 388-535-1271. To correct the oversight, the department

repealed WAC 388-535-1265 on an emergency basis effective April 1, 2007. (WAC 388-535-1271, filed on March 1, 2007, under WSR 07-06-041, became effective on April 1, 2007.) This action permanently repeals WAC 388-535-1265.

Repealing this rule is necessary to prevent a conflict with WAC 388-535-1271.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-535-1265.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500, 74.09.520.

Adopted under notice filed as WSR 07-08-066 on March 29, 2007.

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

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

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

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

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

Date Adopted: June 21, 2007.

Stephanie E. Schiller
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-535-1265	Dental-related services not covered—Adults.
------------------	---

WSR 07-14-034

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed June 26, 2007, 2:48 p.m., effective July 27, 2007]

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

Purpose: To add some flexibility to the rule to allow the board to schedule meetings on dates other than the last Friday of the months of January, April, July, and October.

Citation of Existing Rules Affected by this Order: Amending WAC 4-25-510 What is the board's meeting schedule and how are officers elected?

Statutory Authority for Adoption: RCW 18.04.055, 42.30.070.

Adopted under notice filed as WSR 07-10-077 on May 1, 2007.

Changes Other than Editing from Proposed to Adopted Version: Correct minor typographical error in first two sentences - change "a" to "as."

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

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

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

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

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

Date Adopted: June 15, 2007.

Richard C. Sweeney
Executive Director

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-510 What is the board's meeting schedule and how are officers elected? Regular board meetings begin at 9:00 a.m. on the last Friday of the month in the months of January, April and July or as otherwise determined by the board. The board holds an annual meeting beginning at 9:00 a.m. on the last Friday of October or as otherwise determined by the board.

The board consists of nine members. At the annual meeting the board elects the chair, vice-chair, and secretary from its members. The newly elected officers assume the duties of their offices on January 1 following the annual board meeting. Officers serve a term of one year and can be reelected for one additional term.

Either the chair or a quorum of the board has the authority to call meetings of the board. The chair presides at all meetings. In the event of the chair's absence or inability to act, the vice-chair presides. The board determines other duties of the officers.

The board's meetings are open public meetings conducted pursuant to chapter 42.30 RCW. WAC 4-25-521 provides information on how to contact the board's office for meeting times and locations or additional information regarding the board's activities.

WSR 07-14-035

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed June 26, 2007, 2:51 p.m., effective August 1, 2007]

Effective Date of Rule: August 1, 2007.

Purpose: To increase the section fees charged to candidates applying to take the uniform certified public accountant (CPA) examination and eliminate the fee the board charges to transfer grades to another jurisdiction.

Citation of Existing Rules Affected by this Order: Amending WAC 4-25-530 Fees.

Statutory Authority for Adoption: RCW 18.04.065, 18.04.105(3).

Adopted under notice filed as WSR 07-10-078 on May 1, 2007.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: June 15, 2007.

Richard C. Sweeney
Executive Director

AMENDATORY SECTION (Amending WSR 06-14-030, filed 6/27/06, effective 8/1/06)

WAC 4-25-530 Fees. The board shall charge the following fees:

- (1) Initial application for individual license, practice privilege, individual license through reciprocity, CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner \$330
- (2) Renewal of individual license, CPA-Inactive certificate, practice privilege, CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner \$230
- (3) Application for CPA-Inactive certificateholder to convert to a license \$0
- (4) Application for reinstatement of license, practice privilege, CPA-Inactive certificate, or registration as a resident nonlicensee owner \$480
- (5) Quality assurance review (QAR) program fee (includes monitoring reviews for up to two years) Firm submits reports for review \$400

- Firm submits a peer review report for review \$60
- Firm is exempted from the QAR program because the firm did not issue attest reports \$0
- (6) Late fee \$100
- (7) Amendment to firm license except for a change of firm address (there is no fee for filing a change of address) \$35
- (8) Copies of records, per page exceeding fifty pages \$0.15
- (9) Computer diskette listing of licensees, CPA-Inactive certificateholders, grants of practice privilege, registered resident nonlicensee firm owners, or firms \$75
- (10) Replacement CPA wall document \$50
- (11) ~~((Process transfer of grades \$35~~
- ~~(12))~~ Dishonored check fee (including, but not limited to, insufficient funds or closed accounts) \$35
- ~~((13))~~ CPA examination. Exam fees are comprised of section fees plus administrative fees. **The total fee is contingent upon which section(s) is/are being applied for and the number of sections being applied for at the same time.** The total fee is the section fee(s) for each section(s) applied for added to the administrative fee for the number of section(s) applied for.
- (12) Section fees:
 - (i) Auditing and attestation ~~\$((187.00))~~ 209.33
 - (ii) Financial accounting and reporting ~~\$((175.44))~~ 197.40
 - (iii) Regulation ~~\$((152.33))~~ 173.55
 - (iv) Business environment and concepts ~~\$((140.78))~~ 161.63
- (b) Administrative fees:

	1/1/04 -	After
	12/31/06	1/1/07
(i) First-time candidate - Four sections	\$124.50	\$132.95
(ii) First-time candidate - Three sections	\$111.00	\$119.10
(iii) First-time candidate - Two sections	\$97.00	\$104.70
(iv) First-time candidate - One section	\$83.00	\$90.30

(v)	Reexam candidate - Four sections	\$122.50	\$130.75
(vi)	Reexam candidate - Three sections	\$104.00	\$111.40
(vii)	Reexam candidate - Two sections	\$85.00	\$91.50
(viii)	Reexam candidate - One section	\$66.00	\$71.60
	National Association of State Boards of Accountancy candidate data base investigation fee for exam applications submitted with- out the applicant's Social Security number	\$70	\$70

Note: The board may waive late filing fees for individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

WSR 07-14-036

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed June 26, 2007, 3:02 p.m., effective July 27, 2007]

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

Purpose: The board is charged with protection of the public interest and ensuring the integrity and dependability of financial information as it relates to the licensure of CPAs and CPA firms used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private or governmental. The purpose of the QAR program is to monitor licensees' compliance with attest standards.

Citation of Existing Rules Affected by this Order: Amending WAC 4-25-820 What are the requirements for participating in quality assurance review (QAR)?

Statutory Authority for Adoption: RCW 18.04.055(9).

Adopted under notice filed as WSR 07-10-079 on May 1, 2007.

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

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

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

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

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

Date Adopted: June 15, 2007.

Richard C. Sweeney
Executive Director

AMENDATORY SECTION (Amending WSR 05-01-135, filed 12/16/04, effective 1/31/05)

WAC 4-25-820 What are the requirements for participating in quality assurance review (QAR)? (1) **Purpose.** The Washington state board of accountancy is charged with protection of the public interest and ensuring the ~~((integrity))~~ dependability of ~~((financial))~~ information ~~((as it relates to the licensure of CPAs and CPA firms))~~ used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private or governmental. The purpose of the QAR program is to monitor licensees' compliance with attest standards.

(2) Structure and implementation.

(a) The board will annually appoint a quality assurance review committee to perform the following functions:

(i) Review of financial statements and the reports of licensees thereon to assess their compliance with applicable professional standards;

(ii) Review of licensees' reports and information covered by those reports for conformity with applicable professional standards;

(iii) Improvement of reporting practices of licensees through education and rehabilitative measures; and

~~((iii) Referral of cases requiring further investigation to the board; and))~~

(iv) Such other functions as the board may assign to the committee.

(b) Once every three years the board will require each licensed firm to participate in the board's quality assurance review program. Participating firms will be notified by the board in January of the reporting requirement, and participating firms will be required to submit a quality assurance review status form, along with the appropriate fee, by the following April 30th. Failure to submit a complete quality assurance review status form postmarked by the April 30th due date, will result in the assessment of late fees. The board may waive late fees based on individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

(c) Each participating firm shall submit, for each of its offices, ~~((a compilation report, a review report, and an audit report))~~ one licensee report and the information covered by that report, for each of the following types of service or any other service the board determines:

- Compilation report on historical financial statements;
- Review report on historical financial statements;
- Audit report on historical financial statements;
- Agreed-upon procedures;
- Forecasts;
- Internal controls;
- Performance audits; and
- Projections.

A firm shall select these reports from all reports prepared during the twelve months preceding the date of board request

or, if no reports have been issued within the last twelve months, from all reports during the preceding three years.

If reports issued by all offices of a firm are reviewed and issued in a controlled, centralized process, only one ~~((of))~~ each of the type of licensee reports, including the information covered by the reports, specified above need be submitted by the firm as a whole.

(d) The board may exempt from the requirement of (c) of this subsection any firm ~~((which))~~ that has participated in a board-approved peer review program within the three years immediately preceding the date of board request.

~~((e))~~ (e) Firms requesting exemption must submit a copy of an unmodified report, letter of comments, response to letter of comments, if applicable, and letter of acceptance from the reviewing organization. Firms that receive modified peer review reports may request exemption, but must submit copies of such reports and related correspondence, at the discretion of the board, for consideration on an individual basis.

~~((f))~~ (f) Any documents submitted in accordance with (c) of this subsection may have the name of the client, the client's address, and other identifying factors omitted, provided that the omission does not render the type or nature of the entity undeterminable. Dates may not be omitted.

~~((g))~~ (g) Reports submitted to the committee pursuant to (c) of this subsection and comments of reviewers, the committee and the board on such reports or workpapers relating thereto, shall also be preserved in confidence except to the extent that they are communicated by the board to the licensees who issued the reports or disclosure is required under administrative procedure rules or by direction of a court of law.

~~((h))~~ (h) The committee's review of ~~((financial statements and))~~ the licensee reports ((of the licensees thereon)) and other information covered by those reports shall be directed toward the following:

(i) Presentation of the financial statements covered by the licensee reports and/or other information covered by those reports in conformity with ~~((generally accepted accounting principles or other comprehensive basis of accounting, if))~~ applicable professional standards for presentation and disclosure;

(ii) Compliance by licensees with ~~((generally accepted auditing))~~ applicable reporting standards; and

(iii) ~~((Compliance by licensees with other professional standards; and~~

~~((iv))~~ Compliance by licensees with the rules of the board and other regulations relating to the practice of public accounting.

~~((h))~~ (i) If the board determines that a report and/or other information covered by the report referred to the board by the committee is substandard or seriously questionable with respect to applicable professional standards, the board may take one or more of the following actions:

(i) Send the licensee a letter of comment detailing the perceived deficiencies and require the licensee to develop quality control procedures to ensure that similar occurrences will not occur in the future;

(ii) Require any licensee who had responsibility for issuance of a report, or who substantially participated in preparation of the report and/or related workpapers, to successfully

complete specific courses or types of continuing education as specified by the board;

(iii) Require that the licensee responsible for a substandard report submit all or specified categories of its reports to a preissuance review in a manner and for a duration prescribed by the board. The cost of the preissuance review will be at the firm's expense;

(iv) Require the licensee responsible for a substandard report to submit to a peer review conducted in accordance with standards acceptable to the board. The cost of the peer review will be at the licensee's expense;

(v) Require the licensee responsible for substandard work to submit to on-site field review or other investigative procedures of work product and practices by board representatives in order to assess the degree or pervasiveness of substandard work. The board may assess the costs of such field review or procedures to the licensee if the results of such investigative efforts substantiate the existence of substandard work product;

(vi) Initiate an investigation pursuant to RCW 18.04.295, 18.04.305, and/or 18.04.320.

~~((h))~~ (j) The board may solicit and review ~~((financial statements and related reports of licensees))~~ licensee reports and/or other information covered by the reports from clients, public agencies, banks, and other users of ~~((financial statements. In gathering information about the attest work of licensees, the board may make use of investigators))~~ such information.

WSR 07-14-051

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed June 28, 2007, 9:26 a.m., effective August 1, 2007]

Effective Date of Rule: August 1, 2007.

Purpose: The department is amending this WAC to incorporate the results of the Navigant Study. The health and recovery services administration (HRSA) is clarifying and updating existing rules and adopting new rules to describe policy regarding the department's hospital services coverage, rate-setting methods, and payment methods, based on recommendations made in the Navigant Study and supported by the state legislature. In addition, the proposed rules replace "medical assistance administration (MAA)" with "the department," and update and clarify other language. Hospitals providing services to medical assistance clients will be able to use the rules to understand the policy, services provided, and the rate-setting and payment methods in the new inpatient payment system.

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-3100, 388-550-3150, 388-550-3250, 388-550-3450, 388-550-3600, 388-550-3700, 388-550-3800, 388-550-3900, 388-550-4000, 388-550-4100, 388-550-4200, 388-550-4300, 388-550-4400, 388-550-4500, 388-550-4800, and 388-550-6700.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Other Authority: Chapter 518, Laws of 2005, (ESSB 6090) recommended that a study be done by Navigant to look at the department's inpatient payment system and include recommendations on the design.

Adopted under notice filed as WSR 07-10-095, 07-10-096, 07-10-097, 07-10-098, 07-10-099, and 07-10-100 on May 1, 2007.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's Note below.

A final cost-benefit analysis is available by contacting Larry Linn, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1856, fax (360) 753-9152, e-mail linnd@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 16, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 16, Repealed 0.

Date Adopted: June 25, 2007.

Robin Arnold-Williams
Secretary

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 07-16 issue of the Register.

WSR 07-14-052

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed June 28, 2007, 9:29 a.m., effective August 1, 2007]

Effective Date of Rule: August 1, 2007.

Purpose: Medical assistance of the health and recovery services administration (HRSA) is clarifying and updating existing definitions, adding new definitions relating to inpatient and outpatient hospital services, specifically definitions pertaining to payment methodologies for inpatient hospital services, and repealing outdated definitions. Medical assistance is also adding new language that states the department's hospital selective contracting program no longer exists for admissions on and after July 1, 2007.

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-1050.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Adopted under notice filed as WSR 07-08-108 on April 4, 2007.

A final cost-benefit analysis is available by contacting Larry Linn, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1856, fax (360) 753-9152, e-mail linnd@dshs.wa.gov.

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

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

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

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

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

Date Adopted: June 25, 2007.

Robin Arnold-Williams
Secretary

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 07-15 issue of the Register.

WSR 07-14-053

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed June 28, 2007, 9:31 a.m., effective August 1, 2007]

Effective Date of Rule: August 1, 2007.

Purpose: The rules update and clarify information regarding the department's inpatient psychiatric services coverage (including adding applicable definitions), payment policy, and general policy for hospital care. The rules also clarify how the department pays a hospital for covered dental-related services that are provided in the hospital's operating room. Also, effective for dates of admission on and after July 1, 2007, the base community psychiatric hospitalization payment method for medicaid and state children's health insurance program (SCHIP) clients and non-medicaid and non-SCHIP clients is no longer used. (A "non-medicaid or non-SCHIP client" is defined as a client eligible under the general assistance-unemployable (GA-U) program, the Alcoholism and Drug Addiction Treatment and Support Act (ADATSA), the psychiatric indigent inpatient (PII) program, or other state-administered program, as determined by the department.)

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-1100, 388-550-2600, and 388-550-2650.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Adopted under notice filed as WSR 07-10-093 on May 1, 2007.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's Note below.

A final cost-benefit analysis is available by contacting Larry Linn, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1856, fax (360) 753-9152, e-mail linnld@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: June 25, 2007.

Robin Arnold-Williams
Secretary

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 07-15 issue of the Register.

**WSR 07-14-054
PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed June 28, 2007, 9:32 a.m., effective August 1, 2007]

Effective Date of Rule: August 1, 2007.

Purpose: The health and recovery services administration (HRSA) is adding language to the rule to update and clarify the department's critical access hospital (CAH) policy and processes for rate-setting, claim payment, etc. It incorporates into rule that for dates of admission on and after August 1, 2007, the department uses the per diem payment method to pay for services provided in detoxification units, distinct psychiatric units, and distinct rehabilitation units.

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-2598.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Adopted under notice filed as WSR 07-10-094 on May 1, 2007.

A final cost-benefit analysis is available by contacting Larry Linn, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1856, fax (360) 753-9152, e-mail linnld@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 27, 2007.

Blake D. Chard
for Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 07-03-077, filed 1/17/07, effective 2/17/07)

WAC 388-550-2598 Critical access hospitals (CAHs).

(1) ~~((The department reimburses department of health (DOH)-approved critical access hospitals (CAHs) for inpatient and outpatient hospital services provided to fee-for-service medical assistance clients on a cost basis, using departmental weighted costs-to-charges (DWCC) ratios and a retrospective cost settlement process. The department pays CAH fee-for-service hospital claims subject to retrospective cost settlement, adjustments such as a third-party payment amount, and any client responsibility amount.~~

(2) ~~For inpatient and outpatient hospital services provided to clients enrolled in a managed care plan, DWCC rates for each CAH are incorporated into the calculations for the managed care capitated premiums. The department considers managed care Healthy Options DWCC payment rates to be cost. Cost settlements are not performed by the department for managed care claims.~~

(3) ~~The following definitions and abbreviations and those found in WAC 388-500-0005 and 388-550-1050 apply to this section:~~

~~(a) "CAH," see "critical access hospital."~~

~~(b) "Cost settlement" means a reconciliation of the fee-for-service interim CAH payments with a CAH's actual costs determined in conjunction with use of the CAH's final settled Medicare cost report (Form 2552-96) after the end of the CAH's HFY.~~

~~(c) "Critical access hospital (CAH)" means a hospital that is approved by the department of health (DOH) for inclusion in DOH's critical access hospital program.~~

~~(d) "Departmental weighted costs-to-charges (DWCC) rate" means a rate the department uses to determine a CAH payment. See subsection (8) for how the department calculates a DWCC rate.~~

~~(e) "DWCC rate" see "departmental weighted costs-to-charges (DWCC) rate."~~

~~(f) "HFY" see "hospital fiscal year."~~

~~(g) "Hospital fiscal year" means each individual hospital's fiscal year.~~

(h) "Interim CAH payment" means the actual payment the department makes for claims submitted by a CAH for services provided during its current hospital fiscal year, using the appropriate DWCC rate, as determined by the department.

(i) "Revenue codes and procedure codes to cost centers crosswalk" means a document that indicates the revenue and procedure codes that are grouped to each hospital's Medicare Cost Report in reported cost centers.

(4) To be reimbursed as a CAH by the department, a hospital must be approved by the department of health (DOH) for inclusion in DOH's critical access hospital program. The hospital must provide proof of CAH status to the department upon request. CAHs reimbursed under the CAH program must meet the general applicable requirements in chapter 388-502 WAC. For information on audits and the audit appeal process, see WAC 388-502-0240.

(5) A CAH must have and follow written procedures that provide a resolution to complaints and grievances.

(6) To ensure quality of care:

(a) A CAH is responsible to investigate any reports of substandard care or violations of the facility's medical staff bylaws; and

(b) A complaint or grievance regarding substandard conditions or care may be investigated by any one or more of the following:

(i) Department of health (DOH); or

(ii) Other agencies with review authority for department programs.

(7) The department may conduct a postpay or on-site review of any CAH.

(8) The department prospectively calculates fee for service and managed care inpatient and outpatient DWCC rates separately for each CAH. To calculate prospective interim inpatient and outpatient DWCC rates for each hospital currently in the CAH program, the department:

(a) Obtains from each CAH its estimated aggregate charge master change for its next HFY;

(b) Obtains from each CAH the costs to charges ratio of each respective cost center the "as filed" version of the Medicare cost report the CAH initially submits for cost settlement of its most recently completed HFY;

(c) Obtains from each CAH the revenue codes and procedure codes to cost centers crosswalk related to the Medicare cost report used for cost settlement. Each CAH must indicate any differences between the revenue codes and procedure codes to cost centers crosswalk and the standard groupings of revenue codes and procedure codes to cost centers crosswalk statistics the department provides to the hospital from the department's CAH DWCC rate calculation model. (Example: A CAH reports to the department that for its DWCC rate calculation, the Anesthesia Cost Center, Revenue Code 370, should be grouped to the Surgery Cost Center, Revenue Code 360.)

(d) Obtains from the Medicaid management information system (MMIS) the following fee for service summary claims data submitted by each CAH for services provided during the same HFY identified in (b) of this subsection:

(i) Medical assistance program codes;

(ii) Inpatient and outpatient claim types;

(iii) Procedure codes, revenue codes, or diagnosis-related group (DRG) codes;

(iv) Allowed charges and third party liability/client and department paid amounts; and

(v) Units of service.

(e) Obtains from the managed care encounter data the following data submitted by each CAH for services provided during the same HFY identified in (b) of this section:

(i) Medical assistance program codes;

(ii) Inpatient and outpatient claim types;

(iii) Procedure codes, revenue codes, or diagnosis-related group (DRG) codes; and

(iv) Allowed charges.

(f) Separates the inpatient claims data and outpatient claims data;

(g) Obtains the cost center allowed charges by classifying inpatient and outpatient allowed charges from (d) and (e) of this subsection billed by a CAH (using any one of, or a combination of, procedure codes, revenue codes, or DRG codes) into the related cost center in the CAH's "as filed" Medicare cost report the CAH initially submits to the department. The department:

(i) Uses the claims classifications and cost center combinations as defined in the department's CAH DWCC rate calculation model;

(ii) Assigns a CAH that does not have a cost center ratio that CAH's cost center average;

(iii) Allows changes only if a revenue codes and procedure codes to cost centers crosswalk has been submitted and a cost center average is being used; and

(iv) Does not allow an unbundling of cost centers.

(h) Determines the departmental weighted costs for each cost center by multiplying the cost center's allowed charges from (d) and (e) of this subsection for the appropriate inpatient or outpatient claim type by the related service cost center ratio;

(i) Sums all allowed charges from (d) and (e) of this subsection;

(j) Sums all departmental weighted costs for inpatient and outpatient claims from (h) of this subsection;

(k) Multiplies each hospital's total departmental weighted costs from (j) of this subsection by the Medicare market basket inflation rate. The Medicare market basket inflation rate is published and updated periodically by the centers for Medicare and Medicaid services (CMS);

(l) Multiplies each hospital's total allowed charges from (i) of this subsection by the CAH estimated charge master change from (a) of this subsection. If the charge master change factor is not available from the hospital, the department will apply a reasonable alternative factor; and

(m) Determines the DWCC inpatient and outpatient rates by dividing the calculation result from (k) of this section by the calculation result from (l) of this subsection.

(9) For a currently enrolled hospital provider that is new to the CAH program, the basis for calculating initial prospective DWCC rates for inpatient and outpatient hospital claims for:

(a) Fee for service clients is:

(i) The hospital's most recent "as filed" Medicare cost report, and

(ii) The appropriate MMIS summary claims data for that HFY;

(b) Managed care clients is:

(i) The hospital's most recent "as filed" Medicare cost report; and

(ii) The appropriate managed care encounter data for that HFY;

(10) For a newly licensed hospital that is also a CAH, the department uses the current statewide average DWCC rates for the initial prospective DWCC rates.

(11) For a CAH that comes under new ownership, the department uses the prior owner's DWCC rates.

(12) In addition to the prospective managed care inpatient and outpatient DWCC rates, the department:

(a) Incorporates the DWCC rates into the calculations for the managed care capitated premiums that will be paid to the managed care plans; and

(b) Requires all managed care plans having contract relationships with CAHs to pay the inpatient and outpatient DWCC rates applicable to managed care claims. For purposes of this section, the department considers the DWCC rates used to reimburse CAHs for care given to clients enrolled in a managed care plan to be cost. Cost settlements are not performed for managed care claims.

(13) For fee-for-service claims only, the department uses the same methodology as outlined in subsection (8) to perform an interim retrospective cost settlement for each CAH after the end of the CAH's HFY, using "as filed" Medicare cost report data, the revenue codes and procedure codes to cost centers crosswalk provided by the CAH, and claims data from the fee-for-service claims. Specifically, the department:

(a) Compares actual department total interim CAH payments to the departmental weighted CAH fee-for-service costs for the period being cost settled; and

(b) Pays the hospital the difference between CAH costs and interim CAH payments if actual CAH costs are determined to exceed the total interim CAH payments for that period. The department recoups from the hospital the difference between CAH costs and interim CAH payments if actual CAH costs are determined to be less than total interim CAH payments.

(14) The department performs finalized cost settlements using the same methodology as outlined in subsection (13) of this section, except that the department uses the hospital's final settled Medicare cost report instead of the initial "as filed" Medicare cost report. The CAH must submit its final settled Medicare cost report to the department by the sixtieth day of receiving its Medicare cost report that has been settled by the Medicare fiscal intermediary. The department will use the final settled Medicare cost report for a final cost settlement.) The following definitions and abbreviations and those found in WAC 388-500-0005 and 388-550-1050 apply to this section:

(a) "CAH," see "critical access hospital."

(b) "Cost settlement" means a reconciliation of the fee-for-service interim CAH payments with a CAH's actual costs determined in conjunction with the use of the CAH's final settled Medicare cost report (Form 2552-96) after the end of the CAH's HFY.

(c) "Critical access hospital (CAH)" means a hospital that is approved by the department of health (DOH) for inclusion in DOH's critical access hospital program.

(d) "Departmental weighted costs-to-charges (DWCC) rate" means a rate the department uses to determine a CAH payment. See subsection (5) of this section for how the department calculates a DWCC rate.

(e) "DWCC rate" see "departmental weighted costs-to-charges (DWCC) rate."

(f) "HFY" see "Hospital fiscal year."

(g) "Hospital fiscal year" means each individual hospital's Medicare cost report fiscal year.

(h) "Interim CAH payment" means the actual payment the department makes for claims submitted by a CAH for service provided during its current HFY, using the appropriate DWCC rate, as determined by the department.

(i) "Revenue codes and procedure codes to cost centers crosswalk" means a document that indicates the revenue codes and procedure codes that are assigned by each hospital to a specific cost center in each hospital's Medicare cost report.

(2) To be paid as a CAH by the department, a hospital must be approved by the department of health (DOH) for inclusion in DOH's critical access hospital program. The hospital must provide proof of CAH status to the department upon request. A CAH paid under the CAH program must meet the general applicable requirements in chapter 388-502 WAC. For information on audits and the audit appeal process, see WAC 388-502-0240.

(3) The department pays an eligible CAH for inpatient and outpatient hospital services provided to fee-for-service medical assistance clients on a cost basis (except when services are provided in a distinct psychiatric unit, a distinct rehabilitation unit, or detoxification unit), using departmental weighted costs-to-charges (DWCC) rates and a retrospective cost settlement process. The department pays CAH fee-for-service claims subject to retrospective cost settlement, adjustments such as a third party payment amount, any client responsibility amount, etc.

(4) For inpatient and outpatient hospital services provided to clients enrolled in a managed care organization (MCO) plan, DWCC rates for each CAH are incorporated into the calculations for the managed care capitated premiums. The department considers managed care Health Options and MHD designee DWCC payment rates to be cost. Cost settlements are not performed by the department for managed care claims.

(5) The department prospectively calculates fee-for-service and managed care inpatient and outpatient DWCC rates separately for each CAH.

(a) Prior to the department's calculation of the prospective interim inpatient DWCC and outpatient DWCC rates for each hospital participating in the CAH program, the CAH must timely submit the following to the department:

(i) Within twenty working days of receiving the request from the department, the CAH's estimated aggregate charge master change for its next HFY;

(ii) At the time that the "as filed" version of the Medicare cost report the CAH initially submits to the Medicare fiscal

intermediary for the cost settlement of its most recently completed HFY, a copy of that same medicare cost report;

(iii) At the same time that the "as filed" version of the medicare cost report the CAH has submitted to the medicare fiscal intermediary for cost settlement of its most recently completed HFY, the CAH's corresponding revenue codes and procedure codes to cost centers crosswalk that indicates the revenue codes and procedure codes that are assigned by each hospital to a specific cost center in the hospital's medicare cost report;

(iv) At the same time that the "as filed" version of the medicare cost report the CAH has submitted to the medicare fiscal intermediary for cost settlement of its most recently completed HFY, a document indicating any differences between the CAH's revenue codes and procedure codes to cost centers crosswalk and the standard revenue codes and procedure codes to cost centers crosswalk that the department provides to the CAH from the department's CAH DWCC rate calculation model. (For example, a CAH hospital might indicate when it submits its crosswalk to the department, that a difference exists in the CAH's placement of statistics for the anesthesia revenue code normally identified to the anesthesia cost center in the department's CAH DWCC rate calculation model, but identified to the surgery cost center in the CAH's submitted medicare cost report.)

(b) The department:

(i) Determines if differences between the CAH's crosswalk and the crosswalk in the CAH DWCC rate calculation model will be allowed when the CAH timely submits the document identified in (a)(iii) and (a)(iv) of this subsection. If the CAH does not timely submit the document, the department may use the CAH DWCC rate calculation model without considering the differences.

(ii) Does not allow unbundling or merging of the standard cost centers identified in the CAH DWCC rate calculation model when the department calculates the DWCC rates. This is a standard the department follows during the rate calculation process even though the CAH hospital may have in contrast to the CAH DWCC rate calculation model indicated multiple cost centers, or merged into fewer costs centers, when reporting in the medicare cost report. (For example, a CAH reports to the department that in the department's standard radiology cost center grouping in the CAH DWCC rate calculation model, the hospital has established three costs centers in the medicare cost report, which are radioisotopes, radiology therapeutic, and radiology diagnostic. During the rate calculation process, the department combines these three cost centers under the standard radiology cost center grouping. No unbundling of the standard cost center grouping is allowed.)

(c) The department:

(i) Obtains from its medicaid management information system (MMIS), the following fee-for-service summary claims data submitted by each CAH for services provided during the same HFY identified in (a)(ii) of this subsection:

(A) Medical assistance program codes;

(B) Inpatient and outpatient hospital claim types;

(C) Procedure codes (for outpatient hospital claims only), revenue codes, and diagnosis related group (DRG) codes (for inpatient claims only);

(D) Claim allowed charges, third party liability, client paid amounts, and department paid amounts; and

(E) Units of service.

(ii) Obtains Level III trauma payment data from the department of health (DOH).

(iii) Obtains the costs-to-charges ration (CCR) of each respective cost center from the "as filed" version of the medicare cost report identified in (a)(ii) of this subsection, supplemented by any crosswalk information as described in (a)(iii) and (a)(iv) of this subsection.

(iv) Obtains from the managed care encounter data the following data submitted by each CAH for services provided during the same HFY identified:

(A) Medical assistance program codes;

(B) Inpatient and outpatient hospital claim types;

(C) Procedure codes (for outpatient hospital claims only), revenue codes, and diagnosis related group (DGR) codes (for inpatient claims only); and

(D) Claim allowed charges.

(v) Separates the inpatient claims data and outpatient hospital claims data:

(vi) Obtains the cost center claim allowed charges by classifying inpatient and outpatient hospital claim allowed charges from (c)(i) and (c)(iv) of this subsection billed by a CAH (using any one of, or a combination of, procedure codes, revenue codes, or DRG codes) into the related cost center in the CAH's "as filed" medicare cost report the CAH initially submits to the department.

(vii) Uses the claims classifications and cost center combinations as defined in the department's CAH DWCC rate calculation model:

(viii) Assigns a CAH that does not have a cost center ratio that CAH's cost center average;

(ix) Allows changes only if a revenue codes and procedure codes to cost centers crosswalk has been timely submitted (see (a)(iii), (a)(iv), and (b)(i) of this subsection) and a cost center average is being used;

(x) Does not allow an unbundling of cost centers (see (b)(ii) of this subsection);

(xi) Determines the departmental-weighted costs for each cost center by multiplying the cost center's claim allowed charges from (c)(i) and (c)(iv) of this subsection for the appropriate inpatient or outpatient claim type by the related service costs center ratio;

(xii) Sums all:

(A) Claim allowed charges from (c)(i) and (c)(iv) of this subsection separately for inpatient hospital claims.

(B) Claim allowed charges from (c)(i) and (c)(iv) of this subsection separately for outpatient hospital claims.

(xiii) Sums all:

(A) Departmental-weighted costs from (c)(xi) of this subsection separately for inpatient hospital claims.

(B) Departmental-weighted costs from (c)(xi) of this subsection separately for outpatient hospital claims.

(xiv) Multiplies each hospital's total departmental-weighted costs from (c)(xiii) of this subsection by the centers for medicare and medicaid services (CMS) medicare market basket inflation rate to update costs from the HFY to the rate setting period. The medicare market basket inflation rate is published and updated by CMS periodically;

(xv) Multiplies each hospital's total claim allowed charges from (c)(xii) of this subsection by the CAH estimated charge master change from (a)(i) of this subsection. If the charge master change factor is not submitted timely by the hospital (see (a)(i) of this subsection), the department will apply a reasonable alternative factor; and

(xvi) Determines:

(A) The inpatient DWCC rates by dividing the calculation result from (c)(xiv) of this subsection by the calculation result from (c)(xv) of this subsection.

(B) The outpatient DWCC rates by dividing the calculation result from (c)(xiv) of this subsection by the calculation result from (c)(xv) of this subsection.

(6) For a currently enrolled hospital provider that is new to the CAH program, the basis for calculating initial prospective DWCC rates for inpatient and outpatient hospital claims for:

(a) Fee-for-service clients is:

(i) The hospital's most recent "as filed" medicare cost report; and

(ii) The appropriate MMIS summary claims data for that HFY.

(b) MCO clients is:

(i) The hospital's most recent "as filed" medicare cost report; and

(ii) The appropriate managed care encounter data for that HFY.

(7) For a newly licensed hospital that is also a CAH, the department uses the current statewide average DWCC rates for the initial prospective DWCC rates.

(8) For a CAH that comes under new ownership, the department uses the prior owner's DWCC rates until:

(a) The new owner submits its first "as filed" medicare cost report to the medicare fiscal intermediary, and at the same time to the department, the documents identified in (5)(a)(i) through (a)(iv) of this section; and

(b) The department has calculated new DWCC rates based on the new owner's "as filed" medicare cost report and other timely submitted documents.

(9) In addition to the prospective managed care inpatient and outpatient DWCC rates, the department:

(a) Incorporates the DWCC rates into the calculations for the department's MCO capitated premium that will be paid to the MCO plan; and

(b) Requires all MCO plans having contract relationships with CAHs to pay inpatient and outpatient DWCC rates applicable to managed care claims. For purposes of this section, the department considers the DWCC rates used to pay CAHs for care given to clients enrolled in an MCO plan to be cost. Cost settlements are not performed for claims that are submitted to the MCO plans.

(10) For fee-for-service claims only, the department uses the same methodology as outlined in subsection (5) of this section to perform an interim retrospective cost settlement for each CAH after the end of the CAH's HFY, using "as filed" medicare cost report data from that HFY that is being cost settled, the other documents identified in subsection (5)(a)(i), (a)(iii) and (a)(iv) of this section, when data from the MMIS related to fee-for-service claims. Specifically, the department:

(a) Compares actual department total interim CAH payments to the departmental-weighted CAH fee-for-service costs for the period being cost settled. (Interim payments are the sum of third party liability/client payments, department claim payments, and Level III trauma payments); and

(b) Pays the hospital the difference between CAH costs and interim CAH payments if actual CAH costs are determined to exceed the total interim CAH payments for that period. The department recoups from the hospital the difference between CAH costs and interim CAH payments if actual CAH costs are determined to be less than total interim CAH payments.

(11) The department performs finalized cost settlements using the same methodology as outlined in subsection (10) of this section, except that the department uses the hospital's "final settled" medicare cost report instead of the initial "as filed" medicare cost report for the HFY being cost settled. The "final settled" medicare cost report received from the medicare fiscal intermediary must be submitted by the CAH to the department by the sixtieth day of the hospital's receipt of that medicare cost report.

(12) A CAH must have and follow written procedures that provide a resolution to complaints and grievances.

(13) To ensure quality of care:

(a) A CAH is responsible to investigate any reports of substandard care or violations of the hospital's medical staff bylaws; and

(b) A complaint or grievance regarding substandard conditions or care may be investigated by any one or more of the following:

(i) Department of health (DOH); or

(ii) Other agencies with review authority for department programs.

(14) The department pays detoxification units, distinct psychiatric units, and distinct rehabilitation units operated by CAH hospitals using inpatient payment methods other than DWCC rates and cost settlement.

(a) For dates of admission before August 1, 2007, the department uses the RCW payment method to pay for services provided in detoxification units, distinct psychiatric units, and distinct rehabilitation units. The exception is for state-administered programs' psychiatric claims, which are paid using:

(i) The DRG payment method for claims grouped to stable DRG relative weights (unless the claim has an HIV-related diagnosis), and in conjunction with the base community psychiatric hospitalization payment method; or

(ii) The RCW payment method for other psychiatric claims (except for DRGs 469 and 470), in conjunction with the base community psychiatric hospitalization payment method.

(b) For dates of admission on and after August 1, 2007, the department uses the per diem payment method to pay for services provided in detoxification units, distinct psychiatric units, and distinct rehabilitation units.

(15) The department may conduct a post pay or on-site review of any CAH.

WSR 07-14-055
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed June 28, 2007, 9:33 a.m., effective August 1, 2007]

Effective Date of Rule: August 1, 2007.

Purpose: The department is amending sections in chapter 388-550 WAC relating to hospital payment methodologies and limits in order to change verbiage from "medical assistance administration (MAA)" to "the department," and change verbiage from "facility" to "hospital." In addition, the proposed changes reflect updates for dates of admission before August 1, 2007, and on and after August 1, 2007. The department is repealing WAC 388-550-2000.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-550-2000; and amending WAC 388-550-2900, 388-550-3000, 388-550-3200, 388-550-3300, 388-550-3350, 388-550-3381, 388-550-3400, and 388-550-3500.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.500.

Adopted under notice filed as WSR 07-10-107 on May 1, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-550-2900 (1)(b), be an in-state hospital, a bordering city hospital, a...

WAC 388-550-2900 (2)(c)(ii), DRG payment, per diem payment, or per case rate payment ~~no on~~ claims...

WAC 388-550-2900 (2)(d)(ii), correct cross-reference: The hospital... as specified in WAC 388-550-4300~~(3)(6)~~.

WAC 388-550-2900(3), an interim billed inpatient hospital claim submitted for a client's continuing inpatient hospitalization of at least ~~ninety sixty~~ calendar days...

WAC 388-550-2900 (3)(a)(i), be submitted in ~~ninety sixty~~ calendar day intervals, unless the client is discharged prior to the next ~~ninety sixty~~ calendar day interval...

WAC 388-550-2900 (3)(b)(i), after ~~ninety sixty~~ calendar days...

WAC 388-550-2900(4), a hospital claim...of ~~one hundred twenty sixty~~ calendar days...

WAC 388-550-2900 (4)(d), transfers from the hospital or..., or a designated acute rehabilitations unit...

WAC 388-550-3900 (5)(a), in accordance with the current national uniform billing ~~date data~~ element...

WAC 388-550-2900 (5)(b), in accordance with the current published international classification of diseases clinical modification coding guidelines, ~~in effect on the date of the client's admission~~;

A final cost-benefit analysis is available by contacting Larry Linn, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1856, fax (360) 753-9152, e-mail linlnd@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 1.

Date Adopted: June 25, 2007.

Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 04-20-058, filed 10/1/04, effective 11/1/04)

WAC 388-550-2900 Payment limits—Inpatient hospital services. (1) To ~~((receive reimbursement))~~ be eligible for payment for covered inpatient hospital services, a hospital must:

(a) Have a core-provider agreement with the department; and

(b) Be an in-state hospital, a bordering city hospital, a critical border hospital, or a distinct unit of such a hospital, that meets the definition in RCW 70.41.020 and is certified under Title XVIII of the federal Social Security Act; or

(c) Be an out-of-state hospital that meets the conditions in WAC 388-550-6700.

(2) The department does not pay:

(a) A hospital or distinct unit for inpatient care and/or services provided to a client when a managed care organization (MCO) plan is contracted to cover those services.

(b) A hospital or distinct unit for care and/or services provided to a client enrolled in the hospice program, unless the care or services are completely unrelated to the terminal illness that qualifies the client for the hospice benefit.

(c) ~~((Hospitals))~~ A hospital or distinct unit for ancillary services in addition to the ~~((diagnosis-related group (DRG) payment))~~;

(i) Diagnosis related group (DRG) payment, or per case rate payment on claims with dates of admission before August 1, 2007; or

(ii) DRG payment, per diem payment, or per case rate payment on claims with dates of admission on and after August 1, 2007.

(d) For additional days of hospitalization on a non-DRG claim when:

(i) Those days exceed the number of days established ~~((at the seventy fifth percentile as published in the "Length of Stay by Diagnosis and Operations, Western Region"))~~ by the department or mental health division (MHD) designee (see WAC 388-550-2600), as the approved length of stay (LOS); and

(ii) The hospital or distinct unit has not requested and/or received approval for an extended length of stay (LOS) from the department or MHD designee as specified in WAC 388-550-4300~~((3))~~(6). The department may perform a prospective, concurrent, or retrospective utilization review as described in WAC 388-550-1700, to evaluate an extended

LOS. A MHD designee may also perform those utilization reviews to evaluate an extended LOS.

(e) For dates of admission before August 1, 2007, for elective or ((nonemergency)) nonemergency inpatient services provided in a nonparticipating hospital. A nonparticipating hospital is defined in WAC 388-550-1050. See also WAC 388-550-4600.

(f) For inpatient hospital services when the department determines that the client's medical record fails to support the medical necessity and inpatient level of care for the inpatient admission. The department may perform a retrospective utilization review as described in WAC 388-550-1700, to evaluate if the services are medically necessary and are provided at the appropriate level of care.

(g) For two separate inpatient hospitalizations if a client is readmitted to the same or different hospital or distinct unit within seven calendar days of discharge, unless the readmission is due to conditions unrelated to the previous admission. The department:

(i) May perform a retrospective utilization review as described in WAC 388-550-1700 to determine the appropriate payment for the readmission.

(ii) Determines if the combined hospital stay for the admission qualifies to be paid as an outlier. See WAC 388-550-3700 for DRG high-cost outliers and per diem high outliers for dates of admission on and after August 1, 2007.

(h) For a client's day(s) of absence from the hospital or distinct unit.

(i) For an inappropriate or nonemergency transfer of a client from one acute care hospital or distinct unit to another. The department may perform a prospective, concurrent, or retrospective utilization review as described in WAC 388-550-1700 to determine if the admission to the second hospital or distinct unit qualifies for payment. See also WAC 388-550-3600 for hospital transfers.

(3) An interim billed inpatient hospital claim submitted for a client's continuous inpatient hospitalization of at least sixty calendar days, is considered for payment by the department only when the following occurs (this does not apply to interim billed hospital claims for which the department is not the primary payer (see (b) of this subsection), or to inpatient psychiatric admissions:

(a) Each interim billed hospital claim must:

(i) Be submitted in sixty calendar day intervals, unless the client is discharged prior to the next sixty calendar day interval.

(ii) Document the entire date span between the client's date of admission and the current date of services billed, and include the following for that date span:

(A) All inpatient hospital services provided; and

(B) All applicable diagnosis codes and procedure codes.

(iii) Be submitted as an adjustment to the previous interim billed hospital claim.

(b) When the department is not the primary payer, the department pays an interim billed hospital claim when the criteria in (a) of this subsection are met and:

(i) After sixty calendar days from the date the department becomes the primary payer; or

(ii) The date a client eligible for both medicare and medicaid has exhausted the medicare lifetime reserve days for inpatient hospital care.

(4) A hospital claim submitted for a client's continuous inpatient hospital admission of sixty calendar days or less is considered for payment by the department upon the client's discharge from the hospital or distinct unit. The department considers a client discharged from the hospital or distinct unit if one of the following occurs. The client:

(a) Obtains a formal release issued by the hospital or distinct unit;

(b) Dies in the hospital or distinct unit;

(c) Transfers from the hospital or distinct unit as an acute care transfer; or

(d) Transfers from the hospital or distinct unit to a designated psychiatric unit or facility, or a designated acute rehabilitation unit or facility.

(5) To be eligible for payment, a hospital or distinct unit must bill an inpatient hospital claim:

(a) In accordance with the current national uniform billing data element specifications:

(i) Developed by the national uniform billing committee;

(ii) Approved and/or modified by the Washington State Payer Group or the department; and

(iii) In effect on the date of the client's admission.

(b) In accordance with the current published international classification of diseases clinical modification coding guidelines;

(c) Subject to the rules in this section and other applicable rules;

(d) In accordance with the department's current published billing instructions and other documents; and

(e) With the date span that covers the client's entire hospitalization. See subsection (3) of this section for when the department considers and pays an initial interim billed hospital claim and/or subsequent interim billed hospital claims; and

(f) That requires an adjustment due to, but not limited to, charges that were not billed on the original paid claim (i.e., late charges), through submission of an adjusted hospital claim. Each adjustment to a paid hospital claim must provide complete documentation for the entire date span between the client's admission date and discharge date, and include the following for that date span:

(i) All inpatient hospital services provided; and

(ii) All applicable diagnosis codes and procedure codes.

(6) The department ((limits payment for private room accommodations to)) allows the semiprivate room rate for a client's room charges, even if a hospital bills the private room rate. Room charges must not exceed the hospital's usual and customary charges to the general public as required by C.F.R. §447.271.

(7) For inpatient hospital claims, the department allows hospitals an all-inclusive administrative date rate, beginning on the client's admission date, for those days of hospital stay in which a client does not meet criteria for acute inpatient level of care, but is not discharged because an appropriate placement outside the hospital is not available.

(8) The department pays for observation services according to WAC 388-550-3000 (2)(b), 388-550-6000 (4)(c) and 388-550-7200 (2)(e) and other applicable rules.

(9) The department determines its actual payment for an inpatient hospital admission by making any required adjustments from the calculations of the allowed covered charges. Adjustments include, but are not limited to, any client responsibility, any third party liability amount, including medicare part A and part B, and any other adjustments as determined by the department.

(10) The department reduces payment rates to hospitals and distinct units for services provided to clients eligible under state-administered programs according to the hospital equivalency factor and/or ratable, or other department policy, as provided in WAC 388-550-4800.

(11) All hospital providers must present final charges to the department within three hundred sixty-five days of the "statement covers period from date" shown on the claim. The state of Washington is not liable for payment based on billed charges received beyond three hundred sixty-five days from the "statement covers period from date" shown on the claim.

AMENDATORY SECTION (Amending WSR 05-11-077, filed 5/17/05, effective 6/17/05)

WAC 388-550-3000 Payment method—DRG. (1) The ~~((medical assistance administration (MAA)))~~ department uses the diagnosis-related group (DRG) payment method to ~~((reimburse))~~ pay for covered inpatient hospital services, except as specified in WAC 388-550-4300 and 388-550-4400.

(2) ~~((MAA))~~ The department uses the all-patient grouper (AP-DRG) to assign a DRG to each inpatient hospital stay. ~~((MAA))~~ The department periodically evaluates which version of the AP-DRG to use.

(3) A DRG payment includes all covered hospital services provided to a client during days the client is eligible, but is not limited to:

(a) ~~((All covered hospital services provided to a client during the client's))~~ An inpatient hospital stay.

(b) Outpatient hospital services, including preadmission, emergency room, and observation services related to an inpatient hospital ~~((admission))~~ stay and provided within one calendar day of a client's inpatient hospital ~~((admission))~~ stay. These outpatient services must be billed on the inpatient hospital claim (see WAC 388-550-6000 (3)(c)).

(c) Any specific service(s), treatment(s), or procedure(s) (such as renal dialysis services) that the admitting hospital is unable to provide and:

(i) The admitting hospital sends the client to another facility or provider for the service(s), treatment(s), or procedure(s) during the client's inpatient hospital stay; and

(ii) The client returns as an inpatient to the admitting hospital.

(d) All transportation costs for an inpatient client when the client requires transportation to another facility or provider for a specific service(s), treatment(s), or procedure(s) that the admitting hospital is unable to provide and:

(i) The admitting hospital sends the client to another facility or provider for the service(s), treatment(s), or procedure(s); and

(ii) The client returns as an inpatient to the admitting hospital.

(4) ~~((MAA's))~~ The department's allowed amount for the DRG payment is determined by multiplying the assigned DRG's relative weight, as determined in WAC 388-550-3100, by the hospital's conversion factor. The total allowed amount also includes any high outlier amount calculated for claims. See WAC 388-550-3450 and 388-550-4600(4).

(5) ~~((MAA's))~~ The department's DRG payment((s)) to a hospital((s)) may be adjusted when one or more of the following occur:

(a) For dates of admission before August 1, 2007, a claim qualifies as a DRG high-cost or low-cost outlier, and for dates of admission on and after August 1, 2007, a claim qualifies as a DRG high outlier (see WAC 388-550-3700);

(b) A client transfers from one acute care hospital or distinct unit to another acute care hospital or distinct unit (see WAC 388-550-3600);

(c) A client is not eligible for a medical assistance program on one or more of the days of the hospital stay;

(d) A client has third party liability coverage at the time of admission to the hospital or distinct unit;

(e) A client is eligible for Part B medicare and medicare has made a payment for the Part B hospital charges; or

~~((e))~~ (f) A client is discharged from an inpatient hospital stay and, within seven calendar days, is readmitted as an inpatient ((within seven days)) to the same hospital. ((MAA)) The department or its designee performs a retrospective utilization review (see WAC 388-550-1700 (((3)(b)(iii)))) on the initial admission and the readmission(s) to determine which inpatient hospital stay(s) qualify for DRG payment. Upon the department's retrospective review, an outlier payment may be made if the department determines the claim for combined hospital stays qualifies as a high-cost outlier or high outlier. See WAC 388-550-3700 for DRG high-cost outliers and high outliers.

(6) The department does not pay for a client's day(s) of absence from the hospital.

(7) The department pays an interim billed hospital claim or covered inpatient hospital services provided to an eligible client only when the interim billed claim meets the criteria in WAC 388-550-2900.

(8) The department applies all applicable claim payment adjustments for client responsibility, third party liability, medicare, etc., to the payment.

AMENDATORY SECTION (Amending WSR 98-01-124, filed 12/18/97, effective 1/18/98)

WAC 388-550-3200 Medicaid cost proxies. (1) For cases in which a hospital has medicaid and SCHIP charges (claims) for certain accommodation or ancillary cost centers which are not separately reported on its medicare cost report, the department ~~((shall))~~ establishes cost proxies to estimate ~~((such))~~ costs in order to ensure recognition of medicaid related costs.

(2) For the inpatient payment system effective for dates of admission before August 1, 2007, the department ((shall)) develops per diem proxies for accommodation cost centers using the median value of the hospital's per diem cost data within the affected hospital peer group.

(3) For the inpatient payment system effective for dates of admission before August 1, 2007, the department ((shall)) also develops ratio of cost-to-charge (RCC) proxies for ancillary cost centers using the median value of the hospital's RCC data within the affected hospital peer group.

(4) For the inpatient payment system effective for dates of admission on and after August 1, 2007, the department:

(a) Develops per diem proxies for accommodation cost centers using the hospital's per diem cost data within the affected same type of services; and

(b) Develops ratios of costs-to-charges (RCC) proxies for ancillary cost centers based on the hospital's aggregate ancillary costs to aggregate ancillary charges.

AMENDATORY SECTION (Amending WSR 06-08-046, filed 3/30/06, effective 4/30/06)

WAC 388-550-3300 Hospital peer groups and cost caps. (1) For rate-setting purposes ((the department groups hospitals into peer groups and establishes cost caps for each peer group. The department sets hospital reimbursement rates at levels that recognize the costs of reasonable, efficient, and effective providers)), the department groups hospitals into peer groups.

(2) The six hospital peer groups are:

(a) Group A, rural hospitals;

(b) Group B, urban hospitals without medical education programs;

(c) Group C, urban hospitals with medical education program;

(d) Group D, specialty hospitals or other hospitals not easily assignable to the other five groups;

(e) Group E, public hospitals participating in the "full cost" public hospital certified public expenditure (CPE) program; and

(f) Group F, ((critical access)) hospitals approved by the department of health (DOH) as critical access hospitals.

(3) For dates of admission before August 1, 2007, the department uses a cost cap at the seventieth percentile for hospitals in peer groups B and C for cost based conversion rate setting. All other peer groups are exempt from the cost caps for the following reasons:

(a) Peer group A hospitals because they are paid under the ratio of costs-to-charges (RCC) methodology for Medicaid claims.

(b) Peer group D hospitals because they are specialty hospitals without a common peer group on which to base comparisons.

(c) Peer group E hospitals because they are paid under the "full cost" public hospital certified public expenditure (CPE) program RCC methodology for inpatient claims.

(d) Peer group F hospitals because they are paid under the departmental weighted costs-to-charges (DWCC) methodology for ((Medicaid)) most hospital claims. See WAC 388-550-2598(14) for the payment methods for inpatient

detoxification unit, distinct psychiatric unit, and distinct rehabilitation unit claims.

(4) For dates of admission before August 1, 2007, the department calculates cost caps for peer groups B and C for cost based conversion rate setting based on the hospitals' base period costs after subtracting:

(a) Indirect medical education costs, in accordance with WAC 388-550-3250(2), from the aggregate operating and capital costs of each hospital in the peer group; and

(b) The cost of outlier cases from the aggregate costs in accordance with WAC 388-550-3350(1).

(5) For dates of admission before August 1, 2007, the department uses the lesser of each individual hospital's calculated aggregate cost or the peer group's seventieth percentile cost cap as the base amount in calculating the individual hospital's adjusted cost-based conversion factor. After the peer group cost cap is calculated, the department adds back to the individual hospital's base amount its indirect medical education costs and appropriate outlier costs, as determined in WAC 388-550-3350(2).

(6) For dates of admission before August 1, 2007, in cases where corrections or changes in an individual hospital's base-year cost or peer group assignment occur after peer group cost caps are calculated, the department updates the peer group cost caps involved only if the change in the individual hospital's base-year costs or peer group assignment will result in a five percent or greater change in the seventieth percentile of costs calculated for either its previous peer group category, its new peer group category, or both.

(7) For dates of admission on and after August 1, 2007, the department continues to use the hospital peer groups in subsection (2) of this section to determine some rate setting and payment methods.

AMENDATORY SECTION (Amending WSR 98-01-124, filed 12/18/97, effective 1/18/98)

WAC 388-550-3350 Outlier costs. (1) The information and processes described in subsections (1) through (5) of this section are applicable for claims with dates of admission before August 1, 2007.

(a) The department ((shall)) removes the cost of low- and high-cost outlier cases from individual hospitals' aggregate costs before calculating the peer group cost cap.

(b) After this initial step, all subsequent calculations involving outliers in subsections (2) through (5) of this section pertain only to high-cost outliers.

(c) For a definition of outliers see WAC 388-550-1050((Definitions)).

(2) After an individual hospital's base period costs and its peer group cost cap are determined, the department ((shall)) add the individual hospital's indirect medical education costs and an outlier cost adjustment back to:

(a) The lesser of the hospital's calculated aggregate cost; or

(b) The peer group's seventieth percentile cost cap.

(3) The outlier cost adjustment is determined as follows to reduce the original high-cost outlier amount in proportion to the reduction in the hospital's base period costs as a result of the capping process:

(a) If the individual hospital's aggregate operating, capital, and direct medical education costs for the base period are less than the seventieth percentile costs for the peer group, the entire high-cost outlier amount is added back.

(b) A reduced high-cost outlier amount is added back if:

(i) The individual hospital's aggregate base period costs are higher than the seventieth percentile for the peer group; and

(ii) The hospital is capped at the seventieth percentile.

(iii) The amount of the outlier added back is determined by multiplying the original high-cost outlier amount by the percentage obtained when the hospital's final cost cap, which is the peer group's seventieth percentile cost, is divided by its uncapped base period costs, as determined in WAC 388-550-3300(4).

(4) The department ~~((shall))~~ pays high-cost outlier claims from the outlier set-aside pool. The department ~~((shall))~~ calculates an individual hospital's high-cost outlier set-aside as follows:

(a) For each hospital, the department extracts utilization and paid claims data from the Medicaid Management Information System (MMIS) for the most recent twelve-month period for which the department estimates the MMIS has complete payment information.

(b) Using the data in (a) of this subsection, the department determines the projected annual amount above the high-cost diagnosis related group (DRG) outlier threshold that the department paid to each hospital.

(c) The department's projected high-cost outlier payment to the hospital determined in (b) of this subsection is divided by the department's total projected annual DRG payments to the hospital to arrive at a hospital-specific high-cost outlier percentage. This percentage becomes the hospital's outlier set-aside factor.

(5) The department ~~((shall))~~ uses the individual hospital's outlier set-aside factor to reduce the hospital's CCBF by an amount that goes into a set-aside pool to pay for all high-cost outlier cases during the year. The department ~~((shall))~~ funds the outlier set-aside pool on hospitals' prior high-cost outlier experience. No cost settlements ~~((shall))~~ will be made to hospitals for outlier cases.

(6) For dates of admission on and after August 1, 2007, the department includes statistical outlier claims for calculation of the conversion factors, per diem rates, and per case rates, and does not establish an outlier set-aside pool. The department does not include statistical outlier claims for calibration of DRG relative weights.

AMENDATORY SECTION (Amending WSR 03-06-047, filed 2/28/03, effective 3/31/03)

WAC 388-550-3381 Payment methodology for acute PM&R services and administrative day services. The ~~((medical assistance administration's (MAA's)))~~ department's payment methodology for acute PM&R services provided by ~~((hospital-based))~~ acute PM&R ~~((facilities))~~ hospitals is described in this section.

(1) ~~((MAA))~~ For dates of admission before August 1, 2007, the department pays an acute PM&R rehabilitation ((facility)) hospital according to the individual hospital's cur-

rent ratio of costs-to-charges as described in WAC 388-550-4500((Payment method—RCC)). For dates of admission on and after August 1, 2007, the department pays an acute PM&R hospital for acute PM&R services based on a rehabilitation per diem rate. See WAC 388-550-3010 and 388-550-3460.

(2) Acute PM&R room and board includes, but is not limited to:

(a) Facility use;

(b) Medical social services;

(c) Bed and standard room furnishings; and

(d) Dietary and nursing services.

(3) When ~~((MAA))~~ the department authorizes administrative day(s) for a client as described in WAC 388-550-2561(8), ~~((MAA reimburses))~~ the department pays the facility:

(a) The administrative day rate; and

(b) For pharmaceuticals prescribed in the client's use during the administrative portion of the client's stay.

(4) The department pays for transportation services provided to a client receiving acute PM&R services in an acute PM&R hospital~~((-based facility))~~ according to chapter 388-546 WAC.

AMENDATORY SECTION (Amending WSR 98-01-124, filed 12/18/97, effective 1/18/98)

WAC 388-550-3400 Case-mix index. (1)~~((a))~~ The department ~~((shall))~~:

(a) Adjusts hospital costs ((for case mix under the diagnosis related group (DRG) payment systems)) used to calculate the conversion factor and per diem rates during the rebasing process by the hospital's case-mix index; and

(b) ((The department shall)) Calculates ((a)) the case-mix index (CMI) for each individual hospital to measure the relative cost for treating medicaid and SCHIP cases in a given hospital.

(2) The department ~~((shall))~~ calculates the CMI for each hospital using medicaid and SCHIP admissions data from the individual hospital and the hospital's base period cost report~~((-as described in))~~. See WAC 388-550-3150. The CMI is calculated for each hospital by summing all relative weights for all claims in the dataset, and dividing the sum of the relative weights by the number of claims. That amount represents the relative acuity of the claims. The hospital-specific CMI is calculated as follows:

(a) The department ~~((shall multiply))~~ multiplies the number of medicaid and SCHIP admissions to the hospital for a specific DRG classification by the relative weight for that DRG classification. The department ~~((shall))~~ repeats this process for each DRG billed by the hospital.

(b) The department ~~((shall))~~ adds together the products in (a) of this subsection for all of the medicaid and SCHIP admissions to the hospital in the base year.

(c) The department ~~((shall))~~ divides the sum obtained in (b) of this subsection by the corresponding number of medicaid and SCHIP hospital admissions.

(d) Example: If the average case mix index for a group of hospitals is 1.0, a CMI of 1.0 or greater for a hospital in that group means that the hospital has treated a mix of

patients in the more costly DRG((s)) classifications. A CMI of less than 1.0 indicates a mix of patients in the less costly DRG((s)) classifications.

(3) The department (~~shall~~) recalculates each hospital's case-mix index periodically, but no less frequently than each time rebasing is done.

AMENDATORY SECTION (Amending WSR 99-14-027, filed 6/28/99, effective 7/1/99)

WAC 388-550-3500 Hospital annual inflation adjustment determinations. ~~(1) Effective (on November 1 of) each state fiscal year, ((MAA)) except rebase implementation years, the department may adjust all cost-based conversion factors (CBCF), per diem rates, and per case rates, by an inflation factor (vendor rate increase), as determined by the state legislature and ((as addressed in subsequent budget notes)) supported in the state's budget. ((MAA)) The department does not automatically give an inflation increase to negotiated conversion factors for contracted hospitals participating in the hospital selective contracting program.~~

~~(2) For dates of admission on and after August 1, 2007, except for rebase implementation years, the department makes adjustments to the hospital's DRG conversion factors, per diem rates, and per case rates, by an inflation factor (vendor rate increase), as authorized and determined by the legislature and supported in the state's budget.~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-550-2000 Medical criteria—Transplant services.

WSR 07-14-056

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed June 28, 2007, 4:17 p.m., effective July 29, 2007]

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

Purpose: The department is adopting amendments to chapter 16-54 WAC in order to reorganize the information and present it in a more clear and concise manner, to update requirements for bringing animals into the state in order to help prevent the entry and spread of infectious and contagious animal diseases, and to correct outdated information.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-54-018, 16-54-020, 16-54-035, 16-54-040, 16-54-050, 16-54-120, 16-54-125, 16-54-135 and 16-54-155; and amending WAC 16-54-010, 16-54-030, 16-54-060, 16-54-071, 16-54-082, 16-54-090, 16-54-101, 16-54-111, and 16-54-145.

Statutory Authority for Adoption: Chapter 16.36 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 07-03-173 on January 24, 2007; WSR 07-08-004 on March 21, 2007; WSR 07-

09-010 on April 6, 2007; and WSR 07-10-088 on May 1, 2007.

Changes Other than Editing from Proposed to Adopted Version: The department has removed references to "zones" from WAC 16-54-010 and 16-54-085, and has removed "cats" from WAC 16-54-170(7).

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 12, Amended 9, Repealed 9.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 12, Amended 9, Repealed 9.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 12, Amended 9, Repealed 9.

Date Adopted: June 28, 2007.

Robert W. Gore
for Valoria H. Loveland
Director

AMENDATORY SECTION (Amending WSR 99-09-023, filed 4/15/99, effective 5/16/99)

WAC 16-54-010 Definitions. ~~((For purposes of this chapter:~~

~~(1) "Director" means the director of agriculture of the state of Washington or his duly authorized representative.~~

~~(2) "Breeding cattle" shall be those females and bulls not consigned to a federally inspected slaughter establishment, a restricted feedlot, or other authorized slaughter-only channel.~~

~~(3) "Official brucellosis test" means blood samples are to be tested only by cooperating state federal laboratories or by such persons as may be authorized by state of origin animal health officials to conduct the standard agglutination tests or the card test. All samples initially tested at other than cooperating state federal laboratories shall be promptly submitted and confirmed at the cooperating state federal laboratory.~~

~~(4) "Official brucellosis vaccine" means a female bovine animal vaccinated between the ages of four and twelve months (one hundred twenty days to three hundred sixty five days) with an approved brucella vaccine such as strain 19 vaccine or RB-51 vaccine or any other legal brucellosis vaccination administered in accordance with the laws and regulations of a state or country.~~

~~(5) "Class free and Class A, B, and C states" means states as classified by the current federal brucellosis eradication uniform methods and rules.~~

~~(6) "Stage I, II, III, IV, or V Pseudorabies state" means states as classified by the current federal pseudorabies eradication Uniform Methods and Rules.~~

~~(7) "Official health certificate" means a legible certificate of veterinary inspection executed on an official form of the state of origin or of the Animal and Plant Inspection Ser-~~

vice (APHIS), United States Department of Agriculture (USDA), by a licensed and accredited veterinarian or a veterinarian approved by the proper official of APHIS, USDA.

(8) "Animal" means any animal species except fish and insects.

(9) "Domestic animal" means any farm animal raised for the production of food and fiber or companion animal or both.

(10) "Farm animal" means any species which have normally and historically been kept and raised on farms in Washington, the United States, or elsewhere or used or intended for use as food, fiber, breeding, or draft and which may be legally kept for such use in Washington and are not those animals classified as wildlife or deleterious exotic wildlife under Title 77 RCW.) In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Accredited free state" means a state that has been determined by United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) to have a zero prevalence of cattle and bison herds affected with bovine tuberculosis as listed in Title 9 CFR Part 77.79 (January 1, 2006).

"Approved veterinary laboratory" means a laboratory that has been approved by National Veterinary Services Laboratories.

"Certificate of veterinary inspection" means a legible veterinary health inspection certificate on an official form (electronic or paper) from the state of origin or from APHIS, USDA executed by a licensed and accredited veterinarian or a veterinarian approved by APHIS, USDA. The certificate of veterinary inspection is also known as an "official health certificate."

"Class free and Class A, B, and C states" means states that are classified for brucellosis by USDA, APHIS in Title 9 CFR Part 78.41 (January 1, 2006).

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of WSDA or the director's authorized representative.

"Domestic bovine" means domesticated cattle, including bison.

"Domestic equine" means horses, donkeys, mules, ponies, and other animals in the *Equidae* family.

"Entry permit" means prior written permission issued by the director to admit or import animals or animal reproductive products into Washington state.

"Exotic animal" means species of animals that are not native to Washington state but exist elsewhere in the world in the wild state.

"Immediate slaughter" means livestock will be delivered to a federally inspected slaughter plant within three days of entry into Washington state.

"Mature vaccinate" means a female bovine over the age of twelve months that has been vaccinated, under directions issued by the state of origin, with a mature dose of brucellosis vaccine.

"Modified accredited state" means a state that has been determined by USDA, APHIS to have a prevalence of bovine tuberculosis of less than 0.1 percent of the total number of

herds of cattle and bison as listed in Title 9 CFR Part 77.11 (January 1, 2006).

"Movement permit" means an entry permit that is valid for six months and permits the entry of domestic equine into Washington state.

"NPIP" means the National Poultry Improvement Plan.

"Official brucellosis test" means the official test defined by Title 9 CFR Part 78.1 (January 1, 2006).

"Official brucellosis vaccinate" means an official adult vaccinate or official calfhood vaccinate as defined by Title 9 CFR Part 78.1 (January 1, 2006).

"Poultry" means chickens, turkeys, ratites, waterfowl, game birds, pigeons, doves, and other domestic fowl designated by statute. Poultry does not mean free ranging birds defined as wildlife in RCW 77.08.010(16).

"Restricted feedlot" means a feedlot holding a permit issued under chapter 16-30 WAC.

"Stage I, II, III, IV, or V Pseudorabies state" means states as classified by the Pseudorabies Eradication State - Federal - Industry Program Standards (November 1, 2003).

"USDA, APHIS" means the United States Department of Agriculture Animal and Plant Health Inspection Service.

"Wild animals" is defined in RCW 77.08.010(17).

GENERAL IMPORTATION REQUIREMENTS

NEW SECTION

WAC 16-54-025 Transporting livestock—Sanitary requirements. All trucks, railway cars, and other conveyances used for the transportation of livestock must be maintained in a sanitary condition and cleaned and disinfected when required by the director in order to prevent the spread of disease.

NEW SECTION

WAC 16-54-028 Testing procedure requirements. (1) An accredited veterinarian or a veterinary technician under the direct supervision of an accredited veterinarian must collect and submit all test specimens.

(2) All livestock regulatory tests must be performed by a laboratory approved by the National Veterinary Services Laboratories.

(a) Official tuberculosis tests must be conducted by a licensed accredited veterinarian.

(b) Technicians employed and approved by state, federal, or tribal government and directly or indirectly supervised by state, federal, or tribal animal health veterinarians may conduct routine surveillance tests.

AMENDATORY SECTION (Amending WSR 99-09-023, filed 4/15/99, effective 5/16/99)

WAC 16-54-030 ((Health)) Certificate of veterinary inspection, and entry permit requirements. ~~((1))~~ All animals entering Washington shall be accompanied by an official health certificate except:

~~(a) Dogs and cats originating in Washington and visiting Canada for thirty days or less.~~

~~(b) Dogs, cats and ferrets that are family pets traveling by private automobile with their owners who possess a current rabies certificate for the animals. This exemption does not apply to dogs, cats or ferrets imported for sale or puppies, kittens, or kits too young to vaccinate.~~

~~(c) Horses traveling into Washington with their Oregon or Idaho owners in personal vehicles for round trip visits of not more than ninety-six hours duration. This exemption does not apply during emergency disease conditions declared by the state veterinarian or extend to any required testing.~~

~~(d) Llamas and alpacas traveling into Washington with their Oregon or Idaho owners in personal vehicles for round trip visits of not more than ninety-six hours duration. This exemption does not apply during emergency disease conditions declared by the state veterinarian.~~

~~(e) Sheep traveling into Washington with their Oregon or Idaho owners in personal vehicles for round trip visits of not more than ninety-six hours duration. This exemption does not apply during emergency disease conditions declared by the state veterinarian or extend to any animals entering for breeding purposes.~~

~~(f) Those classes of animals specifically exempted in laws or regulations of this state.~~

~~(2) Official health certificate shall contain the following information:~~

~~(a) Date of inspection. All health certificates void after thirty days, except breeding cattle forty-five days from date of issue. The director may give special exemption for show animals.~~

~~(b) Names and addresses of the consignor and consignee.~~

~~(c) Certification that the animals are apparently free from evidence of infectious and communicable disease.~~

~~(d) Test or vaccination status when required.~~

~~(e) Description of each animal to include species, breed, age, sex, tag or tattoo and for cattle, only an official ear tag will be accepted or if registered, the registry name, number and tattoo for individual identification except one brand or other owner identified animals, all of the same description, for which tests are not required.~~

~~(f) Certification of disinfection of ears and trucks when required.~~

~~(g) An owner/agent statement which says "the animals in this shipment are those certified to and listed on this certificate" and is signed and dated by the owner, agent, or veterinarian.~~

~~(3) All health certificates shall be reviewed by the livestock sanitary official of the state of origin and a copy shall be forwarded immediately to the department of agriculture, Olympia, Washington.))~~

(1) Certificate of veterinary inspection:

(a) A certificate of veterinary inspection must accompany all animals entering Washington state, except where specifically exempted in this chapter.

(b) The certificate of veterinary inspection must show that all livestock listed have been examined and found in compliance with vaccination, testing, and Washington animal identification requirements found in chapter 16-610 WAC.

(c) Any exemption to the requirement for a certificate of veterinary inspection may be suspended during an emergency disease condition declared by the director.

(2) Entry permit: An entry permit is required on:

(a) All domestic bovine (including Mexican cattle, Canadian cattle, and bison);

(b) Swine;

(c) Rams;

(d) Equine identified on a certificate similar to the Washington Equine Certificate of Veterinary Inspection and Movement Permit (form AGR-3027);

(e) Equine from states or countries where the diseases listed in WAC 16-54-071 have been diagnosed;

(f) Intact male equine that test positive to equine viral arteritis; and

(g) Equine reproductive products from donors that test positive to equine viral arteritis.

(3) Entry permits are granted at the discretion of the director and may be obtained from:

Washington State Department of Agriculture

Animal Services Division

1111 Washington Street S.E.

P.O. Box 42577

Olympia, Washington 98504-2577

360-902-1878.

NEW SECTION

WAC 16-54-032 Certificate of veterinary inspection—Required information. (1) A certificate of veterinary inspection must contain the following information:

(a) An entry permit, when required;

(b) Date of inspection;

(c) Names and addresses of the consignor and consignee;

(d) Shipment information, including:

(i) Origin of shipment;

(ii) Anticipated shipment date; and

(iii) Number of animals in the shipment;

(e) Certification that the animals are free from clinical signs or known exposure to any infectious or communicable disease;

(f) Test or vaccination status, when required;

(g) Description of each animal by:

(i) Identifying species;

(ii) Breed;

(iii) Age;

(iv) Sex of the animal;

(v) Color; and

(vi) Tag, tattoo, microchip, USDA-approved RFID (radio frequency identification device) ear tag, or other official method of identification, including ownership brands.

(2) All certificates of veterinary inspection must be reviewed by the animal health official of the state of origin and a copy must be immediately forwarded to:

Washington State Department of Agriculture

Animal Services Division

1111 Washington Street S.E.

P.O. Box 42577

Olympia, Washington 98504-2577.

AMENDATORY SECTION (Amending Order 1172, filed 12/15/70)

WAC 16-54-060 Quarantine. ~~((Domestic animals entering the state without proper health certificate or official permission, or not meeting the health requirements of the state of Washington, shall be held in quarantine at the owner's expense and be subject to any required tests, inspection, vaccination at owner's expense until released from quarantine by the director.))~~ Any animal entering Washington state without a required certificate of veterinary inspection, or required entry permit, or that does not meet the requirements of this chapter shall be quarantined at the owner's expense and subject to any required test, inspection, or vaccination at the owner's expense until released from quarantine by the director.

IMPORTATION RESTRICTIONS

NEW SECTION

WAC 16-54-065 Prohibited entries. (1) Any animal that is infected with or exposed to any infectious or communicable disease is prohibited from entering Washington state.

(2) Livestock susceptible to vesicular stomatitis that have been located within the past thirty days within ten miles of any premises under quarantine for vesicular stomatitis are prohibited from entering Washington state.

(3) The following animals are prohibited from entering Washington state for any purpose:

- (a) Cattle originating from Mexican dairies;
- (b) Feral swine;
- (c) Domestic swine from herds where brucellosis is known to exist;
- (d) Deleterious exotic wildlife, as defined by RCW 77.08.010 and designated at WAC 232-12-017, except as provided in WAC 232-12-017.

(4) The Washington state department of health under WAC 246-100-191 (Animals, birds, pets—Measures to prevent human disease) prohibits certain animals including bats, skunks, foxes, raccoons, and coyotes from being imported into Washington state except for exhibition by bona fide public or private zoological parks.

(5) Entry permits allowing bona fide public or private zoological parks to import bats, skunks, foxes, raccoons, and coyotes may be issued by the director in consultation with the secretary of the Washington state department of health.

Exemptions:

(6) Infected or exposed animals destined for immediate slaughter, or with an entry permit to a research facility, or with an entry permit to a veterinary facility for treatment may enter at the discretion of the director.

NEW SECTION

WAC 16-54-068 Restrictions. (1) It is a violation to import animals into Washington state that do not comply with the requirements of this chapter or any other Washington state regulation relating to animal health and care, or to the importation and movement of poultry, hatching eggs, and wildlife.

(2) All animals entering Washington state must comply with the requirements of USDA, APHIS regulations found at Title 9 CFR for movement or importation from foreign countries.

(3)(a) Livestock entering Washington state from a state where a reportable disease listed in WAC 16-70-010 has been diagnosed within the past thirty days must be accompanied by a valid entry permit and a certificate of veterinary inspection.

(b) The certificate of veterinary inspection shall also include written verification that the animals have not been exposed to any reportable disease nor located within ten miles of an area where such a disease has been diagnosed.

(c) In the case of a state where vesicular stomatitis has been diagnosed, the certificate of veterinary inspection must be issued within twenty-four hours of shipment to Washington state and must contain:

(i) The temperature reading of each animal at the time of inspection; and

(ii) The following statement written by an accredited veterinarian:

"All animals identified on this certificate have been examined and found to be free from clinical signs of vesicular stomatitis. During the past thirty days, these animals have not been exposed to vesicular stomatitis or located within ten miles of an area where vesicular stomatitis has been diagnosed."

(d) Cattle entering Washington state from a state or a foreign state or province where vesicular stomatitis has been diagnosed must be held at their destination separate and apart from all other cattle for a period of seven days and reexamined by an accredited veterinarian at the end of that period.

(4) Dogs, cats, and ferrets must be accompanied by an entry permit and proof of current rabies vaccination if they originate from a rabies quarantined area or an area where the state or country of origin has designated terrestrial rabies as endemic.

HORSES, DONKEYS, MULES AND OTHER DOMESTIC EQUINE AND EQUINE REPRODUCTIVE PRODUCTS

AMENDATORY SECTION (Amending WSR 99-09-023, filed 4/15/99, effective 5/16/99)

WAC 16-54-071 Domestic equine and equine reproductive products—Importation requirements. ~~((+)) Domestic equine animals shall be accompanied by an official health certificate stating that they are free from clinical symptoms of infectious and communicable disease. All equine over six months of age must have a record of a negative test for the diagnosis of equine infectious anemia made within six months prior to entry. Horses moving to Washington from Oregon or Idaho may be excluded from test requirements when reciprocal.~~

(2) ~~Breeding stallions or their semen shall be tested negative for equine viral arteritis (EVA) within ninety days of import. Positive stallions or semen may be imported with a certifying statement on the health certificate that the consignee has been advised and consents to the shipment. All~~

positive stallions or semen entering Washington shall be moved on a permit issued by the office of the state veterinarian and may be subject to quarantine.

(3) Washington horses may reenter Washington when returning from shows, rides or other events from states that will accept travel to that state with a current "equine certificate of veterinary inspection and interstate movement permit" without additional animal health certifications. Within fourteen days of the return to Washington an "itinerary of interstate travel" must be filed with the state veterinarian's office. Likewise horses from the western state of Oregon, California, Idaho, Nevada, Utah, Arizona, Montana, Wyoming, Colorado, or New Mexico may enter the state of Washington for shows, rides or other events and return with documents similar to the above named documents under a state system of equine health certification acceptable to the Washington state veterinarian and the state origin by written agreement. In any case, travel under this alternative to normal thirty-day health certification will be limited to not more than ninety days duration for any one excursion and the movement permit shall expire in six months from the date of the certificate.) **Import health requirements.**

(1)(a) In addition to the other requirements of this chapter, all horses, donkeys, mules, and other domestic equine and equine reproductive products entering Washington state must be accompanied by a certificate of veterinary inspection.

(b) Equine vaccinated against equine viral arteritis (EVA) must be accompanied by a vaccination certificate.

(c) Reproductive products from donors that test positive for EVA must be accompanied by an application and entry permit.

(d) Domestic equine from the western states of Oregon, Idaho, California, Nevada, Utah, Arizona, Montana, Wyoming, Colorado, and New Mexico may enter Washington state for shows, rides, or other events either with a certificate of veterinary inspection or with a document similar to the Equine Certificate of Veterinary Inspection and Movement Permit. Individual trips cannot exceed ninety days.

(e) An itinerary of interstate travel must be filed with the department within fourteen days of the expiration of the movement permit.

(2) All certificates and forms may be obtained from and sent to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577

Exemptions to import health requirements.

(3) Horses traveling into Washington state with their Oregon or Idaho owners in private conveyance for round-trip visits of not more than four days duration for purposes other than breeding are exempt from the certificate of veterinary inspection.

Import test requirements.

Equine infectious anemia (EIA).

(4) All domestic equine, except foals under six months of age accompanying their negative tested dams, must have a

negative test for equine infectious anemia (EIA) within six months before entering Washington state.

Exemptions to EIA test requirements.

(5) Domestic equine moving to Washington from Oregon are excluded from EIA test requirements.

Equine viral arteritis (EVA).

(6) Intact males over six months of age must test antibody negative for EVA within thirty days before entry into Washington state or have proof of vaccination.

(7) Vaccinated equine that test antibody positive for EVA must be accompanied by a certificate of veterinary inspection that provides proof of:

(a) A prevaccination negative antibody blood test;

(b) Vaccination within ten days of the prevaccination blood test; and

(c) Approved method of animal identification. Approved methods of identification are:

(i) Photograph or clearly drawn picture of the animal (both sides and front);

(ii) Brand (hot iron or freeze brand);

(iii) Microchip; and/or

(iv) Lip tattoo.

(8) Intact males over six months of age and equine reproductive products from donors that test positive for EVA may enter Washington state only if accompanied by an entry permit and a statement on the certificate of veterinary inspection verifying that the consignee:

(a) Has been advised of the positive antibody test results and the associated risks of EVA infection;

(b) Agrees to follow the recommendations of the Office International des Epizooties of the World Organization of Animal Health regarding EVA and USDA recommendations found in the Equine Viral Arteritis Uniform Methods and Rules, effective April 19, 2004; and

(c) Consents to the shipment.

(9) Intact males that test antibody positive for EVA are required to have an entry permit and may be subject to quarantine.

(10) Equine semen and embryos must originate from donors that have proof of vaccination or a negative antibody test for EVA during the current breeding season.

(11) Equine semen and embryos from antibody positive donors must be used or implanted only in vaccinated or seropositive mares. These mares must be isolated for twenty-one days following insemination or implantation.

(12) Additional testing for EVA may be required during emergency disease conditions declared by the director.

Piroplasmosis.

(13) Any equine that has ever tested positive for piroplasmosis may not enter Washington state.

(14) Any equine that has originated from a country or state where piroplasmosis is endemic must be negative to a C-ELISA test within thirty days before entry into Washington state, and must be quarantined upon arrival and retested within sixty to ninety days. Horses that test positive on the post-arrival C-ELISA test are not permitted to remain in the state and must be removed.

CATTLE, BISON, AND OTHER DOMESTIC BOVINE

AMENDATORY SECTION (Amending WSR 05-14-019, filed 6/24/05, effective 7/25/05)

WAC 16-54-082 Domestic bovine animals—Importation requirements. ((All domestic bovine animals (including bison) entering Washington shall be moved on a permit issued by the office of the state veterinarian. All domestic bovine animals (including bison) shall meet the following requirements:

(1) ~~Tuberculosis.~~ All beef and dairy cattle must originate from herds not under quarantine in a not less than modified accredited area. The state veterinarian may require a negative tuberculosis test within thirty days of import for cattle (including bison) from the states classified as modified accredited or accredited free if *Mycobacterium bovis* (*M. bovis*) has been cultured from a herd in that state within the previous twelve months. All Mexican cattle imported from Mexico within three years of date of importation to Washington must show proof of a tuberculosis retest at least one hundred twenty days after import to the United States. Such cattle without proof of retest must be held on the premises of destination under Hold Order/Quarantine in Washington and kept separate from all other cattle for not less than one hundred twenty nor more than one hundred eighty days from the date of entry and retested for tuberculosis during the one hundred twenty to one hundred eighty day period.

All dairy cows and bulls six months of age or older must test negative for bovine tuberculosis within sixty days prior to entering Washington. These dairy cattle must be identified with a USDA silver identification ear tag or a RFID (Radio Frequency Identification) tag. Dairy heifers and bull calves under six months of age entering Washington must obtain a permit and upon entry will be issued a hold order/quarantine requiring the animals to proceed directly to a premise or designated facility and to be held separate from all other cattle until they test negative for bovine tuberculosis after six months of age. Dairy heifers and bull calves under six months of age must be identified with a USDA silver identification ear tag or a RFID (Radio Frequency Identification) tag. Dairy cattle that originate in an accredited tuberculosis free herd as defined by USDA in 9 CFR Chapter 1, Part 77 (January 1, 2005) and for which both an accredited herd number and date of last tuberculosis test are shown on the official interstate health certificate or certificate of veterinary inspection, dairy steers and spayed heifers being imported to restricted feedlots to be fed for slaughter, dairy cattle consigned to federally inspected slaughter plants for immediate slaughter, and dairy cattle consigned to a state federally approved livestock market to be sold directly to slaughter only are exempt from bovine tuberculosis testing under this section.

(2) ~~Brucellosis health certificate requirements.~~ All domestic bovine animals (including bison), except those consigned to restricted feedlots, to federally inspected slaughter plants for immediate slaughter, or beef breed cattle, slaughter only dairy breed cattle, or dairy breed cattle from Oregon, Montana, and Idaho consigned to a state federal approved livestock market, shall be accompanied by an official inter-

state health certificate and shall meet the following requirements:

(a) ~~Brucellosis test.~~

(i) ~~Cattle from class free and A states.~~

(A) ~~Sexually intact heifers from brucellosis quarantined herds in class free and A states shall not be imported into the state of Washington except for immediate slaughter at a federally inspected slaughter plant.~~

(B) ~~Cattle other than those referred to in (a)(i)(A) of this subsection from class free or A states which are test eligible, unless destined for a restricted feedlot or for immediate slaughter at a federally inspected slaughter establishment, must be negative to an official brucellosis test conducted within thirty days prior to date of entry. Cattle not considered test eligible include:~~

(I) ~~Calves under six months of age.~~

(II) ~~Steers and spayed heifers.~~

(III) ~~Officially vaccinated dairy cattle under twenty months of age and officially vaccinated beef cattle under twenty-four months of age.~~

(IV) ~~Cattle from a certified brucellosis free herd.~~

(V) ~~Cattle from selected brucellosis free states designated by the Washington state veterinarian.~~

(ii) ~~Cattle from Class B or C states:~~

(A) ~~Sexually intact females from other than certified brucellosis free herds in states classified B or C by the USDA shall not be imported into the state of Washington except for immediate slaughter at a federally inspected slaughter establishment.~~

(B) ~~Sexually intact males from Class B states which are test eligible, unless destined for a restricted feedlot or for immediate slaughter at a federally inspected slaughter establishment, must be negative to an official brucellosis test conducted within thirty days prior to date of entry and held on the premises of destination and kept separate from all other cattle for retest not less than forty-five nor more than one hundred twenty days from the date of the preentry test. Cattle not considered test eligible include:~~

(I) ~~Calves under six months of age.~~

(II) ~~Steers and spayed heifers.~~

(III) ~~Cattle from a certified brucellosis free herd.~~

(C) ~~Sexually intact males from Class C states which are test eligible must be negative to two official brucellosis tests conducted prior to entry at least sixty days apart, the second test to be conducted within thirty days of entry. Those cattle shall be held on the premises of destination and kept separate from all other cattle for retest not less than forty-five nor more than one hundred twenty days from the date of the second negative preentry test. Cattle not considered test eligible include:~~

(I) ~~Calves under six months of age.~~

(II) ~~Steers and spayed heifers.~~

(III) ~~Cattle from a certified brucellosis free herd.~~

(iii) ~~Beef cattle eligible for brucellosis testing coming from class free or A states or dairy cattle coming from Idaho, Montana, or Oregon may be moved to state federal approved livestock markets in Washington to meet entry health requirements.~~

(iv) ~~Should brucellosis infection occur in the state of Washington as a result of importation of infected animals, all~~

future importations from the state of origin shall be required to meet import regulations of the next lower classification. State regulatory officials of that state shall be notified and the lower classification entry requirement will be in effect for twelve months following notification to the state of origin.

(b) ~~Brucellosis vaccinates female dairy cattle. All female dairy cattle must be identified as official brucellosis vaccinates before entry into a dairy cow breeding herd. Except the following classes of cattle are exempt from this requirement:~~

- ~~(i) Calves under four months of age.~~
- ~~(ii) Those cattle consigned directly to a restricted feedlot.~~
- ~~(iii) Spayed heifers.~~

(c) ~~Brucellosis vaccinates female beef cattle. All female beef breed cattle must be identified as official brucellosis vaccinates before entry into a beef cow breeding herd, except the following classes of cattle are exempt from this requirement:~~

- ~~(i) Calves under four months of age.~~
- ~~(ii) Cattle sold or consigned to a restricted feedlot.~~
- ~~(iii) Spayed heifers.~~

(d) ~~Cattle from a certified brucellosis free country may be imported if the state veterinarian, upon being assured that to allow such cattle to enter would not create any jeopardy to the livestock industry of the state of Washington, issues a special permit for such entry.~~

(3) ~~Scabies. The office of the state veterinarian may require that any cattle from a known infected area be dipped at an official dipping facility within ten days of entry and, except those consigned to a federally inspected slaughter plant for immediate slaughter within fourteen days, be accompanied by an official interstate health certificate. Ivermectin may be used as an alternative to the dipping procedure for beef and nonlactating dairy animals.~~

(4) ~~Vesicular stomatitis. The office of the state veterinarian may require that:~~

(a) ~~Any cattle be accompanied by an official interstate health certificate except those consigned to a federally inspected slaughter plant for immediate slaughter within fourteen days;~~

(b) ~~Dairy breed cattle be held separate and apart from all other cattle for a period of seven days at the point of destination and rechecked by an accredited veterinarian at the end of that period; except that dairy breed cattle from known infected areas shall not be allowed entry into the state; and~~

(c) ~~Beef breed cattle from known infected areas be held separate and apart from all other cattle for a period of thirty days either prior to entry or at the point of destination or both.~~

(5) ~~Temporary grazing permits. Herd owners desiring to move cattle into Washington for temporary grazing purposes must obtain a prior permit from the office of the state veterinarian. The state veterinarian may, if deemed necessary, require a brucellosis herd test and/or an official health certificate for any cattle entering the state for grazing purposes. Applicants must also file an approved herd plan with the office of the state veterinarian to phase out all brucellosis nonvaccinates in the herd prior to January 1, 1988. Grazing permits shall be for one specified season only and shall be valid for movement to only that destination declared on the permit. A copy of the permit shall accompany any vehicle~~

~~transporting cattle into the state for such temporary grazing purposes.)~~ **Import health requirements.**

~~(1) Domestic bovine entering Washington state must have a certificate of veterinary inspection and an entry permit issued by the office of the state veterinarian prior to entry. Entry permits are required on all feeder cattle entering restricted feedlots and are to be obtained by the brand inspector of the state of origin and recorded on the brand document.~~

Exemptions to import health requirements.

~~(2) A certificate of veterinary inspection is not required for domestic bovine that are:~~

~~(a) Consigned to federally inspected slaughter plants for immediate slaughter; or~~

~~(b) Consigned to state-federal approved livestock markets for sale for immediate slaughter only; or~~

~~(c) Consigned to specifically approved livestock markets or restricted holding facilities where import requirements can be met; or~~

~~(d) Consigned to a restricted feedlot.~~

NEW SECTION

WAC 16-54-083 Domestic and foreign bovine brucellosis requirements. (1) Female cattle, domestic and foreign, must have an official calfhood brucellosis vaccination and legible vaccination tattoo before entry into Washington state.

(a) Cattle vaccinated with strain 19 vaccine must be permanently identified with a tattoo in the right ear that must bear the USDA registered V shield preceded by a number indicating the quarter of the year in which they were vaccinated, followed by the last digit of the year of vaccination.

(b) Cattle vaccinated with RB-51 strain of vaccine must be permanently identified with a tattoo in the right ear that must bear the USDA registered V shield preceded by the letter R followed by the last digit of the year of vaccination.

(c) Brucellosis vaccinated cattle from foreign countries must present original vaccination certificates. On arrival, the cattle must be tattooed with the USDA V shield and the year indicated on the vaccination certificate.

(2) Mature vaccinated domestic bovine that are identified by a legible vaccination tattoo and USDA vaccination and USDA identification tags will be allowed entry into Washington state if the state of origin allows mature vaccination and is of the same brucellosis class or higher.

(3)(a) Test eligible dairy cattle from all states and all cattle from Class A states must be tested negative for bovine brucellosis within thirty days before entry.

(b) Beef cattle from selected brucellosis free states designated by the director may be required to have a negative test thirty days before entry.

(c) Test eligible bovine are bulls over six months of age, brucellosis vaccinated dairy females over twenty months of age, and brucellosis vaccinated beef breed females over twenty-four months of age.

(4) All animals must be identified by USDA approved official identification.

Exemptions to domestic bovine brucellosis test and vaccination requirements.

(5) Domestic bovine that are exempt from brucellosis testing and vaccination requirements are:

- (a) Those cattle from a class free state consigned to restricted feedlots;
- (b) Those consigned to federally inspected slaughter plants for immediate slaughter;
- (c) Heifer calves less than four months of age;
- (d) Slaughter only dairy breed cattle from Oregon, Idaho, and Montana that are consigned to a state-federal approved livestock market;
- (e) Bull calves less than six months of age;
- (f) Steers and spayed heifers;
- (g) Official brucellosis vaccinated dairy cattle less than twenty months of age;
- (h) Official brucellosis vaccinated beef cattle less than twenty-four months of age;
- (i) Cattle from a certified brucellosis free herd, as defined by Title 9 CFR Part 78.1; and
- (j) Test eligible beef breed cattle and dairy cattle that are consigned to a state or federally approved livestock market to meet entry testing requirements. Heifer calves between four and twelve months of age may be consigned to a state-federal approved sale yard where they will remain until meeting vaccination requirements.

NEW SECTION

WAC 16-54-085 Domestic bovine tuberculosis requirements. (1) All domestic bovine from a modified accredited advanced or lower state must have a negative TB test within sixty days before entry into Washington state. Domestic bovine from a modified accredited or lower state shall be held separate and apart from native cattle for sixty days and retested negative at least sixty days after entry into Washington state.

(2) **Dairy cattle six months of age or older** must:

- (a) Test negative for bovine tuberculosis within sixty days before entering Washington state; and
- (b) Be identified with a USDA silver identification ear tag, or a USDA-approved RFID tag, or an orange brucellosis vaccination tag.

(3) **Dairy heifers and bull calves less than six months of age** must:

- (a) Be issued a hold order or a quarantine order that requires the animals to be taken directly to a designated premises or facility;
- (b) Be held separate and apart from all other domestic bovine until they test negative for bovine tuberculosis after six months of age; and
- (c) Be identified with a USDA silver identification ear tag, or a USDA-approved RFID tag, or an orange brucellosis vaccination tag.

(4) **Mexican cattle** - All cattle imported from Mexico that enter Washington, including those imported for rodeo or recreation purposes, must be sexually neutered and must bear official Mexican identification and brand before entry.

(a) All Mexican cattle must be accompanied by proof of two negative bovine tuberculosis tests conducted in the United States after entry from Mexico. The second negative test must be a minimum of sixty days after the first test and within thirty days before entry into Washington state.

(b) All Mexican cattle that remain in the state of Washington shall be tested annually for tuberculosis.

(c) If Mexican cattle entering Washington state are not accompanied by proof of two negative bovine tuberculosis tests prior to entry, they will be issued a hold order or a quarantine order that requires the animals to be taken directly to a designated premises or facility and kept separate and apart from Washington cattle until the completion of required tests.

(d) Sexually intact Mexican beef cattle may enter only with a prior entry permit and at the discretion of the director.

Exemptions to domestic bovine tuberculosis test requirements.

(5) **Dairy cattle** are exempt from bovine tuberculosis testing requirements if they:

(a) Originate from an accredited bovine tuberculosis-free herd, as defined by USDA, APHIS in Title 9 CFR Chapter 1 Part 77 (January 1, 2006), and if an accredited herd number and the date of the last bovine tuberculosis test are shown on the certificate of veterinary inspection;

(b) Are consigned to federally inspected slaughter plants for immediate slaughter; or

(c) Are consigned to slaughter through state and federally approved sale yards and remain in slaughter channels.

(6) **Adult dairy cows from Oregon and Idaho** that have not met the department's brucellosis and tuberculosis requirements may enter a WSDA approved brucellosis/tuberculosis holding facility in Washington state until testing requirements have been met.

(7) **Dairy steers and spayed heifers** are exempt from bovine tuberculosis testing requirements before entry into Washington state if they are entering restricted feedlots to be fed for slaughter.

(8) **Mexican cattle** are exempt from the second bovine tuberculosis test and isolation requirements if their official Mexican identification remains intact and they are consigned to a federally inspected slaughter plant for immediate slaughter.

NEW SECTION

WAC 16-54-088 Temporary grazing permits. Cattle moving interstate on grazing permits are exempt from a certificate of veterinary inspection and testing requirements.

(1)(a) Persons desiring to move cattle into Washington state for temporary grazing purposes must complete a temporary grazing application approved by both states. After approval, a permit number will be issued.

(b) Temporary grazing permits are valid for a period not to exceed six months and are valid only for movement to the destination specified on the permit and return to the location of origin.

(c) A copy of the approved application must accompany any vehicle transporting cattle into Washington state for temporary grazing purposes.

(d) Temporary grazing permits will be issued only for cattle entering from states that share common borders with the state of Washington.

(e) If cattle have been commingled with other herds or additional cattle have been added to the original grazing herd,

they must have a certificate of veterinary inspection and entry permit in order to return to Washington.

(2) Permits are granted based on current disease conditions in both states. The director may specify conditions on the permit to prevent or control disease.

GOATS

AMENDATORY SECTION (Amending WSR 92-21-039, filed 10/15/92, effective 11/15/92)

WAC 16-54-090 Goats—Importation and testing requirements. (~~Goats except those for immediate slaughter, shall be accompanied by a health certificate stating they are clinically free from infectious and communicable disease. Dairy goats shall be tested negative for brucellosis within thirty days prior to date of entry. Goats under six months of age are exempt from brucellosis test requirement.~~) **Import health requirements.**

(1) All goats entering Washington state must be accompanied by a certificate of veterinary inspection. The certificate of veterinary inspection must state that the animals are free from clinical signs or known exposure to any infectious or communicable disease.

(2) Female dairy goats six months of age or older must test negative for brucellosis and tuberculosis within thirty days before they enter Washington state.

(3) Sexually intact goats must have official USDA scrapie identification.

Exemption to import health requirements.

(4) Goats traveling into Washington state with their Oregon and Idaho owners in private conveyance for round-trip visits of not more than four days duration for purposes other than breeding are exempt from the certificate of veterinary inspection.

SHEEP

AMENDATORY SECTION (Amending WSR 99-09-023, filed 4/15/99, effective 5/16/99)

WAC 16-54-101 Sheep—Importation and testing requirements. (~~Sheep except those for immediate slaughter, shall be accompanied by a health certificate stating they are clinically free from infectious and communicable disease and in addition shall comply with the following requirements which shall be stated on the health certificate:~~

(1) ~~Originate from a flock in which no scrapie has existed for five years or is from a flock enrolled in the USDA Voluntary Scrapie Flock Certification Program.~~

(2) ~~All breeding rams six months of age and over must have a negative ELISA test for brucella ovis within thirty days prior to entry into Washington and be palpated and certified free of brucella ovis or be from a brucella free flock. Each ram must be individually identified with an individual yardage or registration tattoo. This number, along with the test results and date of test, must be entered on the health certificate which must accompany the animal(s).~~

(3) ~~All blackface rams imported into Washington state for the purpose of breeding must be determined by genetic testing to be QR or RR at the 171 codon.~~

(4) ~~All blackface breeding rams shall be moved on a permit issued by the office of the state veterinarian.)~~ **Import health requirements.**

(1) A certificate of veterinary inspection must accompany all sheep entering Washington state. The certificate of veterinary inspection must state that the sheep:

(a) Are clinically free from the signs of infectious diseases, including footrot, sore mouth, and caseous lymphadenitis; and

(b) Originated from a flock in which scrapie has not been diagnosed in the past five years or are from a flock enrolled in the USDA Voluntary Scrapie Flock Certification Program described in Title 9 CFR Part 54 (January 1, 2006).

(c) Are officially identified with official USDA scrapie program identification. Sheep required to be officially identified include:

(i) All breeding sheep;

(ii) All sexually intact sheep imported for exhibition;

(iii) All sheep over eighteen months of age.

Import test requirements.

(2) All breeding rams over six months of age require an entry permit.

(3) The certificate of veterinary inspection must state that the rams:

(a) Tested negative on an ELISA test for *Brucella ovis* within thirty days before entering Washington state; and

(b) Are palpated and certified free of any evidence of epididymitis; and

(c) Are individually identified with an official USDA scrapie program identification. Each ram's identification number, test results, and the date of the test must be entered on the certificate of veterinary inspection accompanying the animal.

(4) Any purebred rams of Suffolk, Hampshire, Shropshire, or Montadale descent, or cross thereof; any nonpurebred rams known to have Suffolk, Hampshire, Shropshire, or Montadale ancestors; and any nonpurebred rams of unknown ancestry with a black face, except for hair sheep, may enter Washington state for breeding purposes if they are determined by genetic testing before entry to be QR or RR at the 171 codon. Hair sheep known to have Suffolk, Hampshire, Shropshire, or Montadale ancestors are considered blackface sheep.

Exemptions to import health and test requirements.

(5) Sheep traveling into Washington state with their Oregon and Idaho owners in private conveyance for round-trip visits of not more than four days duration for purposes other than breeding are exempt from the certificate of veterinary inspection.

(6) Sheep entering Washington state for immediate slaughter at a USDA inspected slaughter plant are exempt from the certificate of veterinary inspection and testing requirements.

(7) Official USDA approved scrapie identification is not required on slaughter sheep less than eighteen months of age.

LLAMAS AND ALPACAS

NEW SECTION**WAC 16-54-105 Llamas and alpacas. Import health requirements.**

(1) All llamas and alpacas imported into Washington state shall be accompanied by a health certificate stating that the animals are free from signs of or exposure to infectious or communicable disease.

Exemptions to import health requirements.

(2) Llamas and alpacas traveling into Washington state with their Oregon and Idaho owners in private conveyance for round-trip visits of not more than four days duration for purposes other than breeding are exempt from the certificate of veterinary inspection.

SWINE

AMENDATORY SECTION (Amending WSR 92-21-039, filed 10/15/92, effective 11/15/92)

WAC 16-54-111 Swine—Importation and testing requirements. ~~((1) Slaughter swine. Swine not known to be affected with or exposed to infectious or communicable diseases may be moved into the state without health certificate to a federally inspected slaughter establishment or public livestock market specifically approved under Part 76, Title 9, Code of Federal Regulations for immediate slaughter and shall not be diverted enroute for any purpose. The waybills or certificates for movement must state "for immediate slaughter." Slaughteryards receiving for slaughter only swine may not offer such swine for sale for any other purpose without meeting all health certificate and test requirements and receive a permit from the state veterinarian.~~

~~(2) Feeder and breeder swine.~~

~~(a) Swine must be accompanied by a permit issued by the department of agriculture state veterinarian, or the state veterinarian's representative, and an official health certificate stating they are clinically free from infectious and contagious disease or exposure thereto. The consignor and consignee will be properly listed with exact mailing address and destination clearly shown. The name and address of the consignee for pet swine shipments will be verified prior to issuance of the permit to import and a written quarantine will be issued pending post entry pseudorabies testing.~~

~~(b) Swine brucellosis. All swine imported for breeding purposes over six months of age entering the state of Washington must be tested and found negative to brucellosis within thirty days prior to entry or originate in a validated brucellosis free herd or state or area. Swine from herds where brucellosis is known to exist will not be admitted.~~

~~(c) Swine pseudorabies. All swine being imported into the state of Washington must be:~~

~~(i) Tested and found negative to pseudorabies within thirty days prior to the date of importation, and~~

~~(ii) Isolated and held in quarantine at the point of final destination until retested and found negative to pseudorabies at least thirty days and not more than sixty days after the date of importation.~~

~~(d) The following classes of swine are exempt from these pseudorabies test requirements:~~

~~(i) Swine originating from a pseudorabies qualified negative herd where the qualifying test has been conducted within sixty days of shipment and all new additions since the test have been tested negative.~~

~~(ii) Swine being shipped directly to a federally inspected slaughter establishment for immediate slaughter.~~

~~(iii) Direct shipment from a stage IV or V state/area.~~

~~(iv) Swine from a country determined to be free of pseudorabies.)~~ **Import health requirements.**

(1) All swine entering Washington state must be accompanied by an entry permit, a certificate of veterinary inspection, and official USDA approved identification. Feral swine are prohibited in Washington state.

Import test requirements.

(2) **Brucellosis.** All intact male and intact female swine more than six months of age must be tested negative for brucellosis within thirty days before entering Washington state or must originate from a USDA validated brucellosis free herd or state (Swine Brucellosis Control/Eradication State-Federal-Industry Uniform Methods and Rules, April, 1998).

(3) **Pseudorabies.** No test is required from states recognized as Stage IV or Stage V by Pseudorabies Eradication State-Federal-Industry Program Standards, November 1, 2003.

(4) A negative pseudorabies test within thirty days before entry is required for swine from any state or area that loses Stage IV or Stage V status.

Exemptions to import test requirements.

(5) Swine shipped directly to a federally inspected slaughter plant for immediate slaughter are exempt from testing requirements.

Swine semen and embryos.

(6)(a) Swine semen and swine embryos entering Washington state for insemination of swine or implantation into swine shall be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian stating that the donor swine are not known to be infected with or exposed to pseudorabies, were negative to an official pseudorabies serologic test within thirty days prior to the collection of the semen or embryos or were members of a qualified pseudorabies negative herd, and had not been exposed to pseudorabies within thirty days prior to the collection of the semen or embryos.

(b) Brucellosis testing is not required on donor swine from brucellosis validated free states.

(c) Pseudorabies testing is not required on donor swine from pseudorabies Stage IV or Stage V states.

AVIAN SPECIES

AMENDATORY SECTION (Amending WSR 94-23-121, filed 11/22/94, effective 12/23/94)

WAC 16-54-145 ((Ratites.)) Poultry, including ratites—Importation and testing requirements. ~~((All ratites imported into Washington shall be accompanied by a permit number and a health certificate or certificate of veterinary inspection unless otherwise exempted, stating that the~~

birds are free from signs or exposure to infectious disease. Ratites as defined in chapter 16.57 RCW and/or their eggs or parent flock must be tested negative for the following diseases: *Salmonella pullorum-typhoid enteritidis* [enteritis]. Health requirements for ratites also appears in chapter 16.59 WAC.) **Import health requirements.**

(1) All poultry, including ratites, imported into Washington state must be accompanied by a certificate of veterinary inspection.

(a) USDA VS form 17-6 (Certificate for Poultry or Hatching Eggs for Export) will be accepted in lieu of the certificate of veterinary inspection.

(b) For hatching eggs and baby poultry, a USDA NPIP VS form 9-3 (Report of Sales of Hatching Eggs, Chicks, and Poults) may be used in lieu of the certificate of veterinary inspection.

(c) The certificate of veterinary inspection must include either the NPIP number or negative results of the required tests.

(2) Poultry or hatching eggs must originate from flocks or areas not under state or federal restriction.

(3) Each ratite entering Washington state must be permanently identified with USDA approved identification. The type of identification must be listed on the certificate of veterinary inspection.

Import test requirements.

(4) Poultry must:

(a) Originate from an NPIP participant flock that has met classification requirements for pullorum-typhoid, *Salmonella enteritidis*, and avian influenza; or

(b) Test negative within thirty days before entering Washington for pullorum-typhoid, *S. enteritidis*, and avian influenza.

(5) Hatching eggs must originate from an NPIP participant flock that has met classification requirements for the diseases listed in subsection (4)(a) of this section. If the parent breeder flock is not an NPIP participant, the parent birds must be tested for the above diseases within thirty days before entry.

(6) Turkeys, their poults, and eggs must originate from a producer who is participating in the mycoplasmosis control phase of the NPIP or must have been tested serologically negative for *M. gallisepticum* and *M. synoviae* within thirty days of entry.

Exemptions to import health requirements.

(7) Doves, pigeons, and poultry destined for immediate slaughter are exempt from the certificate of veterinary inspection and testing requirements.

NEW SECTION

WAC 16-54-160 Birds other than poultry—Importation and testing requirements. Import health requirements.

(1) Birds entering Washington state require a certificate of veterinary inspection that contains the following statement:

"To my knowledge, the birds listed on this certificate are free from clinical signs of or known exposure to infectious or communicable disease during the past thirty days."

(2) All birds must be individually identified in a manner appropriate to the species.

Exemptions to import health requirements.

(3) Family pet birds are exempt from the certificate of veterinary inspection.

SMALL ANIMALS

NEW SECTION

WAC 16-54-170 Dogs, cats, and ferrets—Importation and testing requirements. Import health requirements.

(1) Dogs, cats, or ferrets entering Washington state require a certificate of veterinary inspection.

(2) The certificate of veterinary inspection for dogs, cats, or ferrets must identify each animal and certify that each animal at the time of entry is current on rabies vaccination according to the manufacturer's label, and does not originate from an area under quarantine for rabies.

Exemptions to import health requirements.

(3) Dogs, cats, or ferrets less than ninety days of age do not require a rabies vaccination.

(4) Dogs and cats that originate in Washington state and visit Canada for thirty days or less are exempt from a certificate of veterinary inspection.

(5) Dogs, cats, or ferrets that are family pets and have current rabies vaccination certificates and are traveling by private conveyance with their owners are exempt from a certificate of veterinary inspection.

Import test requirements.

(6) The director may require dogs six months of age or older to be tested negative for heartworm.

Exemptions to import test requirements.

(7) Dogs that are family pets, have been owned more than one month, are not going to be sold or have a change of ownership, and are traveling by private conveyance with their owner or handler are exempt from the heartworm test requirement.

**WILD AND EXOTIC ANIMALS AND BIRDS,
INCLUDING ZOO ANIMALS**

NEW SECTION

WAC 16-54-180 Wild and exotic animals and birds—Importation and testing requirements. Import health requirements.

(1) Wild and exotic animals and birds entering Washington state must be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian licensed in the state of origin, or accompanied by an international certificate of health.

(2) All wild and exotic animals must be accompanied by an entry permit.

Import test requirements.

(3) **Brucellosis:** Within thirty days before entering Washington state, negative serologic testing must be conducted on the following categories of captive wild or exotic animals that are more than six months of age:

Table 1.
Wild and exotic animals that must be tested for brucellosis

Tested For	Species Scientific Name	Common Name Examples
<i>Brucella abortus</i>	<i>Camelidae</i>	<ul style="list-style-type: none"> • Vicuna • Guanaco
	<i>Cervidae</i>	<ul style="list-style-type: none"> • Elk • Caribou • Moose • Reindeer • Deer
	<i>Giraffidae</i>	<ul style="list-style-type: none"> • Giraffe • Okapi
	<i>Bovidae</i>	<ul style="list-style-type: none"> • Antelope • Wild cattle (gaur, banteng, kaupre, yak) • Bison (American bison, European bison) • Buffalo (Asian water buffalo, tamaraw, lowland anoa, mountain anoa, African buffalo)
	<i>Ovidae, Capridae</i>	<ul style="list-style-type: none"> • Wild sheep (big-horn sheep, dalls sheep, mouflon, argoli, uriol, blue sheep, barbary sheep, red sheep) • Wild goats (Rocky Mountain goat, ibex, walia ibex, west caucasian tur, east caucasian tur, Spanish ibex, markhor)
<i>Brucella suis</i>	<i>Suidae</i>	<ul style="list-style-type: none"> • Wild swine (European wild boar, bearded pig, Jovan pig, pygmy hog, wart hog, giant forest pig, East Indian swine or Babirusa, African bush pig, peccaries)
<i>Brucella suis bio-var 4</i>	<i>Cervidae</i>	<ul style="list-style-type: none"> • Caribou • Reindeer

Table 1.
Wild and exotic animals that must be tested for brucellosis

Tested For	Species Scientific Name	Common Name Examples
<i>Brucella ovis</i>	<i>Ovidae, Capridae</i>	<ul style="list-style-type: none"> • All wild sheep and goats must be tested and found negative to <i>Brucella ovis</i> within thirty days before entering Washington state

(4) **Tuberculosis** (*Mycobacterium bovis* and *Mycobacterium tuberculosis*):

(a) Animals less than six months of age that are nursing negative tested dams may be excluded from tuberculosis test requirements.

(b) Within thirty days before entering Washington state, the animals listed in the following table must test negative for *M. bovis* and *M. tuberculosis* by a skin test or other approved test that follows federal tuberculosis protocols:

Table 2.
Wild and exotic animals that must be tested for tuberculosis

Species Scientific Name	Common Name Examples
<i>Ceropithecidae</i>	<ul style="list-style-type: none"> • Old world primates
<i>Hylobotidae</i>	<ul style="list-style-type: none"> • Gibbons • Lessor apes
<i>Pongidae</i>	<ul style="list-style-type: none"> • Great apes
<i>Bovidae</i>	<ul style="list-style-type: none"> • Antelope • Wild cattle
<i>Ovidae, Capridae</i>	<ul style="list-style-type: none"> • Wild sheep • Wild goats
<i>Cervidae, Giraffidae</i>	<ul style="list-style-type: none"> • Elk • Caribou • Moose • Reindeer • Deer • Giraffe • Okapi

(c) *Cervidae*, such as elk, deer, caribou, moose, and reindeer and *Giraffidae*, such as giraffe and okapi, must be from herds not known to be infected with, exposed to, or affected by tuberculosis. They must also test negative for *M. bovis* using the testing requirements defined in Title 9 CFR Part 77.33 (January 1, 2006).

(d) For all captive wild or exotic animals not listed in Table 2 in subsection (2)(b) of this section, the following statement signed by the animal's owner or agent must be placed on the official certificate of veterinary inspection:

"To my knowledge, the animals listed on this certificate are not infected with tuberculosis and have not been exposed

to animals infected with tuberculosis during the past twelve months."

(5) **Pseudorabies:** All wild swine imported for zoos, exhibitions or to a research facility must test negative for pseudorabies no more than thirty days before entry into Washington state and must be held in quarantine for thirty to sixty days pending a postentry retest.

(6) **Equine infectious anemia:** All wild horses, donkeys, and hybrids of the family *Equidae* must test negative on an approved test for equine infectious anemia no more than six months before entry into Washington state.

(7) **Elaphostrongylinae** (*Parelaphostrongylus tenvis* (meningeal worm) and *Elaphostrongylus cervis* (muscle worm)): Before entering Washington state, all *Cervidae* must be examined for *Elaphostrongylinae* infection in the absence of anthelmintic treatment that could mask detection of the parasite.

(a) **All *Cervidae* residing for at least six months** west of a line through the eastern boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas must have a negative fecal exam for dorsal-spined larvae made by an approved laboratory using the Baermann technique and be certified that they have not been treated with or exposed to anthelmintics for at least thirty days before testing.

(b) **All *Cervidae* residing for less than six months** west of a line through the eastern boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas must be held in a preentry quarantine for thirty to sixty days and have two fecal tests for dorsal-spined larvae made by an approved laboratory using the Baermann technique.

(i) The first test must be conducted at least thirty days and not more than forty days before the second test.

(ii) Fecal samples of at least thirty grams per sample are to be collected by an accredited veterinarian from the animal's rectum and identified by the animal's official identification number.

(iii) During the thirty-day testing period, test animals must be held in quarantine and isolated from all other *Cervidae* not included in the shipment.

(iv) If any animal tests positive to either of the two fecal tests, neither that animal nor any other animal held in quarantine with the infected animal may be imported into Washington state.

(c) All imported *Cervidae* must be held for one hundred eighty days in an onsite quarantine and be available for inspection by the director during this time.

(d) Every thirty, sixty, ninety, one hundred twenty, one hundred fifty, and one hundred eighty days after arrival, fecal samples from the animals must be tested by the Baermann technique in an approved laboratory and be found negative for dorsal-spined larvae. Animals that test positive for dorsal-spined larvae must either be removed from Washington state or destroyed.

(e) To prevent the presence of the gastropod intermediate hosts of *Elaphostrongylinae* larvae, the quarantine site must be prepared and inspected before the imported animals enter. Preparation includes:

(i) Providing a hard surface, such as asphalt or concrete, on which to keep the animals;

(ii) Spraying the quarantine area with an EPA-registered molluscicide; and

(iii) Spraying a four-meter wide tract around the perimeter of the holding compound with an EPA-registered molluscicide. This perimeter tract must be treated once every five days and within twenty-four hours of precipitation (10 mm or more) to ensure that the gastropod population is kept to zero within the compound.

(8) **Rabies:** Any carnivorous mammal taken from the wild is prohibited from entering Washington state if rabies has been diagnosed in the state of origin during the past twelve months.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-54-018	Official brucellosis vaccines.
WAC 16-54-020	Illegal importation.
WAC 16-54-035	Certification of health—Wild and exotic animals.
WAC 16-54-040	Immediate slaughter cattle and horses.
WAC 16-54-050	Vehicles.
WAC 16-54-120	Dogs and cats.
WAC 16-54-125	Species prohibited by state health department.
WAC 16-54-135	Llamas and alpacas.
WAC 16-54-155	Exotic Newcastle Disease (END) quarantine.

WSR 07-14-057

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed June 28, 2007, 4:17 p.m., effective July 29, 2007]

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

Purpose: The department is adopting amendments to chapter 16-610 WAC in response to a change in state law enacted by the 2006 legislature (ESB 6376). The adopted rules amend fees for livestock brand inspections so that they match those in statute, provide for the self-inspection of up to twenty-five head of cattle, and establish rules regarding open consignment horse sales.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-610-011, 16-610-090, 16-610-092, 16-610-094, 16-610-105, 16-610-110 and 16-610-124; and amending WAC 16-610-005, 16-610-010, 16-610-012, 16-610-013, 16-610-015, 16-610-016, 16-610-018, 16-610-020, 16-610-025, 16-610-035, 16-610-045, 16-610-055, 16-610-060, 16-610-062, 16-610-065, 16-610-070, [new section] 16-610-075, 16-610-080, 16-610-085, 16-610-100, 16-610-115,

16-610-120, 16-610-122, 16-610-125, 16-610-130, 16-610-140, and 16-610-145.

Statutory Authority for Adoption: Chapters 16.57, 16.58, and 16.65 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 07-03-124 on January 22, 2007; WSR 07-07-086 on March 16, 2007; WSR 07-08-018 on March 26, 2007; and WSR 07-10-084 on May 1, 2007.

Changes Other than Editing from Proposed to Adopted Version: The title of the chapter has been changed to "livestock brand inspection" and references to RFID tags have been removed from the fee schedule in WAC 16-610-065.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 26, Repealed 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 27, Repealed 7.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 27, Repealed 7.

Date Adopted: June 28, 2007.

Robert W. Gore
for Valoria H. Loveland
Director

Chapter 16-610 WAC

LIVESTOCK BRAND INSPECTION (~~(AND IDENTIFICATION)~~)

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-005 (~~(What)~~) Definitions (~~(are important to this chapter?)~~). In addition to the definitions found in RCW 16.57.010, 16.58.020, and 16.65.010, the following definitions apply to this chapter:

"**Association of livestock breeders**" means any properly incorporated association whose membership is made up of livestock breeders.

(~~"Brand"~~ means a permanent firebrand, or any artificial mark, other than an individual identification symbol, that is approved by the director and is used with a brand or by itself.

"**Livestock inspection**" means examining livestock or livestock hides for brands or any other means of identifying livestock or livestock hides including the examination of any documents providing evidence of ownership.

"**Certificate of permit**" or "**transportation permit**" means a department form which, when completed by the livestock owner, or a person authorized to act as his/her agent,

serves as a declaration of ownership. The form must not be used as a bill of sale for cattle. This form must accompany livestock:

(1) In transit;

(2) Consigned to a public livestock market, special sale, or livestock processing facility; or

(3) Upon entry into a certified feedlot.

~~"Collection point"~~ means a livestock inspection point, designated by the Washington state beef commission, for the purpose of collecting beef commission assessment payments directly from cattle producers and remitting those assessments to the Washington state beef commission.

"**Department**" means the Washington state department of agriculture.

"**Director**" means the director of the department or the director's designated representative.) "**Beef commission assessment point**" means a person or business, as designated by the Washington state beef commission, required to collect and submit the mandatory per-head beef promotional fees directly to the commission when the sale of cattle occurs.

"**Beef promotion fee**" means the mandatory state and/or federal beef commission assessment fee under RCW 16.67.120 and 16.67.122 that is collected on each head of cattle at the time of sale.

"**Farmers cooperative association**" means any cooperative association of livestock producers. ((~~"~~)Farmers cooperative association(~~"~~)) does not include livestock youth organizations such as 4-H, FFA, or other junior livestock groups.

(~~"Individual identification symbol"~~ means a department-approved permanent mark placed on the neck of a horse for the purpose of individually identifying and registering the horse.

"**Inspection certificate**" means a certificate issued by the director or a veterinarian certified by the director that documents animal ownership based on a visual inspection of the animal. An inspection certificate includes an individual identification certificate.

"**Licensee**" means any person licensed to operate a market under chapter 16.65 RCW.

"**Livestock**" means all cattle, horses, burros, mules, sheep, swine, and goats of any species, breed or age.

"**Lot**" means a group of livestock owned by one owner.) "**Livestock heritage brand**" means a designation given to a brand that has been deactivated by the recorded owner. A heritage brand may not be applied to livestock.

"**Market**" means a public livestock market as defined in RCW 16.65.010(1).

(~~"Person"~~ means any natural person, individual, firm, partnership, corporation, company, society, or association, and every officer, agent or employee thereof. Depending upon the context in which it is used, "person" may have a singular or plural meaning.

"**Production brand**" means a number brand that is used only for production identification purposes.

"**Purchase invoice**" means the invoice issued by a public livestock market to the purchaser of livestock consigned to the market.

"**Self-inspection**" means an ownership verification inspection conducted solely by the buyer and seller of cattle,

without the benefit of the director. Self-inspection is limited to fifteen head or less of cattle.

"Self-inspection certificate" means a department form that is used when cattle are inspected by their purchaser and seller. The purchaser and seller must sign the self-inspection certificate. The purpose of the self-inspection certificate is to document that self-inspection has occurred.)

"Special sale" means a public sale conducted by ~~((a producer))~~ an individual, youth organization, livestock breeders association, or farmers cooperative association ~~((, etc.))~~ on a seasonal or occasional basis. ~~((A livestock market may also conduct a special sale on sale days not specifically assigned to it when its original application was filed with the director. "Special sale" does not mean a public sale by a group of individuals conducting private treaty sales of horses brought to a central location, provided that the:~~

(1) Funds are not handled by a third party; and

(2) Buyer meets the inspection requirements contained in RCW 16.57.260.) **"USDA"** means the United States Department of Agriculture.

LIVESTOCK IDENTIFICATION ADVISORY BOARD

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-010 ~~((What is the))~~ **Livestock identification advisory board** ~~((?))~~. (1) The livestock identification advisory board is established in RCW 16.57.015 for the purpose of advising the director regarding:

(a) Livestock identification programs administered under chapter 16.57 RCW and these rules;

(b) Inspection fees; and

(c) Related licensing fees.

(2) The board is appointed by the director and is composed of six members ~~((appointed by the director))~~ representing beef producers, public livestock market operators, horse owners, dairy farmers, cattle feeders, and meat processors. The director is an ex officio member of the advisory board.

(3) The board must elect a member to serve as board chair. The board chair, or the chair's designee, is responsible for organizing and conducting board meetings.

(4) The board must meet with the director at least once a year to offer its advice. Additional meetings may be held at the request of the director or a majority of the board's membership.

(5) Livestock identification advisory board members must be residents of the state of Washington and actively engaged in the industry they represent.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-012 ~~((How long of term does a board member serve?))~~ **Livestock identification advisory board—Length of term.** (1) Advisory board members serve staggered three-year terms. Terms begin on July 1 and end on June 30.

(2) Positions are numbered one through six as follows:

- (a) Position one - beef producers;
- (b) Position two - public livestock market operators;
- (c) Position three - horse owners;
- (d) Position four - dairy farmers;
- (e) Position five - cattle feeders; and
- (f) Position six - meat processors.

(Note: When the board first began operating, positions one and four served a one-year term; positions two and five served a two-year term; and positions three and six served a three-year term. The purpose of this "staggered start" was to provide the board with a continuity of membership by staggering vacancies on the board.)

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-013 ~~((How are board vacancies filled?))~~ **Livestock identification advisory board—Vacancies.** (1)

To fill a vacancy resulting from an expired term, the director must solicit nominations from affected statewide industry groups. Nominations from industry groups must be submitted to the director before May 1 of the year in which the term expires. If a nomination is not received for a vacant position, the director may appoint a qualified person to fill that position.

(2) The director may fill, for the unexpired portion of a term, vacancies that occur before a term expires. When such vacancies occur, advisory board members and the presidents of affected statewide industry groups may submit names to the director for consideration.

GENERAL PROVISIONS

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-015 ~~((What specific livestock identification forms are required by the director?))~~ **Certificate of permit.** ~~((1))~~ Official livestock identification forms required by the director include the following:

(a) Certificate of permit (WSDA form #7020);

(b) Livestock inspection certificate; and

(c) Self-inspection certificate (WSDA form #7059 or #7065).

(2) (1) A certificate of permit (WSDA form #7020), commonly known as a "transportation permit" or a "haul slip," must accompany livestock:

(a) In transit (cattle);

(b) Consigned to a public livestock market, special sale, or livestock processing facility; or

(c) Upon entry into a certified feedlot (cattle).

(2) The certificate of permit may not be used as a bill of sale for cattle.

(3) A certificate of permit may be purchased by contacting the department at 360-902-1855. The price is \$1.00 for a book of twenty-five.

(4) The ~~((official forms))~~ certificate of permit must include:

(a) Owner's name and address;

(b) Livestock breed;

(c) Sex of the animal;

(d) Brand or other methods of livestock identification; and

(e) Any other information(~~(- which))~~ that the director considers necessary.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-016 (~~(How do I obtain a "certificate of permit" or a "self-inspection" certificate?)~~) **Self-inspection certificate.** (1) A self-inspection certificate is used for cattle inspections at the point of private sale, trade, gifting, barter, or any other action not in connection with a public livestock market that constitutes a change of ownership.

(2) You may purchase these forms by contacting the department at(=) 360-902-1855.

~~((2)(a))~~ The purchase price of a certificate of permit is one dollar for a book of twenty-five.

~~((b))~~ The purchase price of a self-inspection certificate is equal to the sum of the number of head involved in the transaction multiplied by the current inspection fee of \$1.60 and the number of head involved in the transaction multiplied by the beef promotion fee.

(3)(a) Self-inspection certificates must be completed and signed by the buyer and seller. The original completed copy of the certificate must be given to the buyer and must accompany the cattle. The seller must also retain a copy of the completed certificate.

(b) Self-inspection is limited to transactions involving twenty-five head or less of cattle.

(c) The buyer must be given proof of ownership for all cattle bearing brands not recorded to the seller.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-018 (~~(What documents can I use to establish proof of ownership of my livestock?)~~) **Proof of ownership documents.** (1) (~~Your~~) Proof of ownership for cattle and horses may be established by presenting one of the following documents:

(a) An official livestock inspection certificate issued by the director.

(b) A duplicate certificate or certified copy of an original inspection document issued by the director.

(c) For cattle only, a self-inspection certificate (~~(cattle only))~~ signed by both the seller and the buyer. Additional proof of ownership (~~(must be provided to the buyer))~~ for all livestock bearing brands not recorded to the seller must be provided to the buyer.

(d) An official inspection certificate issued by another (~~(inspection))~~ state or province that maintains a livestock inspection program.

(e) Registration papers on purebred horses.

(f) Registration papers on purebred cattle (~~(provided))~~ if the brand is not recorded in this state.

(g) For horses only, a bill of sale (~~(horses only))~~, Department form #7092 Equine Bill of Sale may be used and may be purchased by contacting the department at 360-902-1855. The purchase price of an Equine Bill of Sale is \$1.00 for a book of twenty-five.

(h) (~~(Health papers issued by a nonbrand state.))~~ A certificate of veterinary inspection issued by a state that does not maintain a livestock inspection program. Vaccination/test tags and the animal description must be verifiable and match the document.

~~((i))~~ A statement declaring that the animal was raised and not purchased.

(2) (~~(The director will))~~ Only (~~(accept))~~ original inspection certificates, official duplicate certificates, or certified copies of inspection certificates are acceptable. (~~(The director will not accept))~~ Carbon copies, faxed copies or photocopies will not be accepted. The name of the livestock owner must appear on the document that is submitted.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-020 (~~(When are cattle required to be inspected for brands or other proof of ownership?)~~) **Cattle inspections for brands or other proof of ownership.** (1) All cattle must be inspected for brands or other proof of ownership:

(a) Before being moved (~~(out of state))~~ out of Washington state, unless the provisions of WAC 16-610-035(2) apply.

(b) When offered for sale at any public livestock market or special sale approved by the director.

(c) Upon delivery to any cattle processing plant where the United States Department of Agriculture maintains a meat inspection program, unless the cattle:

(i) Originate from a certified feedlot; or

(ii) Are accompanied by an inspection certificate issued by the director, or a veterinarian certified by the director, or (~~(any other))~~ an agency (~~(authorized))~~ in (~~(any other))~~ another state or (~~(any))~~ Canadian province authorized by law to issue such a certificate.

(2) All cattle(=) entering or reentering (~~(but before commingling with other cattle))~~ any certified feed lot licensed under chapter 16.58 RCW(=) must be inspected for brands or other proof of ownership before commingling with other cattle unless the cattle are accompanied by an inspection certificate issued by the director, or a veterinarian certified by the director, or (~~(any other))~~ an agency (~~(authorized))~~ in (~~(any other))~~ another state or (~~(any))~~ Canadian province authorized by law to issue such a certificate.

(3) All cattle must be inspected for brands or other proof of ownership at any point of private sale, trade, gifting, barter, or any other action that constitutes a change of ownership, (~~(subject to title passing, when an intended purchaser or private agent takes possession.))~~ except for individual(=)

~~((a))~~ private sales of unbranded female dairy breed cattle involving fifteen head or less(=or

~~((b))~~ Sales of unbranded dairy breed calves under thirty days of age provided the seller holds a Grade A dairy permit issued by the director).

(4) Exemptions from mandatory inspections do not exempt cattle sellers from paying (~~(assessments they owe))~~ beef promotion fees owed to the Washington state beef commission under chapter 16.67 RCW.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-025 ~~((When are horses required to be inspected for brands or other proof of ownership?))~~ **Horse inspections for brands or other proof of ownership.** All horses must be inspected for brands or other proof of ownership:

(1) Before being moved ~~((out-of-state))~~ out of Washington state, unless the provisions of WAC 16-610-035 apply.

(2) When offered for sale at any public livestock market or special sale approved by the director.

(3) When offered for sale at any special open consignment horse sale as defined in RCW 16.65.010.

(4) ~~((When offered for sale at any special sale where horses of more than one owner are offered for sale on an occasional and seasonal basis by public auction.))~~ At any special sale where horses of more than one owner are offered for sale.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-035 ~~((What procedures apply to inspections of cattle and horses that are moving out of state?))~~ **Inspections for cattle and horses moving out of Washington state.** (1) Except as provided in subsection (2) of this section, all cattle and horses must be inspected by the director or a certified veterinarian for brands or other proof of ownership before being moved ~~((out-of-state))~~ out of Washington state.

(2) Exceptions:

(a) Cattle and horses may be moved ~~((out-of-state))~~ out of Washington state without inspection when they are destined for a public livestock market ~~((or a livestock processing plant))~~ in another state where brand inspection is performed by ~~((the director))~~ Washington state department of agriculture inspectors or an agent according to an agreement with the other state.

(b) Cattle and horses moving ~~((out-of-state))~~ out of Washington state to public livestock markets ~~((or livestock processing plants described in subsection (2)(a) of this section))~~ must be accompanied by a certificate of permit showing that the livestock are destined for and are being transported directly to the designated out-of-state inspection point. The certificate of permit is not valid for transportation to any point other than the designated inspection point.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-045 ~~((What procedures apply to inspection of))~~ **Cattle inspections at certified feedlots and slaughter plants((?)).** Inspections of cattle required under WAC 16-610-020 (1)(c) or 16-610-020(2) and at any other beef commission assessment collection point must be conducted by the director.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-050 ~~((What))~~ **Cattle inspections** ~~((procedures apply to))~~ **for private transactions((?)).** ~~((+))~~ Inspections of cattle required under WAC 16-610-020(3) may be conducted by:

~~((a))~~ (1) The director; or

~~((b))~~ (2) Veterinarians certified by the director; or

~~((c))~~ (3) The buyer and seller using a self-inspection certificate.

~~((2))~~ Inspections of cattle required under WAC 16-610-020(3) that are conducted by the buyer and seller must be documented using a self-inspection certificate. Self-inspection is limited to transactions involving fifteen head or less of cattle.

(a) Self-inspection certificates must be completed and signed by the buyer and seller. The original completed copy of the certificate must be given to the buyer and must accompany the cattle. The seller must also retain a copy of the completed certificate.

(b) The buyer must be given proof of ownership for all cattle bearing brands not recorded to the seller.

(c) The cost of self-inspection certificates includes the current inspection fee and the current assessment for the National Beef Promotion and Research Act.

(d) ~~The director will remit all assessments collected from self-inspections to the Washington state beef commission.))~~

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-055 ~~((Does the director review))~~ **Ownership disputes((?)).** The director may review or investigate any verified complaint involving disputed ownership that is filed with the director.

VETERINARIAN CERTIFICATION

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-060 ~~((Does the director allow veterinarians to issue inspection certificates?))~~ **Veterinarian certification.** (1) The director may certify veterinarians, who are licensed and accredited in Washington state and who comply with the requirements of this section, to issue livestock inspection certificates ~~((for livestock)).~~

(2) Veterinarians licensed and accredited in Washington state ~~((that))~~ who wish to issue inspection certificates for livestock must apply for certification on the department's application form (WSDA form #7028). The application must include the following:

(a) The full name and principal business address of the individual applying for certification;

(b) The applicant's Washington state veterinary license number;

(c) The geographic area in which the applicant will issue inspection certificates for livestock;

(d) A statement describing the applicant's experience with large animals, especially cattle and horses;

(e) A brief statement indicating ~~((#))~~ that the applicant is requesting certification to issue inspection certificates for cattle, horses or both;

(f) The signature of the applicant; and

(g) Any other ~~((reasonable))~~ additional information as requested by the director ~~((needs to achieve the purpose of this chapter)).~~

(3) All applications must be accompanied by a check or money order for the amount of the certification fee~~(-~~

~~((4) The certification fee is))~~ of thirty-five dollars per applicant.

~~((5))~~ (4) Certifications expire on the third December 31st following the date of issuance. For example, if ~~((your))~~ a certificate was issued on October 14, 2003, it would expire on December 31, 2005.

~~((6))~~ (5) All veterinarians applying for certification must complete department-provided training. The department will provide~~(-)~~ to each person ~~((certified))~~ applying for certification a copy of the most current brand book and any supplements issued to date. Training will include, but will not be limited to, the:

- (a) Reading of printed brands;
- (b) Reading of brands or other marks on live animals;
- (c) Completion of official documents; and
- (d) Review of satisfactory ownership documents.

~~((7))~~ (6) The director will maintain a list of veterinarians certified to perform livestock inspections. Interested parties may request a copy of the list from the ~~((director))~~ department by calling 360-902-1855 ~~((or by accessing the department's web site)).~~

~~((8))~~ (7) Inspections by certified veterinarians are conducted upon request and provided at the discretion of the veterinarian.

~~((9))~~ (8) Certified veterinarians must submit all required inspection fees to the director ~~((with))~~ and copies of each inspection certificate ~~((issued))~~ within thirty days of the date of issue.

~~((Note: Certified veterinarians may charge an additional fee that is separate from the fees collected under RCW 16.57.220 and WAC 16-610-065:))~~

(9) The director may deny certification to issue inspection certificates if the veterinarian fails to meet the requirements of this section or knowingly makes false or inaccurate statements regarding his or her qualifications on the certification application.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

~~**WAC 16-610-062 ((Can the director withdraw or deny a veterinarian's certification to issue inspection certificates?))**~~ **Veterinarian certification—Suspension and revocation.** (1) The director may ~~((withdraw or deny))~~ suspend or revoke a veterinarian's certification to issue inspection certificates if the veterinarian knowingly:

~~((1) Makes false or inaccurate statements on an application regarding their qualifications.~~

~~((2))~~ (a) Makes or acquiesces in false or inaccurate statements on livestock inspection certificates regarding:

- ~~((#))~~ (i) The date or location of the inspection;

~~((b))~~ (ii) The marks or brands on the livestock inspected;

~~((c))~~ (iii) The owner's name; or

~~((d))~~ (iv) Any other statement ~~((material to))~~ about the livestock inspected.

~~((3))~~ (b) Fails to properly verify the ownership status of the animal before issuing an inspection certificate.

(c) Issues an inspection certificate without actually conducting an inspection of the livestock.

(d) Fails to submit inspection fees and certificates issued to the director within thirty days from the date of issue.

(2) Actions under this section will be taken in accordance with chapter 34.05 RCW.

FEES

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

~~**WAC 16-610-065 ((What))**~~ **Livestock identification fees ((are charged by the director?)).** All livestock identification inspection fees charged by the director are specified in statute under RCW 16.57.220 but are reproduced in this section for ~~((your convenience:))~~ ease of reference.

For purposes of this section, the time and mileage fee means seventeen dollars per hour and the current mileage rate set by the office of financial management.

((RCW Chapter:))	Fees:
(1) Chapter 16.57 RCW—Identification of livestock	
Base livestock inspection fee for cattle	(a) A livestock inspection fee for cattle of \$0.85 per head or \$15.00 per hour and the current mileage rate set by the office of financial management (OFM), whichever is greater.
Base livestock inspection fee for horses	(b) A livestock inspection fee of horses is \$3.50 per head or \$15.00 per hour and the current OFM mileage rate, whichever is greater.
Group livestock inspection fee for horses	(c) A livestock inspection fee for groups of thirty or more horses is \$2.00 per head or \$15.00 per hour and the current OFM mileage rate, whichever is greater, provided:
	(i) The horses are owned by one individual; and
	(ii) The inspection is performed on one date and at one location; and
	(iii) Only one certificate is issued.

((RCW Chapter:	Fees:
Minimum certificate fee	(d) A minimum certificate fee of \$5.00 for each certificate issued.
Annual livestock inspection fee	(e) A livestock inspection fee for cattle and horses of \$20.00 per head for an individual identification certificate (annual) or \$15.00 per hour and the current OFM mileage rate, whichever is greater.
Annual group livestock inspection fee	(f) A livestock inspection fee for an individual identification certificate (annual) for groups of thirty or more horses or cattle of \$5.00 per head or \$15.00 per hour and the current OFM mileage rate, whichever is greater, provided:
	(i) The horses or cattle are owned by one individual;
	(ii) The inspection is performed on one date and at one location; and

((RCW Chapter:	Fees:
	(iii) Only one certificate is issued.
Lifetime livestock inspection fee	(g) A livestock inspection fee for horses and cattle of \$60.00 per head for an individual identification certificate (lifetime) or \$15.00 per hour and the current OFM mileage rate, whichever is greater.
(2) Chapter 16.58 RCW Identification of cattle through licensing of certified feedlots	A livestock inspection fee for cattle of \$0.85 per head or \$15.00 per hour and the current OFM mileage rate, whichever is greater.
(3) Chapter 16.65 RCW Public livestock markets	(a) A livestock inspection fee for cattle of \$0.85 per head.
	(b) A livestock inspection fee for horses of \$3.50 per head.))

<u>Certificate</u>	<u>Fees:</u>
<u>Inspection Certificate - Cattle</u>	<p><u>(1) The livestock inspection fee for cattle is \$1.60 per head or the time and mileage fee, whichever is greater, except: The fee for livestock inspection for cattle is \$1.10 per head or the time and mileage fee, whichever is greater, when cattle are identified with a valid brand recorded to the owner of the cattle in Washington or another state or province.</u></p> <p><u>(a) This fee does not apply for inspection of cattle when documenting a change of ownership with a self-inspection certificate.</u></p> <p><u>(b) Proof of the recording status of out-of-state brands must be presented to the director at the time of inspection.</u></p> <p><u>(2) The livestock inspection fee for cattle is \$4.00 per head for cattle delivered to a USDA inspected slaughter facility with a daily capacity of no more than five hundred head of cattle.</u></p> <p><u>(3) No inspection fee is charged for a calf that is inspected prior to moving out-of-state under an official temporary grazing permit if the calf is part of a cow-calf unit and the calf is identified with the owner's Washington state-recorded brand.</u></p> <p><u>(4) No inspection fee is charged for a dairy calf less than thirty days old that is delivered to a USDA inspected slaughter facility.</u></p>
<u>Inspection Certificate - Horse</u>	<u>(5) The livestock inspection fee for horses is \$3.50 per head or the time and mileage rate, whichever is greater, except:</u>

<u>Certificate</u>	<u>Fees:</u>
<u>Inspection Certificate - Groups of thirty or more horses</u>	<u>(6) The livestock inspection fee for groups of thirty or more horses is \$2.00 per head or the time and mileage fee, whichever is greater, if:</u> <u>(a) The horses are owned by one individual; and</u> <u>(b) The inspection is performed on one date and at one location; and</u> <u>(c) Only one certificate is issued.</u>
<u>Inspection Certificate - Minimum fee</u>	<u>(7) The minimum fee for a livestock inspection is \$5.00. The minimum fee does not apply to livestock consigned to and inspected at a public livestock market, special sale, or a cattle processing plant.</u>
<u>Annual individual identification certificate for individual animals</u>	<u>(8)(a) The livestock inspection fee for an annual individual identification certificate for cattle and horses is \$20.00 per head or the time and mileage fee, whichever is greater.</u> <u>(b) The livestock inspection fee for an annual individual identification certificate for groups of thirty or more horses or cattle is \$5.00 per head or the time and mileage fee, whichever is greater, if:</u> <u>(i) The horses or cattle are owned by one individual;</u> <u>(ii) The inspection is performed on one date and at one location; and</u> <u>(iii) Only one certificate is issued.</u>
<u>Lifetime individual identification certificate</u>	<u>(9) A livestock inspection fee for a lifetime individual identification certificate for horses and cattle is \$60.00 per head or the time and mileage fee, whichever is greater.</u>

BRANDS

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-070 ~~((What is the schedule for renewing))~~ **Renewal of recorded brands((?))**, ~~((Except as noted below;))~~ Brand recordings are renewed for a period of four years, and the director may establish a staggered renewal schedule. Owners of recorded brands, upon notification by the director, must file for renewal by December 31st of the year in which a recording expires.

~~((Note: To establish a staggered renewal schedule the director may renew, for a two-year period, approximately half of the brand recordings that expire on December 31st. When these recordings expire at the end of the two-year period, they will then be renewed for a four-year period.))~~

NEW SECTION

WAC 16-610-075 Livestock heritage brands. (1) A brand may be recorded as a livestock heritage brand upon initial application.

(2) The owner of a recorded brand may record the brand as a livestock heritage brand during any designated renewal period.

(a) The fee to record a livestock heritage brand is six hundred dollars.

(b) A livestock heritage brand is recorded for a period of twenty years.

(c) Livestock heritage brands are listed in a separate section of the WSDA brand book.

(d) A livestock heritage brand is considered inactive and may not be applied to livestock.

(3) The owner of a livestock heritage brand may reactivate the brand at any time upon written notification to the director.

(a) The owner of a reactivated livestock heritage brand shall not be required to submit renewal fees during the remainder of the original twenty-year period as long as the recorded ownership of the brand does not change.

(b) If the owner of the reactivated brand changes the ownership status (adds, deletes, or transfers ownership to another), the brand will automatically be due for renewal at the end of the current four-year recording period.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-080 ~~((Does the director allow livestock identification by))~~ **Freeze branding((?))**, Freeze branding techniques to identify livestock may be used to comply with the requirements of chapters 16.57 RCW and ~~((16-610-WAC, provided))~~ the other requirements of this section as long as the brand is recorded with the director.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-085 ((Can)) Production brands ((be used to identify dairy cattle?)), (1) Before a production brand may be used in Washington state, it must be recorded with the director according to the provisions of chapter 16.57 RCW and in the same manner as an ownership brand.

(2) Forms to record a brand may be obtained from the director.

(3) The director will not charge a fee to record a production brand if the person recording the brand has already paid to record an ownership brand.

(4) Production brands are not recognized for ownership purposes, recorded for ownership purposes, or accepted for livestock inspection purposes.

(5) Dairy cattle: Owners may use any digit or combination of digits as a production brand to identify their dairy cattle as long as the brand is located ~~((either))~~ on the neck or between the hock and the stifle of a hind leg.

(6) Beef cattle: Owners may use a production brand to identify beef cattle but only when the cattle also bear a brand that is currently recorded to the owner of the animal.

(a) On beef cattle, production brands may be located on either side of the animal on the shoulder or hip.

(b) Any numeral digit or combination of digits may be used for a beef cattle production brand as long as they do not conflict with currently recorded ownership brands.

(7) Only Arabic numerals can be used for production brands.

PENALTIES

NEW SECTION

WAC 16-610-095 Penalty schedule for notices of infraction. (1) If any person fails to comply with the requirements of chapters 16-610 WAC and 16.57 RCW (Identification of livestock), the director may issue that person a notice of infraction and may assess a penalty.

(2) The following infractions have the base penalty listed, not including statutory assessments.

Livestock Identification Program
Civil Infraction Schedule for Violations of Chapter 16.57 RCW

Violation	Base Penalty
RCW 16.57.260	Removal of cattle and horses from Washington state without an inspection certificate.
First offense	\$100.00
2nd offense within three years	\$150.00
3rd offense within three years	\$250.00
RCW 16.57.267	Failing to present an animal for mandatory inspection.
First offense	\$100.00
2nd offense within three years	\$150.00
3rd offense within three years	\$250.00
RCW 16.57.270	Refusing to assist in establishing ownership and identity.
First offense	\$100.00
2nd offense within three years	\$150.00
3rd offense within three years	\$250.00
RCW 16.57.350	Interfering with the director in the performance of livestock identification duties.
First offense	\$100.00
2nd offense within three years	\$150.00
3rd offense within three years	\$250.00
RCW 16.57.050	Using an unrecorded brand.
Each offense	\$37.00
RCW 16.57.243	Moving cattle without proof of ownership.
Each offense	\$37.00

Violation	Base Penalty
RCW 16.57.275	Transporting a carcass without proof of ownership.
Each offense	\$37.00
RCW 16.57.277	Failing to attach custom slaughter tags.
Each offense	\$37.00
RCW 16.57.410	Acting as a registering agency without a permit.
Each offense	\$37.00

CUSTOM SLAUGHTERING

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-100 ~~((What are custom slaughter beef tags?))~~ **Identification of custom slaughtered animals.** (1) Any person presenting cattle for slaughter to a licensed custom slaughterer must give the custom slaughterer a completed certificate of permit. The certificate of permit documents the ownership of the animal at the time of slaughter.

(2) Any person licensed as a custom slaughterer must complete and attach a custom slaughter beef tag to each of the four quarters of all slaughtered cattle ~~((they handle. These))~~ that are handled. In order to identify the owner of the carcass, these tags must remain attached to the quarters until the carcass is processed and the quarters are cut and wrapped.

~~((2) The purpose of attaching the beef tag to the carcass is to identify the owner of the carcass while the carcass is being processed.))~~

(3) Only the department may provide custom slaughter beef tags to custom ~~((slaughters))~~ slaughterers. The fee for each set of four custom slaughter beef tags is one dollar and fifty cents.

(4)(a) Custom meat facilities may accept carcasses of cattle slaughtered by the cattle owner only if a certificate of permit, signed by the owner, accompanies the carcass.

(b) Without a certificate of permit signed by the owner, custom meat facilities can only accept carcasses from mobile or fixed location custom farm slaughterers or officially inspected slaughter plants.

CERTIFIED FEEDLOTS

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-115 ~~((What requirements must be met before a license to operate a certified feedlot is granted?))~~ **Certified feedlots—Application inspection.** (1)(a) Before issuing an initial certified feedlot license, the director will conduct an inspection of all cattle in the feedlot inventory and their corresponding ownership documents.

(b) The applicable fee for this inspection of cattle is ~~((set))~~ found in ~~((RCW 16.57.220))~~ WAC 16-610-065.

(2) If a certified feedlot license is not renewed, all cattle in the feedlot inventory are subject to the inspection requirements for ~~((noncertified))~~ feedlots without a certification.

PUBLIC LIVESTOCK MARKETS

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-120 ~~((Who is responsible for identifying cattle and horses consigned to a public livestock market?))~~ **Public livestock markets—Identification requirements.** (1) ~~((The licensee))~~ Any person licensed to operate a public livestock market is responsible for identifying ~~((each head of))~~ all cattle and horses consigned to ~~((a))~~ the public livestock market.

(2) Identification must be done under the supervision of the director and may occur either before or at the time the animals are inspected.

(3) Acceptable methods of identification are ~~((=~~ (a) ~~Placing))~~ a USDA-approved numbered back tag placed on each animal ~~((=))~~ or

~~((b) Using))~~ some other ~~((director approved method of identification to identify each animal))~~ method of identification that is approved by USDA. Tags must be placed in numerical order.

(4) The licensee is responsible for moving, confining, and/or restraining livestock as needed to ~~((insure that))~~ allow for a complete inspection ~~((can be performed)).~~

(5) The director may exempt certain ~~((lots))~~ groups of one-brand or no-brand cattle under the same ownership from the individual identification requirements of this section ~~((provided))~~ if the integrity of the inspection process can be maintained.

(6) It is the responsibility of the licensee or consignor to present livestock to the director so an inspection can be performed.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-122 ~~((What requirements must be satisfied before cattle and horses consigned or purchased at a public livestock market can be removed from that facility?))~~ **Release of cattle and horses from public livestock markets.** (1) Before allowing the removal of any cattle or horses from any public livestock market, a licensee or ~~((their))~~ the licensee's agent or employee must:

(a) Obtain a livestock inspection clearance from the director for the cattle or horses being removed; and

(b) Issue a release to the person wishing to remove the cattle or horses.

(2) ~~((If stamped by the director, the purchase invoice, with specific livestock identification information drawn and written on it can serve as an inspection clearance document provided the animals listed are unbranded and will not be shipped to an out-of-state destination. It is the director's responsibility to:~~

~~(a) Add the livestock identification information to the purchase invoices; and~~

~~(b) Ensure its accuracy.~~

~~(3) At the request of the purchaser, a livestock inspection certificate will be issued in lieu of a stamped purchase invoice at no additional cost.) Cattle and horses that have been offered for sale at a public livestock market but did not sell, will not be assessed an additional inspection fee upon reconsignment if:~~

~~(a) The reconsignment occurs within eight days of the original sale;~~

~~(b) The animals are reconsigned to the original sale facility;~~

~~(c) The animals have not been removed from the original sale facility before reconsignment;~~

~~(d) The animals have not been commingled with other animals; and~~

~~(e) No animals have been added or removed from the group.~~

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-125 ~~((What requirements apply to))~~ Public livestock market livestock inspection facilities(?)~~.~~ The director must approve all livestock inspection facilities at public livestock markets. For the director's approval, inspection facilities must:

(1) Include a chute that is constructed according to the following specifications:

(a) Constructed with a solid base on each side of sufficient strength to contain cattle and horses. The base must be at least twenty-four but not more than thirty-six inches in height~~((, but no more than thirty-six inches in height))~~.

(b) Above the base on each side, the chute must have wire cables extended along its entire length. The cables must be separated by six-inch intervals and must extend vertically to a height of at least six feet.

~~(c) ((For support and to ensure that the cables are maintained in a tight condition, the cables must be attached to a vertical post every sixteen feet that is alternated with a pipe or stay every eight feet.))~~ The cables must be attached every sixteen feet to a vertical post that is alternated with a pipe or stay every eight feet to provide support and to keep the cables tight.

(d) The chute must be well lit by shop, spot, or floodlights. These lights must be located on both sides of the chute at a height of five feet above the highest cable. Beginning at the head of the chute, this lighting must extend along three-fourths of the length of the chute.

(2) Electrical outlets must be available at all chutes so clippers can be conveniently used.

(3) Inspection areas must be well covered by adequate roofing and kept free of any water leaks or water build-up of any kind.

(4) Inspection areas must incorporate a work area for livestock inspectors on each side of the chute. The work area must:

(a) Provide an inspector with at least thirty inches of workspace along the entire length of the chute; and

(b) Be enclosed by fencing or some other ~~((permanent-type))~~ permanent structure that protects inspectors while cattle and horses are unloaded and moved along the chute.

(5) Inspection areas must include an office. The office must:

(a) Be constructed according to dimensions of at least eight feet by ten feet;

(b) Contain adequate heating; and

(c) Be equipped with a counter built at a standing work level height and with a width of approximately eighteen inches.

(6) The licensee shall provide sufficient indoor office space as needed in order for the director to process and distribute inspection documents to the buyer.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-130 ~~((What regulations apply to the installation of scales in a))~~ Public livestock market(?)~~.~~ scales. (1) To ensure that scales can be tested with relative ease and convenience:

(a) All scales that are inaccessible to a test truck must be accessible by a convenient, unobstructed, hard-surfaced approach ramp or walkway that connects with the scale deck at the scale deck level; and

(b) All doors and passageways leading to the scale must have a minimum width of six feet.

(2) Preferably, scale decks should be constructed using reinforced concrete with "Z" bar coping. If cleats are used that are more than three-fourths inch in thickness, they must be:

(a) Hinged; or

(b) Readily removable; or

(c) Accompanied by a satisfactory covering to allow for proper testing.

(3) All stock racks must be securely fastened to the scale deck. There must be a minimum clearance of three inches between the rack and the surrounding ~~((dead))~~ stationary construction.

(4) Adequate space and visibility must be provided around scales so that interested parties may observe the weighing operation.

(5) All dial scales used by the licensee must be:

(a) Readily visible to all interested parties; and

(b) Equipped with a mechanical weight recorder.

(6) All beam scales used by the licensee must be equipped with a balance indicator, a weigh beam, and a mechanical weight recorder. The balance indicator, weigh beam, and mechanical weight recorder must be readily visible to all interested parties.

(7)(a) The pit and foundation beneath the scale deck must be constructed in a singular, uniform and massively solid way.

(b) Coping iron is required on all corners adjacent to the deck.

(c) The pit must be six feet in depth, dry and readily accessible for inspection. When conditions are sufficiently adverse, the director may allow exceptions to this six-foot depth requirement. However, a minimum of two feet clearance between the lowest scale lever and the pit floor must always be provided.

(d) To insure safe and accurate inspections, sufficient electrical lighting must be provided in the inspection facility, especially around the chute and scales and in the pit beneath the scale deck.

(8) The recording element must be adequately housed for protection against wind and weather.

(9) Scales are not required at markets only licensed to handle horses and mules unless these animals are sold by weight. When these animals are sold by weight, the scale requirements of this section apply.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-135 (~~What if a public livestock market fails~~) Failure to conduct a sale on an allocated sale day (1) If a licensed operator of a public livestock market fails more than six times in a twelve-month period to conduct a sale on a sale day that has been allocated to the licensee by the director, the allocation of that sale day is subject to change or revocation by the director.

(2) Any change or revocation of an allocated sale day must be considered in an administrative hearing conducted according to the provisions of chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-140 (~~Does the director approve special sales?~~) Approval of special sales and open consignment horse sales (1) (The director must approve all special sales and approval) An individual, farmers cooperative association, association of livestock breeders, or youth livestock organization such as 4-H, FFA, or other junior livestock group may submit an application to the director for a special sale or open consignment horse sale. Approval of applications for a special sale or open consignment horse sale is at the discretion of the director.

(2) (Application for approval of a special sale must be made at least fifteen days in advance of the proposed sale. The application must contain the following:

(a) Name, address, and contact number of the applicant;
(b) Type of applicant: Producer, livestock market or association;

(c) Name of sale and/or event;
(d) Type and number of livestock expected to be sold;
(e) Date, time, and location of the sale;
(f) Name and the contact number of the veterinarian who will be providing animal health services; and
(g) Signature of the applicant.

Note: Use WSDA form #7046 (Application: Special livestock sale permit) to apply for the director's approval of a special sale.

(3)) A livestock market may submit an application to the director for a special sale or open consignment horse sale on a day not specifically assigned to it. Approval of special sales and open consignment horse sales on unassigned days is at the discretion of the director.

(3) Special sales and open consignment horse sales are limited to three sales per month per applicant in any location, as long as all requirements are met and the proper permits and license have been obtained.

(4) "Special sale" does not mean a public sale by a group of individuals conducting private treaty sales of horses brought to a central location if:

(a) Funds are not handled by a third party; and

(b) The buyer meets the inspection requirements contained in RCW 16.57.260.

(5) Application for approval of a special sale or open consignment horse sale must be made at least fifteen days in advance of the proposed sale.

(6) The application for a special sale or open consignment horse sale must be made on forms provided by the director and must contain the following:

(a) Name, address, and contact number of the applicant;

(b) Type of applicant: Producer, livestock market, or association;

(c) Name of sale and/or event;

(d) Type and number of livestock expected to be sold;

(e) Date, time, and location of the sale;

(f) Name and contact number of the veterinarian who will be providing animal health services; and

(g) The signature of the applicant.

(7) In addition to the requirements in subsections (5) and (6) of this section, the application for an open consignment horse sale must also provide the director with the following:

(a) A detailed statement showing all of the assets and liabilities of the applicant;

(b) A schedule of rates and charges that the applicant will impose on the seller or consignor, including the entry fee, commission, pass out (no sale) fees, stabling, etc.;

(c) Verification of custodial account, as per RCW 16.65.140;

(d) Written evidence of valid bond, as per RCW 16.65.232; and

(e) The projected approximate value of the horses to be handled.

(8) The director charges a special sale application fee of fifty dollars, which is specified in RCW 16.65.420, and an open consignment horse sale license fee of one hundred dollars, as specified in RCW 16.65.042. ((Special sale)) Applications will not be processed until the application fee is paid. There is no application fee for youth livestock organizations.

AMENDATORY SECTION (Amending WSR 04-01-171, filed 12/23/03, effective 1/23/04)

WAC 16-610-145 (~~What is the relationship between membership in an association and a special sale?~~) Requirements for farmers cooperative associations and

associations of livestock breeders holding special sales. To assure that any special sale proposed by a farmers cooperative association or association of livestock breeders is limited to the sale of their own livestock, the association may be required to provide verification to the director that any person offering livestock for sale at the special sale was a member of the association at the time of the filing of any consignment application, contract or commitment.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-610-011 Who can serve on the livestock identification advisory board?
- WAC 16-610-090 Can production brands be used to identify beef cattle?
- WAC 16-610-092 What style of numbers must be used for production brands?
- WAC 16-610-094 Are production brands recorded with the director?
- WAC 16-610-105 Are certificates of permit required for custom slaughtered cattle?
- WAC 16-610-110 Can a custom meat facility accept carcasses of cattle slaughtered by the cattle owner?
- WAC 16-610-124 What if cattle and horses consigned to a public livestock market are not sold?

Statutory Authority for Adoption: RCW 18.16.030 and 43.24.023.

Adopted under notice filed as WSR 07-10-012 on April 19, 2007.

Changes Other than Editing from Proposed to Adopted Version: The department is revising the proposed rule under WAC 308-20-110(20), medical devices. The department is adding that "prescriptive" devices must be "used within the scope of RCW 18.16.020(12)." practice of esthetics. This will clarify that the "prescriptive" tools indicated in this subsection are only those devices used within the scope of the practice of esthetics.

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

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

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

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

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

Date Adopted: June 29, 2007.

Trudie Touchette
Administrator

AMENDATORY SECTION (Amending WSR 04-05-005, filed 2/6/04, effective 3/8/04)

WAC 308-20-110 Minimum safety and sanitation standards for schools, cosmetologists, manicurists, estheticians, barbers, instructors, salons/shops, mobile units and personal services. ((In addition to the requirements of RCW 18.16.175,)) Every licensee shall maintain the following safety and sanitation standards. In addition, school instructors and apprentice trainers must assure persons training in a school or apprentice salon/shop will adhere to the following safety and sanitation standards:

~~((1))~~ **Safety shall be maintained as follows:**

~~(a) A separate area with hot and cold running water shall be designated for use in dispensing and mixing chemicals and disinfecting supplies, tools, equipment, and other materials;~~

~~(b) All containers must be clearly labeled;~~

~~(c) All chemicals must be stored and labeled according to manufacturer's instructions;~~

~~(d) Disinfected supplies, tools, equipment and other material shall be stored separately from those that have been used;~~

~~(e) First-aid supplies shall be available;~~

~~(f) Licensees shall not work on clients with parasites, open wounds, or signs of infection; and~~

~~(g) School instructors and apprentice trainers shall not allow persons training in a school or apprentice salon/shop to~~

WSR 07-14-066

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed June 29, 2007, 10:59 a.m., effective August 1, 2007]

Effective Date of Rule: August 1, 2007.

Purpose: To amend the safety and sanitation standards under chapter 308-20 WAC, Cosmetologists, barbers, manicurists and estheticians. Changes to the safety and sanitation standards will be clearer; more aligned with today's industry standards; and improve the health, safety and welfare of licensees and consumers.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-20-600 Disinfecting and sterilizing of tools and other implements and 308-20-610 Chemical use and storage; and amending WAC 308-20-110 Minimum safety and sanitation standards for schools, cosmetologists, manicurists, estheticians, barbers, instructors, salon/shops, mobile units and personal services and 308-20-550 Posting of required licenses, registrations, permits and notice to consumers.

work on clients with parasites, open wounds, or signs of infection.

(2) Sanitation shall be maintained as follows:

(a) Floors, walls, fixtures, work stations and ceilings shall be clean and free from dust, dirt and hair;

(b) Hair shall be removed from the floor after each service; and

(c) Waste receptacles shall be emptied and disinfected daily.

(d) Disposable products shall be placed in a waste receptacle;

(e) Creams and lotions shall be dispensed using a disposable, or sanitized applicator, and fluids shall be dispensed with a squeeze bottle or pump;

(f) Use clean towel, new neck strip and other sanitized supplies for each client;

(g) Clean reusable supplies and implements with a disinfectant after each use; and

(h) Wash hands with single use soap and disposable hand-drying towels after toilet use and before providing service to each client.)

(1) Requirements and standards.

(a) All locations must have a dispensing sink with hot and cold running water. Dispensing sinks are used for mixing chemicals, and disinfecting supplies, tools, equipment, and other materials. Dispensing sinks must be labeled "not for public use."

(b) On-site laundry facilities must be maintained in a sanitary condition.

(c) Single-use hand soap and disposable or single use hand-drying towels for customers must be provided.

(d) Use of bar soap or a common towel is prohibited.

(e) Licensees must not work on clients with visible parasites, open wounds, or signs of infection.

(f) Licensees must sanitize and disinfect affected work area if visible parasites, open wounds, or signs of infection are found on a client.

(g) Creams and lotions must be dispensed using a disposable, or sanitized and disinfected applicator, and liquids must be dispensed with a squeeze bottle or pump.

(h) Wash hands with single-use soap and/or hand sanitizer and disposable or single use hand-drying towels after restroom use and before providing service to each client.

(i) Waste containers must be emptied, sanitized and disinfected daily.

(j) After service on each client, hair and nail clippings must immediately be placed in a closed covered container.

(2) Personal cleanliness.

(a) A licensee must thoroughly wash his or her hands with soap and warm water or any equally effective cleansing agent immediately before providing services to each client, before checking a student's work on a client, or after smoking, eating or using the restroom.

(b) A client's skin upon which services will be performed must be washed with soap and warm water or wiped with disinfectant or waterless hand cleanser approved for use on skin before a service on the hands and feet.

(c) A licensee who has a contagious disease, visible parasite, or open wound of a nature that may be transmitted, must not perform services on a client until the licensee takes

medically approved measures to prevent transmission of the disease.

(3) Articles in contact with a client.

(a) A neck strip or towel must be placed around the client's neck to prevent direct contact between a multiple use haircloth or cape and the client's skin, and must be in place during entire service.

(b) All items, which come in direct contact with the client's skin that do not require disinfecting, must be sanitized; to include reusable gloves.

(c) All articles, which come in direct contact with the client's skin that cannot be sanitized and disinfected, must be disposed of in a waste receptacle immediately after service on each client.

(d) Disposable protective gloves must be disposed of after service on each client.

(4) Materials in contact with a client.

(a) All chemical substances, including paraffin wax must be dispensed from containers in a manner to prevent contamination of the unused portion.

(b) Any part of the body being immersed in paraffin wax must be sanitized with soap and water or sanitizing solution.

(c) Paraffin wax must be covered when not in use, and maintained at a temperature specified by the manufacturer's instructions.

(5) Chemical use and storage.

(a) When administering services to a client that involve the use of chemicals or chemical compounds, all licensees must follow safety procedures, which prevent injury to the client's person or clothing.

(b) Licensees using chemicals or chemical compounds in providing services to clients must store the chemicals so as to prevent fire, explosion, or bodily harm.

(i) Flammable chemicals must be stored away from potential sources of ignition.

(ii) Chemicals which could interact in a hazardous manner such as oxidizers, catalysts, and solvents, must be stored per manufacturer's instruction.

(iii) All chemicals must be stored in accordance with the manufacturer's directions.

(6) Refuse and waste material.

(a) All chemical, flammable, toxic or otherwise harmful waste material must be deposited in a closed container at the conclusion of each service on a client and removed from the premises to a fire-retardant container at the close of each business day.

(b) All nonchemical waste related to the performance of services must be deposited in a covered container to avoid the potential for cross contamination through release of or exposure to infectious waste materials.

(c) All waste unrelated to the performance of services must be deposited in a covered waste disposal container. Containers located in the reception or office area, which do not contain waste relating to the performance of services, are exempt from having covers.

(d) Outer surfaces of waste disposal containers must be kept clean.

(e) Any disposable sharp objects that come in contact with blood or other body fluids must be disposed of in a sealable rigid (puncture proof) labeled container that is strong

enough to protect the licensee, client and others from accidental cuts or puncture wounds that could happen during the disposal process.

(f) Licensees must have both sealable plastic bags and sealable rigid containers available for use at all times services are being performed.

(7) Sanitation/disinfecting.

(a) All tools and implements, including: reusable skin cleaning sponges and skin care bowls, must be sanitized and disinfected or disposed of after service on each client.

(b) When used according to the manufacturer's instructions, each of the following is an approved method of disinfecting tools and implements after they are cleaned of debris:

(i) Complete immersion or spray with an EPA-registered hospital grade disinfectant solution of the object(s) or portion(s) thereof to be disinfected; or

(ii) Steam sterilizer, registered and listed with the U.S. Food and Drug Administration; or

(iii) Dry heat sterilizer, registered and listed with the U.S. Food and Drug Administration, or Canadian certification.

(c) All sanitized and disinfected tools and implements must be kept in a sanitizer or closed nonairtight container.

(d) All disinfecting solutions and/or agents must be kept at manufacturer recommended strengths to maintain effectiveness, be free from foreign material and be available for immediate use at all times the location is open for business.

(e) Nail files, cosmetic make-up sponges, buffer blocks, sanding bands, toe separators or sleeves, orangewood sticks, and disposable nail bits which have not been approved for disinfection and reuse, must be given to the client or discarded after service on each client. Presence of these articles in the work area will be prima facie evidence of reuse.

(8) Disinfecting nonelectrical tools and implements.

(a) All tools and implements used within a field of practice must be disinfected after service on each client in the following order:

(i) Remove all hair and/or foreign material;

(ii) Clean thoroughly with soap or detergent and water;

(iii) Rinse thoroughly with clear, clean water; and

(iv) Disinfect with an EPA-registered hospital grade disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity, and use according to manufacturer's instructions.

(b) Tools and implements without sharp edges or points, including but not limited to combs, brushes, rollers, rods, etc., must be totally immersed according to manufacturer's instructions.

(c) Clips or other tools and instruments must not be placed in mouths, pockets or unsanitized holders.

(d) A client's personal tools and instruments must not be used in the establishment except when prescribed by a physician.

(9) Disinfecting electrical tools and implements. Electrical tools and implements must be disinfected after service on each client in the following order:

(a) Remove hair and/or foreign matter;

(b) Disinfect with an EPA hospital grade disinfectant specifically made for electrical tools and implements.

(10) Storage of tools and implements.

(a) New and/or sanitized and disinfected tools and implements must be stored separately from all others.

(b) Roller storage receptacles and contents must be sanitized and disinfected and free of foreign material.

(c) Storage cabinets, work stations and storage drawers for sanitized and disinfected tools and implements must be clean, free of debris and used only for sanitized and disinfected tools and implements.

(d) Storage of used tools and implements that are not in a labeled drawer or container is prohibited at the workstation.

(11) Cleaning and disinfecting footspas.

(a) As used in this section, "footspa" or "spa" is defined as any basin using circulating water.

(b) After service upon each client, each footspa must be cleaned and disinfected in the following order:

(i) All water must be drained and all debris must be removed from the spa basin.

(ii) The spa basin must be cleaned with soap or detergent and water.

(iii) The spa basin must be disinfected with an EPA-registered hospital grade disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity, which must be used according to manufacturer's instructions.

(iv) The spa basin must be wiped dry with a clean towel.

(c) At the end of each day, each footspa must be cleaned and disinfected in the following order:

(i) The screen must be removed, all debris trapped behind the screen must be removed, and the screen and the inlet must be washed with soap or detergent and water.

(ii) Before replacing the screen, the screen must be totally immersed in an EPA-registered hospital grade disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity, which must be used according to the manufacturer's instructions.

(iii) The spa system must be flushed with low sudsing soap and warm water for at least ten minutes, after which the spa must be rinsed and drained.

(d) Every other week (biweekly), after cleaning and disinfecting as provided in (c) of this subsection, each footspa must be cleaned and disinfected in the following order:

(i) The spa basin must be filled completely with water and one teaspoon of 5.25% bleach for each one gallon of water, or a solution of sodium hypochlorite of approximately 50 ppm used according to manufacturer's instructions.

(ii) The spa system must be flushed with the bleach and water solution, or sodium hypochlorite solution, for five to ten minutes and allowed to sit for six to ten hours.

(iii) The spa system must be drained and flushed with water before service upon a client.

(e) A record must be made of the date and time of each cleaning and disinfecting as required by (c) and (d) of this subsection, and indicate whether the cleaning was a daily or biweekly cleaning. This record must be made at the time of cleaning and disinfecting. Cleaning and disinfecting records must be made available upon request by either a client or a department representative.

(12) Headrests and treatment tables.

(a) The headrest of chairs must be sanitized, disinfected and covered with a clean towel or paper sheet after service on each client.

(b) Shampoo trays and bowls must be sanitized and disinfected after each shampoo, kept in good repair and in a sanitary condition at all times.

(c) All treatment tables must be sanitized, disinfected and covered with sanitary linens or examination paper, which must be changed after each service on a client.

(13) Walls and ceilings. Walls and ceilings must be clean and free of excessive spots, mildew, condensation, or peeling paint.

(14) Liquids, creams, powders and cosmetics.

(a) All liquids, creams, and other cosmetic preparations must be kept in clean and closed containers.

(b) All bottles and containers must be distinctly and correctly labeled to disclose their contents. All bottles and containers containing poisonous substances must be additionally and distinctly marked as such.

(c) When only a portion of a cosmetic preparation is to be used on a client, it must be removed from the container in such a way as not to contaminate the remaining portion.

(d) Pencil cosmetics must be sharpened before each use. Sanitize and disinfect or dispose of the sharpener after service on each client.

(15) Towels or linens. Clean towels or linens must be used for each client in cosmetology, esthetics, manicuring and barbering services. Towels and linens must be sanitized and disinfected with a product that is labeled 10% bleach solution or the equivalent.

(16) Prohibited hazardous substances—Use of products. No establishment or school may have on the premises cosmetic products containing hazardous substances which have been banned by the U.S. Food and Drug Administration for use in cosmetic products. Use of 100% liquid methyl methacrylate monomer and methylene chloride products are prohibited. No product must be used in a manner that is disapproved by the U.S. Food and Drug Administration.

(17) Prohibited instruments or practices.

(a) Any razor-edged tool, which is designed to remove calluses.

(b) Neck and nail dusters to remove debris from client.

(18) Blood spills. If there is a blood spill or exposure to other body fluids during a service, licensees and students must stop and proceed in the following order:

(a) Put on gloves;

(b) Clean the wound with an antiseptic solution;

(c) Cover the wound with a sterile bandage;

(d) If the wound is on a licensee hand in an area that can be covered by a glove or finger cover, the licensee must wear a clean, fluid proof protective glove or finger cover. If the wound is on the client, the licensee providing service to the client must wear gloves on both hands.

All equipment, tools and instruments that have come into contact with blood or other body fluids must be sanitized and disinfected or discarded. Blood-contaminated tissue or cotton or other blood-contaminated material must be placed in a sealed, labeled plastic bag and that plastic bag must be placed into another plastic bag (double bagged), and discarded. Lic-

ensees must wear gloves if there is contact with blood or other body fluids, and must sanitize and disinfect or discard gloves and wash hands.

(19) First aid kit. The establishment must have a first aid kit that contains at a minimum: Small bandages, gauze, antiseptic, and a blood spill kit that contains disposable bags, gloves and hazardous waste stickers.

(20) Medical devices. Any medical device listed with the U.S. Food and Drug Administration as a "prescriptive device" must be used within the scope of RCW 18.16.020 (12) under the delegation and supervision of a licensed physician or physician's assistant or an advanced registered nurse practitioner (ARNP) as defined under chapters 18.71, 18.57, 18.71A, and 18.57A RCW, and RCW 18.79.050.

(21) Restroom.

(a) All locations must have a restroom available. The restroom must be located on the premises or in adjoining premises, which is reasonably accessible.

(b) All restrooms located on the premises must be kept clean, sanitary and in proper working order at all times.

AMENDATORY SECTION (Amending WSR 04-05-005, filed 2/6/04, effective 3/8/04)

WAC 308-20-550 Posting of required licenses, registrations, permits, ~~(and)~~ notice to consumers, and current inspection form. (1) Licenses, the consumer notice required by chapter 18.16 RCW, ~~(and)~~ the apprentice salon/shop notice as defined in WAC 308-20-555, and the most current inspection form shall be posted in direct public view.

(2) Original operator licenses with an attached current photograph shall be posted in clear view of clients in the operator's work station.

(3) School, instructor, salon/shop, and mobile unit licenses shall be displayed in the reception area.

(4) Personal services shall display their licenses and consumer notice in direct view of their client.

(5) A pocket identification card may not be used in lieu of an original license.

(6) No license which has expired or become invalid for any reason shall be displayed by any operator, instructor, or business in connection with the practice of cosmetology, barbering, esthetics, or manicuring. Any license so displayed shall be surrendered to a department representative upon its request.

(7) Licenses issued by another state, territory, or foreign country shall not be displayed in any salon/shop.

(8) A receipt, issued by the department of licensing, showing the application for a duplicate license may be used if the original has been lost, stolen, or otherwise destroyed until the duplicate license is received.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-20-600 Disinfecting and sterilizing of tools and other implements.

WAC 308-20-610 Chemical use and storage.

WSR 07-14-078
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 29, 2007, 12:39 p.m., effective July 30, 2007]

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

Purpose: The purpose of these regulations is to ensure that the state has rules that are consistent with federal regulations implementing the Individuals with Disabilities Education Act of 2004 and with state law under chapter 28A.155 RCW. Implementation of rules in conformance with IDEA is required for the receipt of federal funding.

Citation of Existing Rules Affected by this Order: Repealing chapter 392-172 WAC.

Statutory Authority for Adoption: RCW 28A.155.090 (7).

Other Authority: 42 U.S.C. 1400 et. seq.

Adopted under notice filed as WSR 07-08-086 on April 2, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 392-172A-01035(1) includes cross references to other federal laws addressing disability protections, that were contained in the former version, to clarify district responsibility for students who may not be eligible for special education, despite the presence of a disability. WAC 392-172A-02040(1) removes the reference to an age range of children, and clarifies the child find is for students who are in need of Part B services. A reference to child find responsibilities under Part C is added, to clarify that child find for those children is done according to those procedures. WAC 392-172A-03305(1) clarifies that the referral be in writing and also includes referrals from other sources knowledgeable about the student. WAC 392-172A-03020 (3)(a) clarifies that professional judgment is used if properly validated tests are not available. In addition, subsection (2) clarifies that the evaluation group is selected by the district. WAC 392-172A-03055(2) clarifies that a student's pattern of strengths and weaknesses may be considered under either the severe discrepancy model, or the response to intervention (RTI) process. WAC 392-172A-03060 clarifies that universal screenings were at least three times a year; core curriculum is designed to meet the needs of all students, and the number of data points is sufficient to address response to an intervention. WAC 392-172A-03080 (1)(d) clarifies that patterns of strengths and weakness may be a part of an eligibility determination under either the severe discrepancy model or RTI. WAC 392-172A-04010(1) clarifies that the applicable part-time enrollment provisions apply when a student is enrolled in a public school for receipt of special education services. WAC 392-172A-04095(1) includes special education certification requirements for nonpublic agencies who are approved by the state board, so that it is consistent with other regulations addressing nonpublic agency services to students eligible for special education and consistent with current application requirements. WAC 392-172A-07040 (3)(b) clarifies that the risk ratio applies to the district's population and is not a state wide average. The terms related to discipline and placement are added for consistency with the definition of disproportionality in subsections (1) and (2).

Number of Sections Adopted in Order to Comply with Federal Statute: New 176, Amended 0, Repealed 182; Federal Rules or Standards: New 181, Amended 0, Repealed 194; or Recently Enacted State Statutes: New 5, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 8.

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

Date Adopted: June 29, 2007.

Bob Harmon
Assistant Superintendent
Special Programs

Chapter 392-172A WAC

**RULES FOR THE PROVISION
OF SPECIAL EDUCATION**

GENERAL

NEW SECTION

WAC 392-172A-01000 Authority. The state authority for this chapter is RCW 28A.155.090(7). This authority enables the superintendent of public instruction to promulgate rules and regulations to implement chapter 28A.155 RCW. This authority is supplemented by RCW 28A.300.070 which authorizes the superintendent of public instruction to receive federal funds in accordance with the provisions of federal law. Federal authority for this chapter is 20 U.S.C. Sec. 1400 et seq., the Individuals with Disabilities Education Act.

NEW SECTION

WAC 392-172A-01005 Purposes. The purposes of this chapter are to:

(1) Implement chapter 28A.155 RCW consistent with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.;

(2) Ensure that all students eligible for special education have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(3) Ensure that the rights of students eligible for special education and their parents are protected;

(4) Assist school districts, educational service agencies and federal and state agencies to provide for the education of all students eligible for special education; and

(5) Assess and ensure the effectiveness of efforts to educate students eligible for special education.

NEW SECTION

WAC 392-172A-01010 Applicability. (1)(a) The provisions of this chapter apply to all political subdivisions of the state that are involved in the education of students eligible for special education, including:

(i) The OSPI to the extent that it receives payments under Part B and exercises supervisory authority over the provision of the delivery of special education services by school districts and other public agencies;

(ii) School districts and educational service districts; and

(iii) State residential education programs established and operated pursuant to chapter 28A.190 RCW, state schools for the deaf and blind established and operated pursuant to chapter 72.40 RCW, and education programs for juvenile inmates established and operated pursuant to chapter 28A.193 RCW; and

(b) Are binding on each public agency in the state that provides special education and related services to students eligible for special education, regardless of whether that agency is receiving funds under Part B of the act.

(2) Each school district or public agency is responsible for ensuring that the rights and protections under Part B of the act are given to students eligible for special education who are:

(a) Referred to or placed in private schools and facilities by that public agency under the provisions of WAC 392-172A-04080 through 392-172A-04110; or

(b) Placed in private schools by their parents under the provisions of WAC 392-172A-04000 through 392-172A-04060.

DEFINITIONSNEW SECTION

WAC 392-172A-01020 Act. Act means Part B of the Individuals With Disabilities Education Act, as amended.

NEW SECTION

WAC 392-172A-01025 Assistive technology device. Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student eligible for special education. The term does not include a medical device that is surgically implanted, or the replacement of such device.

NEW SECTION

WAC 392-172A-01030 Assistive technology service. Assistive technology service means any service that directly assists a student eligible for special education in the selection, acquisition, or use of an assistive technology device. The term includes:

(1) The evaluation of the needs of a student, including a functional evaluation of the student in the student's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students eligible for special education;

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for a student eligible for special education or, if appropriate, that student's family; and

(6) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student.

NEW SECTION

WAC 392-172A-01035 Child with a disability or student eligible for special education. (1)(a) Child with a disability or as used in this chapter, a student eligible for special education means a student who has been evaluated and determined to need special education because of having a disability in one of the following eligibility categories: Mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or for students, three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services.

(b) If it is determined, through an appropriate evaluation, that a student has one of the disabilities identified in subsection (1)(a) of this section, but only needs a related service and not special education, the student is not a student eligible for special education under this chapter. School districts and other public agencies must be aware that they have obligations under other federal and state civil rights laws and rules, including 29 U.S.C. 764, RCW 49.60.030, and 43 U.S.C. 12101 that apply to students who have a disability regardless of the student's eligibility for special education and related services.

(c) Speech and language pathology, audiology, physical therapy, and occupational therapy services, may be provided as specially designed instruction, if the student requires those therapies as specially designed instruction, and meets the eligibility requirements which include a disability, adverse educational impact and need for specially designed instruction. They are provided as a related service under WAC 392-172A-01155 when the service is required to allow the student to benefit from specially designed instruction.

(2) The terms used in subsection (1)(a) of this section are defined as follows:

(a)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional behavioral disability, as defined in subsection (2)(e) of this section.

(iii) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (a)(i) of this subsection are satisfied.

(b) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness and adversely affect a student's educational performance.

(c) Deafness means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

(d)(i) Developmental delay means a student three through eight who is experiencing developmental delays that adversely affect the student's educational performance in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development or adaptive development and who demonstrates a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(A) Two standard deviations below the mean in one or more of the five developmental areas; or

(B) One and one-half standard deviations below the mean in two or more of the five developmental areas.

(ii) The five developmental areas for students with a developmental delay are:

(A) Cognitive development: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence;

(B) Communication development: The ability to effectively use or understand age-appropriate language, including vocabulary, grammar, and speech sounds;

(C) Physical development: Fine and/or gross motor skills requiring precise, coordinated, use of small muscles and/or motor skills used for body control such as standing, walking, balance, and climbing;

(D) Social or emotional development: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors; and

(E) Adaptive development: The ability to develop and exhibit age-appropriate self-help skills, including independent feeding, toileting, personal hygiene and dressing skills.

(ii) A school district is not required to adopt and use the category "developmentally delayed" for students, three through eight.

(iv) If a school district uses the category "developmentally delayed," the district must conform to both the definition and age range of three through eight, established under this section.

(v) School districts using the category "developmentally delayed," for students three through eight may also use any other eligibility category.

(vi) Students who qualify under the developmental delay eligibility category must be reevaluated before age nine and determined eligible for services under one of the other eligibility categories.

(vii) The term "developmentally delayed, birth to three years" are those infants and toddlers under three years of age who:

(A) Meet the eligibility criteria established by the state lead agency under Part C of IDEA; and

(B) Are in need of early intervention services under Part C of IDEA. Infants and toddlers who qualify for early intervention services must be evaluated prior to age three in order to determine eligibility for special education and related services.

(e)(i) Emotional/behavioral disability means a condition where the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional/behavioral disability includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under (e)(i) of this subsection.

(f) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness in this section.

(g) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

(h) Multiple disabilities means concomitant impairments, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term, multiple disabilities does not include deaf-blindness.

(i) Orthopedic impairment means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., polio-

myelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(j) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a student's educational performance.

(k)(i) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that adversely affects a student's educational performance.

(ii) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(l) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

(m) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(n) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

NEW SECTION

WAC 392-172A-01040 Consent. (1) Consent means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. This includes a list of any

records that will be released, and to whom they will be released, or records that will be requested and from whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(2) If a parent revokes consent, that revocation is not retroactive. This means that it does not undo an action that occurred after consent was given and before the consent was revoked.

NEW SECTION

WAC 392-172A-01045 Core academic subjects. Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

NEW SECTION

WAC 392-172A-01050 Day—Business day—School day. (1) Day means calendar day unless otherwise indicated as business day or school day.

(2) Business day means Monday through Friday, except for federal and state holidays, unless holidays are specifically included in the designation of a business day, in other sections of this chapter.

(3) School day means any day, including a partial day that students are in attendance at school for instructional purposes, including students with and without disabilities.

NEW SECTION

WAC 392-172A-01055 Educational service district. Educational service district means a regional public multiservice agency:

(1) Authorized under chapter 28A.310 RCW to develop, manage, and provide services or programs to students eligible for special education within school districts.

(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools.

NEW SECTION

WAC 392-172A-01060 Elementary or secondary school. Elementary or secondary school means a public school, a nonprofit institutional day or residential school that provides education to students in any combination of kindergarten through twelfth grade. The definition does not include any education beyond grade twelve.

NEW SECTION

WAC 392-172A-01065 Equipment. Equipment means:

(1) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(2) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

NEW SECTION

WAC 392-172A-01070 Evaluation. Evaluation means procedures used in accordance with WAC 392-172A-03005 through 392-172A-03080 to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs.

NEW SECTION

WAC 392-172A-01075 Excess costs. Excess costs means those costs that are in excess of the average annual per-student expenditure in a school district during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting:

- (1) Amounts received:
 - (a) Under Part B of the act;
 - (b) Under Part A of Title I of the ESEA; and
 - (c) Under Parts A and B of Title III of the ESEA; and
- (2) Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subsection (1) of this section, but excluding any amounts for capital outlay or debt service.

NEW SECTION

WAC 392-172A-01080 Free appropriate public education. Free appropriate public education or FAPE means special education and related services that:

- (1) Are provided at public expense, under public supervision and direction, and without charge;
- (2) Meet the standards of the OSPI, and the act;
- (3) Include an appropriate preschool, elementary school, or secondary school education in the state; and
- (4) Are provided in conformity with an individualized education program (IEP) that meets the requirements of WAC 392-172A-03090 through 392-172A-03135.

NEW SECTION

WAC 392-172A-01085 Highly qualified special education teachers. (1)(a) For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56; and in addition, to meet the definition of highly qualified, public elementary school or secondary school special education teachers must have a bachelors degree and obtained full certification as a teacher and a special education endorsement, which can include certification obtained through alternative routes to certification, or a continuing certificate.

(b) A teacher does not meet the highly qualified definition if he or she is teaching pursuant to a temporary out-of-endorsement assignment or is teaching special education with a preendorsement waiver.

(c) A teacher will be considered to meet the highly qualified standard in (a) of this subsection if that teacher is participating in an alternative route to special education certification program under which the teacher:

- (i) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
- (ii) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
- (iii) Assumes functions as a teacher only for a specified period of time not to exceed three years; and
- (iv) Demonstrates satisfactory progress toward full certification according to the state professional standards board rules, and the state ensures, through its certification and endorsement process, that the provisions of subsection (2) of this section are met.

(2) Any public elementary school or secondary school special education teacher who is not teaching a core academic subject is highly qualified if the teacher meets the state certification requirements and has an endorsement in special education, or holds a continuing certificate.

(3) Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to students who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either:

(a) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(b) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, based on the state professional standards board's certification requirements.

(4) Requirements for special education teachers teaching multiple subjects. Subject to subsection (5) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to students eligible for special education, highly qualified means that the teacher may:

(a) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 (b) or (c);

(b) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, which may include a sin-

gle, high objective uniform state standard of evaluation (HOUSSE) covering multiple subjects; or

(c) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.

(5) Teachers may meet highly qualified standards through use of the state's HOUSSE which meets all the requirements for a HOUSSE for a general education teacher.

(6) Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this section shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular school district employee to be highly qualified, or to prevent a parent from filing a state citizen complaint under WAC 392-172A-05025 through 392-172A-05040 about staff qualifications with the OSPI.

(7)(a) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(b) A certified general education teacher who subsequently receives a special education endorsement is a new special education teacher when first hired as a special education teacher.

(8) Teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by school districts to provide equitable services to parentally placed private school students eligible for special education are not required to meet highly qualified standards addressed in this section. However, nonpublic agencies are required to ensure that teachers providing services to students placed by a school district meet the certification and special education endorsement standards established by the professional educators standards board in Title 181 WAC and in accordance with WAC 392-172A-04095.

NEW SECTION

WAC 392-172A-01090 Homeless children. Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S.C. Sec. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. Sec. 11431 et seq.

NEW SECTION

WAC 392-172A-01095 Include. Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

NEW SECTION

WAC 392-172A-01100 Individualized education program. Individualized education program or IEP means a written statement of an educational program for a student eligible for special education that is developed, reviewed, and revised in accordance with WAC 392-172A-03090 through 392-172A-03135.

NEW SECTION

WAC 392-172A-01105 Individualized education program team. Individualized education program team or IEP team means a group of individuals described in WAC 392-172A-03095, responsible for developing, reviewing, or revising an IEP.

NEW SECTION

WAC 392-172A-01110 Limited English proficient. Limited English proficient has the meaning given the term in section 9101(25) of the ESEA.

NEW SECTION

WAC 392-172A-01115 Local educational agency or school district. (1) Local educational agency or school district means a public board of education with administrative control and direction of any combination of public kindergarten through grade 12 in a school district.

(2) The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including the school for the deaf and the school for the blind.

(3) For the purposes of this chapter, use of the term school district includes public agencies described in WAC 392-172A-01150 who provide special education and/or related services.

NEW SECTION

WAC 392-172A-01120 Native language. (1) Native language, when used with respect to an individual who is limited English proficient, means the following:

(a) The language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student, except as provided in (b) of this subsection.

(b) In all direct contact with a student (including evaluation of the student), the language normally used by the student in the home or learning environment.

(2) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual, such as sign language, Braille, or oral communication.

NEW SECTION

WAC 392-172A-01125 Parent. (1) Parent means:

(a) A biological or adoptive parent of a child;

(b) A foster parent;

(c) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the student, but not the state, if the student is a ward of the state;

(d) An individual acting in the place of a biological or adoptive parent including a grandparent, stepparent, or other relative with whom the student lives, or an individual who is legally responsible for the student's welfare; or

(e) A surrogate parent who has been appointed in accordance with WAC 392-172A-05130.

(2)(a) Except as provided in (b) of this subsection, if the biological or adoptive parent is attempting to act as the parent under this chapter, and when more than one party meets the qualifications to act as a parent, the biological or adoptive parent must be presumed to be the parent unless he or she does not have legal authority to make educational decisions for the student.

(b) If a judicial decree or order identifies a specific person or persons under subsection (1)(a) through (d) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the "parent" for purposes of this section.

(3) The use of the term, "parent," includes adult students whose rights have transferred to them pursuant to WAC 392-172A-05135.

NEW SECTION

WAC 392-172A-01130 Parent training and information center. Parent training and information center means a center assisted under sections 671 or 672 of the act.

NEW SECTION

WAC 392-172A-01135 Part-time enrollment. Part-time enrollment means a student eligible for special education who is home schooled or attends private school, and whose parent chooses to enroll the student in his or her resident school district for special education or related services pursuant to RCW 28A.150.350 and chapter 392-134 WAC.

NEW SECTION

WAC 392-172A-01140 Personally identifiable. Personally identifiable means information that contains:

- (1) The name of the student, the student's parent, or other family member;
- (2) The address of the student;
- (3) A personal identifier, such as the student's Social Security number or student number; or
- (4) A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

NEW SECTION

WAC 392-172A-01145 Private school. Private school means a nonpublic school or school district conducting a program consisting of kindergarten and at least grade one, or a program of any combination of grades one through twelve and meeting minimum state board private school approval standards as outlined in chapter 180-90 WAC.

NEW SECTION

WAC 392-172A-01150 Public agency. Public agency includes school districts, ESDs, state operated programs identified in WAC 392-172A-02000 and any other political subdivisions of the state that are responsible for providing

special education or related services or both to students eligible for special education.

NEW SECTION

WAC 392-172A-01155 Related services. (1) Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(2) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. Nothing in this subsection:

(a) Limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP team to be necessary for the student to receive FAPE;

(b) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or

(c) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

(3) Individual related services terms used in this definition are defined as follows:

(a) Audiology includes:

(i) Identification of students with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of students, parents, and teachers regarding hearing loss; and

(vi) Determination of students' needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(b) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(c) Early identification and assessment of disabilities in students means the implementation of a formal plan for identifying a disability as early as possible in a student's life.

(d) Interpreting services includes:

(i) Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell for students who are deaf or hard of hearing; and

(ii) Special interpreting services for students who are deaf-blind.

(e) Medical services means services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.

(f) Occupational therapy means services provided by a qualified occupational therapist and includes:

(i) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(iii) Preventing through early intervention, initial or further impairment or loss of function.

(g) Orientation and mobility services means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and can include teaching the student:

(i) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(ii) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(iii) To understand and use remaining vision and distance low vision aids; and

(iv) Other concepts, techniques, and tools.

(h) Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

(i) Physical therapy means services provided by a qualified physical therapist.

(j) Psychological services includes:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for students and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(k) Recreation includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(l) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. Sec. 701 et seq.

(m) School health services and school nurse services means health services that are designed to enable a student eligible for special education to receive FAPE as described in the student's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(n) Social work services in schools includes:

(i) Preparing a social or developmental history on a student eligible for special education;

(ii) Group and individual counseling with the student and family;

(iii) Working in partnership with parents and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school;

(iv) Mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(o) Speech-language pathology services includes:

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(p) Transportation includes:

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student eligible for special education.

NEW SECTION

WAC 392-172A-01160 Residency or resident student. Residency or resident student has the same meaning as is defined in WAC 392-137-115.

NEW SECTION**WAC 392-172A-01165 Scientifically based research.**

Scientifically based research:

(1) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(2) Includes research that:

(a) Employs systematic, empirical methods that draw on observation or experiment;

(b) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(c) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(d) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random assignment experiments, or other designs to the extent that those designs contain within condition or across condition controls;

(e) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(f) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

NEW SECTION

WAC 392-172A-01170 Services plan. Services plan means a written statement that describes the special education and related services the school will provide to a parentally placed student eligible for special education who is enrolled in a private school who has been designated to receive services. The plan will include the location of the services and any transportation necessary. The plan will be developed using the procedures for development and implementation of an IEP.

NEW SECTION

WAC 392-172A-01175 Special education. (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

(2) Special education includes:

(a) The provision of speech-language pathology, occupational therapy, audiology, and physical therapy service as defined in WAC 392-172A-01155 when it meets the criteria in WAC 392-172A-01035 (1)(c);

(b) Travel training; and

(c) Vocational education.

(3) The terms in this section are defined as follows:

(a) At no cost means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program.

(b) Physical education means the development of:

(i) Physical and motor fitness;

(ii) Fundamental motor skills and patterns; and

(iii) Skills in aquatics, dance, and individual and group games and sports including intramural and lifetime sports; and

(iv) Includes special physical education, adapted physical education, movement education, and motor development.

(c) Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction:

(i) To address the unique needs of the student that result from the student's disability; and

(ii) To ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.

(d) Travel training means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other eligible students who require this instruction, to enable them to:

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(e) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

NEW SECTION

WAC 392-172A-01180 State educational agency. State educational agency or SEA means the office of superintendent of public instruction (OSPI).

NEW SECTION

WAC 392-172A-01185 Supplementary aids and services. The term "supplementary aids and services" means aids, services, and other supports that are provided in general education classes or other education-related settings to enable students eligible for special education to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment requirements in WAC 392-172A-02050 through 392-172A-02065.

NEW SECTION

WAC 392-172A-01190 Transition services. (1) Transition services means a coordinated set of activities for a student eligible for special education that:

(a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate his or her movement

from school to post-school activities, including postsecondary education, vocational education, integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the student's strengths, preferences, and interests; and includes:

- (i) Instruction;
- (ii) Related services;
- (iii) Community experiences;
- (iv) The development of employment and other post-school adult living objectives; and
- (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(2) Transition services for students eligible for special education may be special education, if provided as specially designed instruction, or a related service, if required to assist a student eligible for special education to benefit from special education.

NEW SECTION

WAC 392-172A-01195 Universal design. The term universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. Sec. 3002. It means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

NEW SECTION

WAC 392-172A-01200 Ward of the state. Ward of the state means a student within the jurisdiction of the department of social and health services, children's administration through shelter care, dependency or other proceedings to protect abused and neglected children, except that it does not include a foster child who has a foster parent who meets the definition of a parent in WAC 392-172A-01125.

FAPE REQUIREMENTS

NEW SECTION

WAC 392-172A-02000 Student's rights to a free appropriate public education. (1) Each school district, public agency, and residential or day schools operated pursuant to chapters 28A.190 and 72.40 RCW shall provide every student who is eligible for special education between the age of three and twenty-one years, a free appropriate public education program (FAPE). The right to a FAPE includes special education for students who have been suspended or expelled from school. A FAPE is also available to any student determined eligible for special education even though the student has not failed or been retained in a course or grade and is advancing from grade to grade. The right to special education for eligible students starts on their third birthday with an IEP in effect by that date. If an eligible student's third birth-

day occurs during the summer, the student's IEP team shall determine the date when services under the individualized education program will begin.

(2) A student who is determined eligible for special education services shall remain eligible until one of the following occurs:

(a) A group of qualified professionals and the parent of the student, based on a reevaluation, determines the student is no longer eligible for special education; or

(b) The student has met high school graduation requirements established by the school district pursuant to rules of the state board of education, and the student has graduated from high school with a regular high school diploma. A regular high school diploma does not include a certificate of high school completion, or a general educational development credential. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with WAC 392-172A-05010; or

(c) The student enrolled in the public school system or is receiving services pursuant to chapter 28A.190 or 72.40 RCW has reached age twenty-one. The student whose twenty-first birthday occurs on or before August 31 would no longer be eligible for special education. The student whose twenty-first birthday occurs after August 31, shall continue to be eligible for special education and any necessary related services for the remainder of the school year.

NEW SECTION

WAC 392-172A-02005 Exceptions to a student's right to FAPE. (1) A student eligible for special education residing in a state adult correctional facility is eligible for special education services pursuant to chapter 28A.193 RCW. The department of corrections is the agency assigned supervisory responsibility by the governor's office for any student not served pursuant to chapter 28A.193 RCW.

(2)(a) Students determined eligible for special education services and incarcerated in other adult correctional facilities will be provided special education and related services.

(b) Subsection (2)(a) of this section does not apply to students aged eighteen to twenty-one if they:

(i) Were not actually identified as being a student eligible for special education; and

(ii) Did not have an IEP; unless the student:

(A) Had been identified as a student eligible for special education and had received services in accordance with an IEP, but who left school prior to incarceration; or

(B) Did not have an IEP in his or her last education setting, but who had actually been identified as a student eligible for special education.

NEW SECTION

WAC 392-172A-02010 Methods of payment for FAPE. (1) If the delivery of services in a public or private residential educational program is necessary to provide special education services to an eligible student, the program, including nonmedical care and room and board, must be at no cost to the parents of the student. Nothing in this chapter limits the responsibility of agencies other than educational agen-

cies for providing or paying some or all of the costs of a FAPE to students eligible for special education.

(2) Nothing in this chapter relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to students eligible for special education.

(3) Consistent with the IEP provisions in this chapter, the OSPI shall ensure that there is no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services to the student is being determined.

NEW SECTION

WAC 392-172A-02015 Availability of assistive technology. (1) Each school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a student eligible for special education if required as part of the student's:

- (a) Special education;
- (b) Related services; or
- (c) Supplementary aids and services.

(2) On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP team determines that the student needs access to those devices in order to receive FAPE.

NEW SECTION

WAC 392-172A-02020 Extended school year services. (1) Extended school year services means services meeting state standards contained in this chapter that are provided to a student eligible for special education:

- (a) Beyond the normal school year;
- (b) In accordance with the student's IEP; and
- (c) Are provided at no cost to the parents of the student.

(2) School districts must ensure that extended school year services are available when necessary to provide a FAPE to a student eligible for special education services.

(3) Extended school year services must be provided only if the student's IEP team determines on an individual basis that the services are necessary for the provision of FAPE to the student.

(4) A school district may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount or duration of those services.

(5) The purpose of extended school year services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors.

(6) School districts must develop criteria for determining the need for extended school year services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based upon the professional judgment of the team and consideration of factors including the nature and severity of the student's disability, rate of progress, and emerging skills, with evidence to support the need.

(7) For the purposes of subsection (6) of this section:

(a) Regression means significant loss of skills or behaviors if educational services are interrupted in any area specified on the IEP;

(b) Recoupment means the recovery of skills or behaviors to a level demonstrated before interruption of services specified on the IEP.

NEW SECTION

WAC 392-172A-02025 Nonacademic services. (1) Each school district must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students eligible for special education an equal opportunity for participation in those services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

NEW SECTION

WAC 392-172A-02030 Physical education. (1) Physical education services, specially designed if necessary, must be made available to every student receiving FAPE.

(2) Each student eligible for special education services must be afforded the opportunity to participate in the general physical education program available to students who are not disabled unless:

- (a) The student is enrolled full time in a separate facility; or
- (b) The student needs specially designed physical education, as described in the student's individualized education program.

(3) If specially designed physical education is required in a student's individualized education program, the school district shall ensure that the public agency responsible for the education of that student provides the service directly, or makes arrangements for it to be provided through other public or private programs.

(4) The school district shall ensure that any student eligible for special education who is enrolled in a separate facility will be provided with appropriate physical education services.

NEW SECTION

WAC 392-172A-02035 Program options. Each school district shall ensure that its students eligible for special education have available to them the variety of educational programs and services available to nondisabled students in the school district's area, including art, music, industrial arts, consumer and homemaking education, and vocational education.

NEW SECTION

WAC 392-172A-02040 Child find. (1) The school district shall conduct child find activities calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability. The child find activities shall extend to students residing in the district whether or not they are enrolled in school. Students attending private elementary or secondary schools located within the district shall be located, identified and evaluated consistent with WAC 392-172A-04005. Districts will conduct child find activities for infants and toddlers, consistent with the child find requirements of the lead agency for Part C of the act.

(2) Child find activities must be calculated to reach students who are homeless, wards of the state, highly mobile students with disabilities, such as homeless and migrant students and students who are suspected of being a student with a disability and in need of special education, even though they are advancing from grade to grade.

(3) The local school district shall have policies and procedures in effect that describe the methods it uses to conduct child find activities in accordance with subsections (1) and (2) of this section. Methods used may include but are not limited to activities such as:

(a) Written notification to all parents of students in the district's jurisdiction regarding access to and the use of its child find system;

(b) Posting notices in school buildings, other public agency offices, medical facilities, and other public areas, describing the availability of special education programs;

(c) Offering preschool developmental screening;

(d) Conducting local media informational campaigns;

(e) Coordinating distribution of information with other child find programs within public and private agencies; and

(f) Internal district review of students such as screening district-wide test results, in-service education to staff, and other methods developed by the school district to identify, locate and evaluate students including a systematic, intervention based, process within general education for determining the need for a special education referral.

NEW SECTION

WAC 392-172A-02045 Routine checking of hearing aids and external components of surgically implanted medical devices. (1) Hearing aids. Each school district must ensure that hearing aids worn in school by students with hearing impairments, including deafness, are functioning properly.

(2) External components of surgically implanted medical devices. Each school district must ensure that the external components of surgically implanted medical devices are functioning properly.

(3) A school district is not responsible for the postsurgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

LEAST RESTRICTIVE ENVIRONMENTNEW SECTION

WAC 392-172A-02050 Least restrictive environment. Subject to the exceptions for students in adult correctional facilities, school districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided:

(1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and

(2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

NEW SECTION

WAC 392-172A-02055 Continuum of alternative placements. (1) Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students.

(2) The continuum required in this section must:

(a) Include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and

(b) Make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement.

NEW SECTION

WAC 392-172A-02060 Placements. (1) When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options.

(2) The selection of the appropriate placement for each student shall be based upon:

(a) The student's IEP;

(b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section;

(c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and

(d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

(3) Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home.

(4) A student shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum.

(5) Notwithstanding subsections (1) through (4) of this section, an IEP team, or other team making placement decisions for a student convicted as an adult and receiving educational services in an adult correctional facility, may modify the student's placement if there is a demonstrated bona fide security or compelling penological interest that cannot otherwise be accommodated.

NEW SECTION

WAC 392-172A-02065 Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, each public agency must ensure that each student eligible for special education participates with nondisabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student. The public agency must ensure that each student eligible for special education has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings.

NEW SECTION

WAC 392-172A-02070 Students in public or private institutions. The state shall make arrangements with public and private institutions as may be necessary to ensure that the least restrictive environment provisions in this chapter are effectively implemented.

OTHER REQUIREMENTS

NEW SECTION

WAC 392-172A-02075 Prohibition on mandatory medication. (1) School district personnel are prohibited from requiring parents to obtain a prescription for substances identified under Schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. Sec. 812(c)) for a student as a condition of attending school, receiving an evaluation, or receiving special education services.

(2) Nothing in subsection (1) of this section shall be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

NEW SECTION

WAC 392-172A-02080 Transition of children from the Part C program to preschool programs. Each school district shall have policies and procedures for transition to preschool programs to ensure that:

(1) Students participating in early intervention programs assisted under Part C of the IDEA, and who will participate in

preschool programs assisted under Part B of the IDEA, experience a smooth and effective transition to those preschool programs in a manner consistent with the Part C requirements.

(2) Each school district will participate in transition planning conferences arranged by the designee of the lead agency for Part C in the state. A transition planning conference will be convened for each student who may be eligible for preschool services at least ninety days prior to the student's third birthday.

(3) By the third birthday of a student described in subsection (1) of this section, an IEP has been developed and is being implemented for the student consistent with WAC 392-172A-02000(1).

NEW SECTION

WAC 392-172A-02085 Homeless children. In carrying out the provisions of this chapter, school districts shall ensure that the rights of homeless children and youth are protected consistent with the requirements under the McKinney-Vento Homeless Assistance Act, as amended.

NEW SECTION

WAC 392-172A-02090 Personnel qualifications. (1) In addition to the highly qualified requirements for teachers, pursuant to WAC 392-172A-01085, all school district personnel providing special education services shall meet the following qualifications:

(a) All employees shall hold such credentials, certificates, endorsements or permits as are now or hereafter required by the professional educator standards board for the particular position of employment and shall meet such supplemental standards as may be established by the school district of employment. Supplemental standards established by a district or other public agency may exceed, but not be less than, those established by the professional educator standards board in accordance with Title 181 WAC and this section.

(b) In addition to the requirement of this subsection (1), all special education teachers providing, designing, supervising, monitoring or evaluating the provision of special education shall possess "substantial professional training." "Substantial professional training" as used in this section shall be evidenced by issuance of an appropriate special education endorsement on an individual teaching certificate issued by the OSPI, professional education and certification section.

(c) Other certificated related services personnel providing specially designed instruction or related services as defined in this chapter, shall meet standards established under the educational staff associate rules of the professional educator standards board, as now or hereafter amended.

(d) Employees with only an early childhood special education endorsement may be assigned to programs that serve students birth through eight. Preference for an early childhood special education assignment must be given first to employees having early childhood special education endorsement.

(e) Certified and/or classified staff assigned to provide instruction in Braille, the use of Braille, or the production of Braille must demonstrate competency with grade two stan-

standard literary Braille code by successful completion of a test approved by the professional educator standards board pursuant to WAC 181-82-130.

(f) Paraprofessional staff and aides shall present evidence of skills and knowledge necessary to meet the needs of students eligible for special education, and shall be under the supervision of a certificated teacher with a special education endorsement or a certificated educational staff associate, as provided in (g) of this subsection. Paraprofessional staff in Title One school-wide programs shall meet ESEA standards for paraprofessionals. Districts shall have procedures that ensure that classified staff receive training to meet state recommended core competencies pursuant to RCW 28A.415-.310.

(g) Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate.

(2) School districts must take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to students eligible for special education. There may be occasions when, despite efforts to hire or retain highly qualified teachers, they are unable to do so. The following options are available in these situations:

(a) Teachers who meet state board criteria pursuant to WAC 181-81-110(3) as now or hereafter amended, are eligible for a preendorsement waiver. Application for the special education preendorsement waiver shall be made to the special education section at the OSPI.

(b) In order to temporarily assign a classroom teacher without a special education endorsement to a special education position, the district or other public agency must keep written documentation on the following:

(i) The school district must make one or more of the following factual determinations:

(A) The district or other public agency was unable to recruit a teacher with the proper endorsement who was qualified for the position;

(B) The need for a teacher with such an endorsement could not have been reasonably anticipated and the recruitment of such a classroom teacher at the time of assignment was not reasonably practicable; and/or

(C) The reassignment of another teacher within the district or other public agency with the appropriate endorsement to such assignment would be unreasonably disruptive to the current assignments of other classroom teachers or would have an adverse effect on the educational program of the students assigned such other classroom teachers.

(ii) Upon determination by a school district that one or more of these criteria can be documented, and the district determines that a teacher has the competencies to be an effective special education teacher but does not have endorsement in special education, the district can so assign the teacher to

special education. The teacher so assigned must have completed six semester hours or nine quarter hours of course work which are applicable to an endorsement in special education. The following requirements apply:

(A) A designated representative of the district and any such teacher shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(B) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments;

(C) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned; and

(D) The assignment of such teachers for the previous school year shall be reported annually to the professional educator standards board by the employing school district as required by WAC 181-16-195.

(3) Teachers placed under the options described in subsection (2) of this section do not meet the definition of highly qualified.

(4) Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this section shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular school district employee be highly qualified, or to prevent a parent from filing a state complaint about staff qualifications with the OSPI under WAC 392-172A-05025 through 392-172A-05040.

NEW SECTION

WAC 392-172A-02095 Transportation. (1) Methods. Transportation options for students eligible for special education shall include the following categories and shall be exercised in the following sequence:

(a) A scheduled school bus;

(b) Contracted transportation, including public transportation; and

(c) Other transportation arrangements, including that provided by parents. Board and room cost in lieu of transportation may be provided whenever the above stated transportation options are not feasible because of the need(s) of the student or because of the unavailability of adequate means of transportation, in accordance with rules of the superintendent of public instruction.

(2) Welfare of the student. The transportation of the student shall be in accordance with rules of the OSPI governing transportation by public school districts.

(3) Bus aides and drivers. Training and supervision of bus aides and drivers shall be the responsibility of the school district.

(4) Special equipment. Special equipment may include lifts, wheelchair holders, restraints, and two-way radios. All such special equipment shall comply with specifications contained in the specifications for school buses as now or hereafter established by the OSPI.

(5) Transportation time on bus. Wherever reasonably possible, no student should be required to ride more than sixty minutes one way.

(6) Transportation for state residential school students to and from the residential school and the sites of the educational program shall be the responsibility of the department of social and health services and each state residential school pursuant to law.

(7) Transportation for a state residential school student, including students attending the state school for the deaf and the state school for the blind, to and from such school and the residency of such student shall be the responsibility of the district of residency only if the student's placement was made by such district or other public agency pursuant to an inter-agency agreement—i.e., an appropriate placement in the least restrictive environment.

NEW SECTION

WAC 392-172A-02100 Home/hospital instruction.

Home or hospital instruction shall be provided to students eligible for special education and other students who are unable to attend school for an estimated period of four weeks or more because of physical disability or illness. As conditions to such services, the parent of a student shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks. A student who is not determined eligible for special education, but who qualifies pursuant to this subsection shall be deemed "disabled" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a special education student for the purposes of generating state or federal special education funds. A school district shall not pay the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section.

Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to students eligible for special education. It shall be limited to services necessary to provide temporary intervention as a result of a physical disability or illness.

EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS

Consent

NEW SECTION

WAC 392-172A-03000 Parental consent for initial evaluations, initial services and reevaluations. (1)(a) A school district proposing to conduct an initial evaluation to determine if a student is eligible for special education services must provide prior written notice consistent with WAC 392-172A-05010 and obtain informed consent from the parent before conducting the evaluation.

(b) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is eligible for special education.

(d) If the student is a ward of the state and is not residing with the student's parent, the school district or public agency is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility for special education services if:

(i) Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(e) If the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation under subsection (1) of this section, or the parent fails to respond to a request to provide consent, the school district may, but is not required to, pursue the initial evaluation of the student by using due process procedures or mediation.

(f) The school district does not violate its child find and evaluation obligations, if it declines to pursue the initial evaluation when a parent refuses to provide consent under (e) of this subsection.

(2)(a) A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

(c) If the parent of a student fails to respond or refuses to consent to services the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student.

(d) If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district:

(i) Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the public agency requests consent; and

(ii) Is not required to convene an IEP team meeting or develop an IEP.

(3)(a) A school district must obtain informed parental consent, prior to conducting any reevaluation of a student eligible for special education services, subject to the exceptions in (d) of this subsection and subsection (4) of this section.

(b) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the

reevaluation by using the due process procedures to override consent or mediation to obtain an agreement from the parent.

(c) The school district does not violate its child find obligations or the evaluation and reevaluation procedures if it declines to pursue the evaluation or reevaluation.

(d) A school district may proceed with a reevaluation and does not need to obtain informed parental consent if the school district can demonstrate that:

- (i) It made reasonable efforts to obtain such consent; and
- (ii) The child's parent has failed to respond.

(4)(a) Parental consent for an initial or a reevaluation is not required before:

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

(b) A school district may not use a parent's refusal to consent to one service or activity of an initial evaluation or reevaluation to deny the parent or student any other service, benefit, or activity of the public agency, except as required by this chapter.

(c) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures and the public agency is not required to consider the student as eligible for special education services.

(d) To meet the reasonable efforts requirements to obtain consent for an evaluation or reevaluation the school district must document its attempts to obtain parental consent using the procedures in WAC 392-172A-03100(6).

EVALUATIONS AND REEVALUATIONS

NEW SECTION

WAC 392-172A-03005 Referral and timelines for initial evaluations. (1) A parent of a child, a school district, a public agency, other persons knowledgeable about the child may initiate a request for an initial evaluation to determine if the student is eligible for special education. The request will be in writing, unless the person is unable to write.

(2) The school district must document the referral and:

(a) Notify the parent that the student has been referred because of a suspected disability and that the district, with parental input, will determine whether or not to evaluate the student;

(b) Collect and examine existing school, medical and other records in the possession of the parent and the school district; and

(c) Within twenty-five school days after receipt of the referral, make a determination whether or not to evaluate the student. The school district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.

(3) When the student is to be evaluated to determine eligibility for special education services and the educational

needs of the student, the school district shall provide prior written notice to the parent, obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent; or

(b) Thirty-five school days after the date the refusal of the parent is obtained by agreement through mediation, or overridden by due process procedures; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline.

(d) Exception. The thirty-five school day time frame for evaluation does not apply if:

(i) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(ii) A student enrolls in another school after the consent is obtained and the evaluation has begun but not yet been completed by the other school district, including a determination of eligibility.

(e) The exception in (d)(ii) of this subsection applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

NEW SECTION

WAC 392-172A-03010 Screening for instructional purposes is not an evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

NEW SECTION

WAC 392-172A-03015 Reevaluation timelines. (1) A school district must ensure that a reevaluation of each student eligible for special education is conducted in accordance with WAC 392-172A-03020 through 392-172A-03080 when:

(a) The school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or

(b) If the child's parent or teacher requests a reevaluation.

(2) A reevaluation conducted under subsection (1) of this section:

(a) May occur not more than once a year, unless the parent and the school district agree otherwise; and

(b) Must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.

(3) Reevaluations shall be completed within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent;

(b) Thirty-five school days after the date the refusal of the parent was overridden through due process procedures or agreed to using mediation; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, within the time frames in subsection (2) of this section.

NEW SECTION

WAC 392-172A-03020 Evaluation procedures. (1)

The school district must provide prior written notice to the parents of a student, in accordance with WAC 392-172A-05010, that describes any evaluation procedures the district proposes to conduct.

(2) In conducting the evaluation, the group of qualified professionals selected by the school district must:

(a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:

(i) Whether the student is eligible for special education as defined in WAC 392-172A-01175; and

(ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities;

(b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for special education and for determining an appropriate educational program for the student; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Each school district must ensure that:

(a) Assessments and other evaluation materials used to assess a student:

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility based on other evidence of the existence of a disability and need for special education. Use of professional judgment shall be documented in the evaluation report;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or

achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(d) If necessary as part of a complete assessment, the school district obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student's educational performance.

(e) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(f) Assessments of students eligible for special education who transfer from one school district to another school district in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(g) In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.

(h) Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.

NEW SECTION

WAC 392-172A-03025 Review of existing data for evaluations and reevaluations. As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must:

(1) Review existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based, local, or state assessments, and classroom-based observations; and

(c) Observations by teachers and related services providers.

(2)(a) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

(i) Whether the student is eligible for special education services, and what special education and related services the student needs; or

(ii) In case of a reevaluation, whether the student continues to meet eligibility, and whether the educational needs of the student including any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum; and

(b) The present levels of academic achievement and related developmental needs of the student.

(3) The group described in this section may conduct its review without a meeting.

(4) The school district must administer such assessments and other evaluation measures as may be needed to produce the data identified in subsection (1) of this section.

(5)(a) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student eligible for special education services, and to determine the student's educational needs, the school district must notify the student's parents of:

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the student continues to be a student eligible for special education, and to determine the student's educational needs.

(b) The school district is not required to conduct the assessment described in this subsection (5) unless requested to do so by the student's parents.

NEW SECTION

WAC 392-172A-03030 Evaluations before change in eligibility. (1) Except as provided in subsection (2) of this section, school districts must evaluate a student eligible for special education in accordance with WAC 392-172A-03020 through 392-172A-03080 before determining that the student is no longer eligible for special education services.

(2) A reevaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under WAC 392-172A-02000 (2)(c).

(3) For a student whose eligibility terminates under circumstances described in subsection (2) of this section, a public agency must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

NEW SECTION

WAC 392-172A-03035 Evaluation report. (1) The evaluation report shall be sufficient in scope to develop an IEP, and at a minimum, must include:

(a) A statement of whether the student has a disability that meets the eligibility criteria in this chapter;

(b) A discussion of the assessments and review of data that supports the conclusion regarding eligibility including additional information required under WAC 392-172A-03080 for students with specific learning disabilities;

(c) How the student's disability affects the student's involvement and progress in the general education curriculum or for preschool children, in appropriate activities;

(d) The recommended special education and related services needed by the student;

(e) Other information, as determined through the evaluation process and parental input, needed to develop an IEP;

(f) The date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. If the evaluation report does not reflect his or her conclusion, the professional member of the group

must include a separate statement representing his or her conclusions.

(2) Individuals contributing to the report must document the results of their individual assessments or observations.

NEW SECTION

WAC 392-172A-03040 Determination of eligibility.

(1) Upon completion of the administration of assessments and other evaluation measures:

(a) A group of qualified professionals and the parent of the student determine whether the student is eligible for special education and the educational needs of the student; and

(b) The school district must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(2)(a) A student must not be determined to be eligible for special education services if the determinant factor is:

(i) Lack of appropriate instruction in reading, based upon the state's grade level standards;

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(b) If the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction.

(3) In interpreting evaluation data for the purpose of determining eligibility for special education services, each school district must:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

(b) Ensure that information obtained from all of these sources is documented and carefully considered.

(4) If a determination is made that a student is eligible for special education, an IEP must be developed for the student in accordance with WAC 392-172A-03090 through 392-172A-03135.

ADDITIONAL PROCEDURES FOR IDENTIFYING STUDENTS WITH SPECIFIC LEARNING DISABILITIES

NEW SECTION

WAC 392-172A-03045 District procedures for specific learning disabilities. In addition to the evaluation procedures for determining whether students are eligible for special education, school districts must follow additional procedures for identifying whether a student has a specific learning disability. Each school district shall develop procedures for the identification of students with specific learning disabilities which may include the use of:

(1) A severe discrepancy between intellectual ability and achievement; or

(2) A process based on the student's response to scientific, research-based intervention; or

(3) A combination of both.

NEW SECTION

WAC 392-172A-03050 Additional members of the evaluation group. The determination of whether the student is eligible for special education services in the specific learning disability category shall be made by the student's parent and a group of qualified professionals which must include:

- (1) The student's general education classroom teacher; or
- (2) If the student does not have a general education classroom teacher, a general education classroom teacher qualified to teach a student of his or her age; or
- (3) For a student of less than school age, an individual qualified to teach a student of his or her age; and
- (4) At least one individual qualified to conduct individual diagnostic examinations of students, such as school psychologist, speech language pathologist, or remedial reading teacher.

NEW SECTION

WAC 392-172A-03055 Specific learning disability—Determination. The group described in WAC 392-172A-03050 may determine that a student has a specific learning disability if:

- (1) The student does not achieve adequately for the student's age or meet the state's grade level standards when provided with learning experiences and instruction appropriate for the student's age in one or more of the following areas:
 - (a) Oral expression.
 - (b) Listening comprehension.
 - (c) Written expression.
 - (d) Basic reading skill.
 - (e) Reading fluency skills.
 - (f) Reading comprehension.
 - (g) Mathematics calculation.
 - (h) Mathematics problem solving.
- (2)(a) The student does not make sufficient progress to meet age or state grade level standards in one or more of the areas identified in subsection (1) of this section when using a process based on the student's response to scientific, research-based intervention or the group finds that the student has a severe discrepancy between achievement and intellectual ability in one or more of the areas identified in subsection (1) of this section; and
 - (b) When considering eligibility under (a) of this subsection, the group may also consider whether the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, and through review of existing data.
- (3) The group determines that its findings under subsection (2) of this section are not primarily the result of:
 - (a) A visual, hearing, or motor disability;
 - (b) Mental retardation;
 - (c) Emotional disturbance;
 - (d) Cultural factors;
 - (e) Environmental or economic disadvantage; or
 - (f) Limited English proficiency.

(4) To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider:

- (a) Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel; and
- (b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.
- (5) The district or other public agency must promptly request parental consent to evaluate the student to determine if the student needs special education and related services, and must adhere to the time frames for an initial evaluation under WAC 392-172A-03005:

- (a) If, prior to a referral, a student has not made adequate progress after an appropriate period of time when provided instruction, as described in subsection (4)(a) and (b) of this section; or
- (b) Whenever a student is referred for an evaluation.

NEW SECTION

WAC 392-172A-03060 Process based on a student's response to scientific research-based intervention. (1) School districts using a process based on a student's response to scientific, research-based interventions to determine if a student has a specific learning disability shall adopt procedures to ensure that such process includes the following elements:

- (a) Universal screening and/or benchmarking at fixed intervals at least three times throughout the school year;
- (b) A high quality core curriculum designed to meet the instructional needs of all students;
- (c) Scientific research-based interventions as defined in WAC 392-172A-01165 are identified for use with students needing additional instruction;
- (d) Scientific research-based interventions used with a student are appropriate for the student's identified need and are implemented with fidelity;
- (e) A multitiered model is developed for delivering both the core curriculum and strategic and intensive scientific research-based interventions in the general education setting;
- (f) Frequent monitoring of individual student progress occurs in accordance with the constructs of the multitiered delivery system implemented in the school consistent with the intervention and tier at which it is being applied; and
- (g) Decision making using problem solving or standard treatment protocol techniques is based upon, but not limited to, student centered data including the use of curriculum based measures, available standardized assessment data, intensive interventions, and instructional performance level.
- (2) Such policies and procedures outlined in subsection (1) of this section shall be designed so that districts can establish that:
 - (a) The student's general education core curriculum instruction provided the student the opportunity to increase her or his rate of learning;

(b) Two or more intensive scientific research-based interventions, identified to allow the student to progress toward his or her improvement targets, were implemented with fidelity and for a sufficient duration to establish that the student's rate of learning using intensive scientific research-based interventions in the general education setting, in addition to or in place of the core curriculum, did not increase or allow the student to reach the targets identified for the student;

(c) The duration of the intensive scientific research-based interventions that were implemented was long enough to gather sufficient data points below the student's aim line to demonstrate student response for each of the interventions through progress monitoring to determine the effectiveness of the interventions.

(3) OSPI has developed guidelines for using response to intervention to assist districts in developing the procedures required under this section.

NEW SECTION

WAC 392-172A-03065 Use of discrepancy tables for determining severe discrepancy. (1) If the school district uses a severe discrepancy model, it will use the OSPI's published discrepancy tables for the purpose of determining a severe discrepancy between intellectual ability and academic achievement.

(2) The tables are developed on the basis of a regressed standard score discrepancy method that includes:

(a) The reliability coefficient of the intellectual ability test;

(b) The reliability coefficient of the academic achievement test; and

(c) An appropriate correlation between the intellectual ability and the academic achievement tests.

(3) The regressed standard score discrepancy method is applied at a criterion level of 1.55.

NEW SECTION

WAC 392-172A-03070 Method for documenting severe discrepancy. (1) For the purposes of applying the severe discrepancy tables, the following scores shall be used:

(a) A total or full scale intellectual ability score;

(b) An academic achievement test score which can be converted into a standard score with a mean of one hundred and a standard deviation of fifteen; and

(c) A severe discrepancy between the student's intellectual ability and academic achievement in one or more of the areas addressed in WAC 392-172A-03055(1) shall be determined by applying the regressed standard score discrepancy method to the obtained intellectual ability and achievement test scores using the tables referenced above.

(2) Where the evaluation results do not appear to accurately represent the student's intellectual ability or where the discrepancy between the student's intellectual ability and academic achievement does not appear to be accurate upon application of the discrepancy tables, the evaluation group, described in WAC 392-172A-03050, may apply professional judgment in order to determine the presence of a specific learning disability. Data obtained from formal assessments,

reviewing of existing data, assessments of student progress, observation of the student, and information gathered from all other evaluation processes for students being identified for a specific learning disability must be used when applying professional judgment to determine if a severe discrepancy exists. When applying professional judgment, the group shall document in a written narrative an explanation as to why the student has a severe discrepancy, including a description of all data used to make the determination through the use of professional judgment.

NEW SECTION

WAC 392-172A-03075 Observation of students suspected of having a specific learning disability. (1) School districts must ensure that a student who is suspected of having a specific learning disability is observed in the student's learning environment, including the general education classroom setting, to document the student's academic performance and behavior in the areas of difficulty.

(2) The evaluation group must:

(a) Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or

(b) Have at least one member of the evaluation group conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation and parental consent is obtained.

(3) In the case of a student of less than school age or out of school, a group member must observe the student in a learning environment appropriate for that student.

NEW SECTION

WAC 392-172A-03080 Specific documentation for the eligibility determination of students suspected of having specific learning disabilities. (1) In addition to the requirements for evaluation reports under WAC 392-172A-03035, for a student suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of:

(a) Whether the student has a specific learning disability;

(b) The basis for making the determination, including an assurance that the determination has been made in accordance with WAC 392-172A-03040;

(c) The relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning;

(d) Any educationally relevant medical findings;

(e) Whether:

(i) The student does not achieve adequately for the student's age or meet state grade level standards in one or more of the areas described in WAC 392-172A-03055(1); and

(ii)(A) The student does not make sufficient progress to meet age or state grade level standards when using a process based on the student's response to scientific research-based interventions consistent with WAC 392-172A-03060; or

(B) The student meets eligibility through a severe discrepancy model consistent with WAC 392-172A-03070; and

(C) If used as part of the eligibility determination under (A) or (B) of this subsection, a discussion of the student's pattern of strengths and weaknesses in performance, achievement or both, relative to age, state grade level standards, or intellectual development.

(f) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and

(g) If the student has participated in a process that assesses the student's response to scientific, research-based intervention:

(i) The instructional strategies used and the student-centered data collected in accordance with the district's response to intervention procedures; and

(ii) The documentation that the student's parents were notified about:

(A) State and school district policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the student's rate of learning; and

(C) The parents' right to request an evaluation.

(2) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

INDIVIDUALIZED EDUCATION PROGRAMS

NEW SECTION

WAC 392-172A-03090 Definition of individualized education program. (1) The term IEP means a written statement for each student eligible for special education that is developed, reviewed, and revised in a meeting in accordance with WAC 392-172A-03095 through 392-172A-03100, and that must include:

(a) A statement of the student's present levels of academic achievement and functional performance, including:

(i) How the student's disability affects the student's involvement and progress in the general education curriculum (the same curriculum as for nondisabled students); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(b)(i) A statement of measurable annual goals, including academic and functional goals designed to:

(A) Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and

(B) Meet each of the student's other educational needs that result from the student's disability; and

(ii) For students who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(c) A description of:

(i) How the district will measure the student's progress toward meeting the annual goals described in (b) of this subsection; and

(ii) When the district will provide periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards);

(d) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other students including nondisabled students in the activities described in this section;

(e) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education classroom and extracurricular and nonacademic activities;

(f)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and districtwide assessments; and

(ii) If the IEP team determines that the student must take an alternate assessment instead of a particular regular state or districtwide assessment of student achievement, a statement of why:

(A) The student cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the student;

(g) Extended school year services, if determined necessary by the IEP team for the student to receive FAPE.

(h) Aversive interventions, if any, required for the student.

(i) The projected date for the beginning of the services and modifications described in (d) of this subsection, and the anticipated frequency, location, and duration of those services and modifications.

(j) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

(i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(ii) The transition services including courses of study needed to assist the student in reaching those goals.

(k) Transfer of rights at age of majority. Beginning not later than one year before the student reaches the age of eighteen, the IEP must include a statement that the student has been informed of the student's rights under the act, if any, that will transfer to the student on reaching the age of majority.

(2) Construction. Nothing in this section shall be construed to require:

(a) Additional information be included in a student's IEP beyond what is explicitly required by the federal regulations implementing the act or by state law; or

(b) The IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

NEW SECTION

WAC 392-172A-03095 IEP team membership. (1)

School districts must ensure that the IEP team for each student eligible for special education includes:

(a) The parents of the student;

(b) Not less than one general education teacher of the student if the student is, or may be, participating in the general education environment;

(c) Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

(d) A representative of the public agency who:

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education;

(ii) Is knowledgeable about the general education curriculum; and

(iii) Is knowledgeable about the availability of resources of the school district.

(e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in (b) through (e) of this subsection;

(f) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and

(g) Whenever appropriate, the student.

(2)(a) The student must be invited to the IEP team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals.

(b) If the student does not attend the IEP team meeting, the school district must take other steps to ensure that the student's preferences and interests are considered.

(c) To the extent appropriate, with the consent of the parents or a student who has reached the age of majority, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(3) The determination of the knowledge or special expertise of any individual invited pursuant to subsection (1)(f) of this section must be made by the party who invited the individual to be a member of the IEP team.

(4) A school district may designate one of the members of the IEP team identified in subsection (1)(b), (c), or (e) of this section to also serve as the district representative, if the criteria in subsection (1)(d) of this section are satisfied.

(5)(a) A school district member of the IEP team is not required to attend a meeting, in whole or in part, if the parent of a student eligible for special education and the school dis-

trict agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(b) A member of the IEP team described in (a) of this subsection may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits written input into the development of the IEP prior to the meeting and provides the input to the parent and other IEP team members.

(6) In the case of a student who was previously served under Part C of the act, an invitation to the initial IEP team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives as specified by the state lead agency for Part C to assist with the smooth transition of services.

NEW SECTION

WAC 392-172A-03100 Parent participation. A

school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(3) The notification required under subsection (1) of this subsection must:

(a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student, and participation of the Part C service coordinator or other designated representatives of the Part C system as specified by the state lead agency for Part C at the initial IEP team meeting for a child previously served under Part C of IDEA.

(4) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, the notice also must:

(a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student and that the agency will invite the student; and

(b) Identify any other agency that will be invited to send a representative.

(5) If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls.

(6) A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as:

- (a) Detailed records of telephone calls made or attempted and the results of those calls;
 - (b) Copies of correspondence sent to the parents and any responses received; and
 - (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- (7) The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
- (8) The school district must give the parent a copy of the student's IEP at no cost to the parent.

NEW SECTION

WAC 392-172A-03105 When IEPs must be in effect.

- (1) At the beginning of each school year, each school district must have an IEP in effect, for each student eligible for special education that it is serving through enrollment in the district.
- (2) For an initial IEP, a school district must ensure that:
- (a) A meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and
 - (b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.
- (3) Each school district must ensure that:
- (a) The student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and
 - (b) Each teacher and provider described in (a) of this subsection is informed of:
 - (i) His or her specific responsibilities related to implementing the student's IEP; and
 - (ii) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.
- (4) If a student eligible for special education transfers from one school district to another school district within the state and has an IEP that was in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:
- (a) Adopts the student's IEP from the previous school district; or
 - (b) Develops, adopts, and implements a new IEP that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.
- (5) If a student eligible for special education transfers from a school district located in another state to a school district within the state and has an IEP that is in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

- (a) Conducts an evaluation to determine whether the student is eligible for special education services in this state, if the school district believes an evaluation is necessary to determine eligibility under state standards; and
 - (b) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.
- (6) To facilitate the transition for a student described in subsections (4) and (5) of this section:
- (a) The new school in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous school in which the student was enrolled, pursuant to RCW 28A.225.-335 and consistent with applicable Family Education Rights and Privacy Act (FERPA) requirements; and
 - (b) The school district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new school district, pursuant to RCW 28A.225.335 and applicable FERPA requirements.

NEW SECTION

WAC 392-172A-03110 Development, review, and revision of IEP. (1) In developing each student's IEP, the IEP team must consider:

- (a) The strengths of the student;
 - (b) The concerns of the parents for enhancing the education of their student;
 - (c) The results of the initial or most recent evaluation of the student; and
 - (d) The academic, developmental, and functional needs of the student.
- (2)(a) When considering special factors unique to a student, the IEP team must:
- (i) Consider the use of positive behavioral interventions and supports, and other strategies, to address behavior, in the case of a student whose behavior impedes the student's learning or that of others; and
 - (ii) Consider the language needs of the student as those needs relate to the student's IEP, for a student with limited English proficiency;
 - (iii) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;
 - (iv) Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and

(v) Consider whether the student needs assistive technology devices and services.

(b) A general education teacher of a student eligible for special education, as a member of the IEP team, must, to the extent appropriate, participate in the development of the student's IEP, including the determination of:

(i) Appropriate positive behavioral interventions and supports and other strategies for the student; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with WAC 392-172A-01185.

(c) After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student, consistent with WAC 392-172A-03105(3).

(d) Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in (c) of this subsection, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(e) To the extent possible, the school districts must encourage the consolidation of reevaluation meetings and other IEP team meetings for the student.

(3) Each public agency must ensure that, subject to subsections (4) and (5) of this section the IEP team:

(a) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

(b) Revises the IEP, as appropriate, to address:

(i) Any lack of expected progress toward the annual goals described in WAC 392-172A-03090 (1)(b) and in the general education curriculum, if appropriate;

(ii) The results of any reevaluations;

(iii) Information about the student provided to, or by, the parents, as described under WAC 392-172A-03025;

(iv) The student's anticipated needs; or

(v) Other matters.

(4) In conducting a review of the student's IEP, the IEP team must consider the special factors described in subsection (2)(a) of this section. In the case of a student whose behavior continues to impede the progress of the student or others despite the use of positive behavioral support strategies: Consider the need for aversive interventions only as a last resort, if positive behavior supports have been used in accordance with the student's IEP, the use of positive behavior supports has been documented to be ineffective, and the IEP team, consistent with WAC 392-172A-03120 through 392-172A-03135 determines that an aversive intervention plan is necessary for the student.

(5) A general education teacher of the student, as a member of the IEP team, must, consistent with subsection (2)(b) of this section, participate in the review and revision of the IEP of the student.

(6)(a) If a participating agency, other than the school district, fails to provide the transition services described in the IEP in accordance with WAC 392-172A-03090 (1)(j), the school district must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

(b) Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students eligible for special education services who meet the eligibility criteria of that agency.

(7)(a) The following requirements do not apply to students eligible for special education who are convicted as adults under state law and incarcerated in adult prisons:

(i) The requirement that students eligible for special education participate in district or statewide assessments.

(ii) The requirements related to transition planning and transition services, if the student's eligibility for special education services will end because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(b)(i) Subject to (b)(ii) of this subsection, the IEP team of a student with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) Contents of the IEP and LRE (least restrictive environment) requirements do not apply with respect to the modifications described in (b)(i) of this subsection.

NEW SECTION

WAC 392-172A-03115 Educational placements. Consistent with WAC 392-172A-05000 (3)(a), each school district must ensure that the parents of each student eligible for special education are members of any group that makes decisions on the educational placement of the student.

AVERSIVE INTERVENTIONS

NEW SECTION

WAC 392-172A-03120 Aversive interventions definition and purpose. (1) The term "aversive interventions" means the systematic use of stimuli or other treatment which a student is known to find unpleasant for the purpose of discouraging undesirable behavior on the part of the student. The term does not include the use of reasonable force, restraint, or other treatment to control unpredicted spontaneous behavior which poses one of the following dangers:

(a) A clear and present danger of serious harm to the student or another person.

(b) A clear and present danger of serious harm to property.

(c) A clear and present danger of seriously disrupting the educational process.

(2) The purpose is to assure that students eligible for special education are safeguarded against the use and misuse of various forms of aversive interventions. Each school district

shall take steps to assure that each employee, volunteer, contractor, and other agent of the district or other public agency responsible for the education, care, or custody of a special education student is aware of aversive intervention requirements and the conditions under which they may be used. No school district or other public agency and no educational service district shall authorize, permit, or condone the use of aversive interventions which violates WAC 392-172A-03120 through 392-172A-03135 by any employee, volunteer, contractor or other agent of the district or other public agency responsible for the education, care, or custody of a special education student. Aversive interventions, to the extent permitted, shall only be used as a last resort. Positive behavioral supports interventions shall be used by the school district and described in the individualized education program prior to the determination that the use of aversive intervention is a necessary part of the student's program.

NEW SECTION

WAC 392-172A-03125 Aversive intervention prohibitions. There are certain interventions that are manifestly inappropriate by reason of their offensive nature or their potential negative physical consequences, or their legality. The purpose of this section is to uniformly prohibit their use with students eligible for special education as follows:

- (1) Electric current. No student may be stimulated by contact with electric current.
- (2) Food services. No student who is willing to consume subsistence food or liquid when the food or liquid is customarily served may be denied or subjected to an unreasonable delay in the provision of the food or liquid.
- (3)(a) Force and restraint in general. No force or restraint which is either unreasonable under the circumstances or deemed to be an unreasonable form of corporal punishment as a matter of state law may be used. See RCW 9A.16.100 which cites the following uses of force or restraint as uses which are presumed to be unreasonable and therefore unlawful:
 - (i) Throwing, kicking, burning, or cutting a student.
 - (ii) Striking a student with a closed fist.
 - (iii) Shaking a student under age three.
 - (iv) Interfering with a student's breathing.
 - (v) Threatening a student with a deadly weapon.
 - (vi) Doing any other act that is likely to cause bodily harm to a student greater than transient pain or minor temporary marks.
- (b) The statutory listing of worst case uses of force or restraint described in this subsection may not be read as implying that all unlisted uses (e.g., shaking a four year old) are permissible. Whether or not an unlisted use of force or restraint is permissible depends upon such considerations as the balance of these rules, and whether the use is reasonable under the circumstances.

(4) Hygiene care. No student may be denied or subjected to an unreasonable delay in the provision of common hygiene care.

(5) Isolation. No student may be excluded from his or her regular instructional or service area and isolated within a

room or any other form of enclosure, except under the conditions set forth in WAC 392-172A-03130.

(6) Medication. No student may be denied or subjected to an unreasonable delay in the provision of medication.

(7) Noise. No student may be forced to listen to noise or sound that the student finds painful.

(8) Noxious sprays. No student may be forced to smell or be sprayed in the face with a noxious or potentially harmful substance.

(9) Physical restraints. No student may be physically restrained or immobilized by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object, except under the conditions set forth in WAC 392-172A-03130.

(10) Taste treatment. No student may be forced to taste or ingest a substance which is not commonly consumed or which is not commonly consumed in its existing form or concentration.

(11) Water treatment. No student's head may be partially or wholly submerged in water or any other liquid.

NEW SECTION

WAC 392-172A-03130 Aversive interventions—Conditions. Use of various forms of aversive interventions which are not prohibited by WAC 392-172A-03125 warrant close scrutiny. Accordingly, the use of aversive interventions involving bodily contact, isolation, or physical restraint not prohibited is conditioned upon compliance with the following procedural and substantive safeguards:

(1) Bodily contact. The use of any form of aversive interventions which involves contacting the body of a student shall be provided for by the terms of the student's individualized education program established in accordance with the requirements of WAC 392-172A-03135.

(2) Isolation. The use of aversive interventions which involves excluding a student from his or her regular instructional area and isolation of the student within a room or any other form of enclosure is subject to each of the following conditions:

(a) The isolation, including the duration of its use, shall be provided for by the terms of the student's individualized education program established in accordance with the requirements of WAC 392-172A-03135.

(b) The enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy.

(c) The enclosure shall permit continuous visual monitoring of the student from outside the enclosure.

(d) An adult responsible for supervising the student shall remain in visual or auditory range of the student.

(e) Either the student shall be capable of releasing himself or herself from the enclosure or the student shall continuously remain within view of an adult responsible for supervising the student.

(3) Physical restraint. The use of aversive interventions which involves physically restraining or immobilizing a student by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the

student's body to an object is subject to each of the following conditions:

(a) The restraint shall only be used when and to the extent it is reasonably necessary to protect the student, other persons, or property from serious harm.

(b) The restraint, including the duration of its use, shall be provided for by the terms of the student's individualized education program established in accordance with the requirements of WAC 392-172A-03135.

(c) The restraint shall not interfere with the student's breathing.

(d) An adult responsible for supervising the student shall remain in visual or auditory range of the student.

(e) Either the student shall be capable of releasing himself or herself from the restraint or the student shall continuously remain within view of an adult responsible for supervising the student.

NEW SECTION

WAC 392-172A-03135 Aversive interventions—Individualized education program requirements. (1) If the need for use of aversive interventions is determined appropriate by the IEP team, the individualized education program shall:

(a) Be consistent with the recommendations of the IEP team which includes a school psychologist and/or other certificated employee who understands the appropriate use of the aversive interventions and who concurs with the recommended use of the aversive interventions, and a person who works directly with the student.

(b) Specify the aversive interventions that may be used.

(c) State the reason the aversive interventions are judged to be appropriate and the behavioral objective sought to be achieved by its use, and shall describe the positive interventions attempted and the reasons they failed, if known.

(d) Describe the circumstances under which the aversive interventions may be used.

(e) Describe or specify the maximum duration of each isolation or restraint.

(f) Specify any special precautions that must be taken in connection with the use of the aversive interventions technique.

(g) Specify the person or persons permitted to use the aversive interventions and the current qualifications and required training of the personnel permitted to use the aversive interventions.

(h) Establish a means of evaluating the effects of the use of the aversive interventions and a schedule for periodically conducting the evaluation, to occur no less than four times a school year.

(2) School districts shall document each use of an aversive intervention, circumstances under which it was used, and the length of time of use.

STUDENTS IN PRIVATE SCHOOLS

Students Eligible for Special Education Enrolled by Their Parents in Private Schools

NEW SECTION

WAC 392-172A-04000 Definition of parentally placed private school students. Parentally placed private school students means students eligible for special education services enrolled by their parents in private, including religious, elementary or secondary schools. It does not include students placed by a school district in a nonpublic agency for the provision of FAPE.

NEW SECTION

WAC 392-172A-04005 Child find for parentally placed private school students eligible for special education. (1) Each school district must locate, identify, and evaluate all students who may be eligible for special education who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district, in accordance with general child find procedures and subsections (2) through (5) of this section.

(2) The child find process must be designed to ensure:

(a) The equitable participation of parentally placed private school students; and

(b) An accurate count of those students.

(3) In carrying out the requirements of this section, the school district must undertake activities similar to the activities undertaken for the school district's public school students.

(4) The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if the school district has met its proportional share obligation under WAC 392-172A-04015.

(5) The child find process must be completed in a time period comparable to that for students attending public schools in the school district.

(6) Each school district in which private, including religious, elementary schools and secondary schools are located must include parentally placed private school students who reside in another state but attend the private school located within the school district boundaries.

NEW SECTION

WAC 392-172A-04010 Provision of services for parentally placed private school students eligible for special education. (1) In addition to the provisions addressed in this section, parents who have placed their children in private school are entitled to enroll their children part-time in their resident district for any course, activity or ancillary service, not provided by the private school under chapter 392-134 WAC and pursuant to WAC 392-172A-01135. Parents who elect to enroll part-time in their resident district in order to receive special education and/or related services are served through an IEP and are counted for federal and state special education reimbursement.

(2) To the extent consistent with the number and location of students eligible for special education who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district boundaries, and who are not part-time enrolled for special education services under chapter 392-134 WAC, districts must allow for the participation of those students by providing them with special education and related services, including direct services determined in accordance with WAC 392-172A-04035.

(3) In accordance with subsection (2) of this section and WAC 392-172A-04035 through 392-172A-04070, a services plan must be developed and implemented for each private school student eligible for special education who has been designated by the school district to receive special education and related services.

(4) Each school district must maintain in its records, and provide to the OSPI, the following information related to parentally placed private school students:

- (a) The number of students evaluated;
- (b) The number of students determined eligible for special education; and
- (c) The number of students served through a services plan.

NEW SECTION

WAC 392-172A-04015 Expenditures. (1) To meet the requirement of WAC 392-172A-04010(2), each school district must spend the following on providing special education and related services, including direct services to parentally placed private students eligible for special education.

(a) For students eligible for special education aged three through twenty-one, an amount that is the same proportion of the school district's total subgrant under section 611(f) of the act as the number of private school students eligible for special education aged three through twenty-one who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district, is to the total number of students eligible for special education in its jurisdiction aged three through twenty-one.

(b)(i) For children aged three through five, an amount that is the same proportion of the school district's total subgrant under section 619(g) of the act as the number of parentally placed private school students eligible for special education aged three through five who are enrolled by their parents in a private, including religious, elementary schools located in the school district, is to the total number of students eligible for special education in its jurisdiction aged three through five.

(ii) As described in (b)(i) of this subsection, students aged three through five are considered to be parentally placed private school students enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school kindergarten level or above.

(c) If a school district has not expended for equitable services all of the funds described in (a) and (b) of this subsection by the end of the fiscal year for which Congress appropriated the funds, the school district must obligate the remaining funds for special education and related services to

parentally placed private school students eligible for special education during a carry-over period of one additional year.

(2) In calculating the proportionate amount of federal funds to be provided for parentally placed private school students eligible for special education, the school district, after timely and meaningful consultation with representatives of private schools under WAC 392-172A-04020, must conduct a thorough and complete child find process to determine the number of parentally placed students eligible for special education attending private schools located in the school district.

(3)(a) After timely and meaningful consultation with representatives of parentally placed private school students eligible for special education, school districts must:

(i) Determine the number of parentally placed private school students eligible for special education attending private schools located in the school district; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(b) The count must be used to determine the amount that the school district must spend on providing special education and related services to parentally placed private school students eligible for special education in the next subsequent fiscal year.

(4) State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally placed private school students eligible for special education.

NEW SECTION

WAC 392-172A-04020 Consultation. To ensure timely and meaningful consultation, a school district must consult with private school representatives and representatives of parents of parentally placed private school students eligible for special education during the design and development of special education and related services for the students regarding the following:

(1) The child find process, including:

(a) How parentally placed private school students suspected of having a disability can participate equitably; and

(b) How parents, teachers, and private school officials will be informed of the process.

(2) The determination of the proportionate share of federal funds available to serve parentally placed private school students eligible for special education including the determination of how the district calculated the proportionate share of those funds.

(3) The consultation process among the school district, private school officials, and representatives of parents of parentally placed private school students eligible for special education, including how the process will operate throughout the school year to ensure that parentally placed students eligible for special education identified through the child find process can meaningfully participate in special education and related services.

(4) How, where, and by whom special education and related services will be provided for parentally placed private school students eligible for special education, including a discussion about:

- (a) The types of services, including direct services and alternate service delivery mechanisms; and
- (b) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school students; and
- (c) How and when those decisions will be made.
- (5) How, if the school district disagrees with the views of the private school officials on the provision of services or the types of services, the school district will provide to the private school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

NEW SECTION

WAC 392-172A-04025 Written affirmation. (1) When timely and meaningful consultation has occurred, the school district must obtain a written affirmation signed by the representatives of participating private schools after timely and meaningful consultation.

(2) If the representatives do not provide the affirmation within a reasonable period of time, the school district must forward the documentation of the consultation process to the OSPI.

NEW SECTION

WAC 392-172A-04030 Compliance with procedures for consultation. (1) A private school official has the right to submit a complaint to the OSPI, special education section that the school district:

- (a) Did not engage in consultation that was meaningful and timely; or
- (b) Did not give due consideration to the views of the private school official.

(2)(a) If the private school official wishes to submit a complaint, the official must provide to the OSPI special education section, the basis of the noncompliance by the school district with the applicable private school provisions in this part; and

(b) The school district must forward the appropriate documentation to OSPI.

(3) If the private school official is dissatisfied with the decision of the OSPI, the official may submit a complaint to the Secretary of the Department of Education by providing the information on noncompliance described in subsections (1) and (2) of this section and the OSPI must forward the appropriate documentation to the Secretary.

NEW SECTION

WAC 392-172A-04035 Determination of equitable services. (1) A parentally placed private school student does not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled full- or part-time in a public school.

(2) Decisions about the services that will be provided to parentally placed private school students eligible for special education disabilities under WAC 392-172A-04010 through 392-172A-04070 must be made in accordance with subsection (4) of this section and the consultation process.

(3) The school district must make the final decisions with respect to the services to be provided to eligible parentally placed private school students eligible for special education.

(4) If a student eligible for special education is enrolled in a religious or other private school by the student's parents and will receive special education or related services from a school district, the school district must:

(a) Initiate and conduct meetings to develop, review, and revise a services plan for the student; and

(b) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the school district shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

NEW SECTION

WAC 392-172A-04040 Equitable services provided.

(1) The services provided to parentally placed private school students eligible for special education must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally placed private school students eligible for special education do not have to meet the highly qualified special education teacher requirements.

(2) Parentally placed private school students eligible for special education may receive a different amount of services than students eligible for special education attending public schools.

(3) Each parentally placed private school student eligible for special education who has been designated to receive services must have a services plan that describes the specific special education and related services that the school district will provide in light of the services that the school district has determined, it will make available to parentally placed private school students eligible for special education.

(4) The services plan must, to the extent appropriate:

(a) Meet the requirements of WAC 392-172A-03090, with respect to the services provided; and

(b) Be developed, reviewed, and revised consistent with WAC 392-172A-03090 through 392-172A-03110.

(5) The provision of services must be provided:

(a) By employees of a school district or ESD; or

(b) Through contract by the school district with an individual, association, agency, organization, or other entity.

(6) Special education and related services provided to parentally placed private school students eligible for special education, including materials and equipment, must be non-secular, neutral, and nonideological.

NEW SECTION

WAC 392-172A-04045 Location of services and transportation. (1) Services to parentally placed private school students eligible for special education may be provided on the premises of private, nonsectarian schools.

(2) If necessary for the student to benefit from or participate in the services provided, a parentally placed private

school student eligible for special education must be provided transportation:

- (a) From the student's school or the student's home to a site other than the private school; and
- (b) From the service site to the private school, or to the student's home, depending on the timing of the services.
- (3) School districts are not required to provide transportation from the student's home to the private school.
- (4) The cost of the transportation described in subsection (2) of this section may be included in calculating whether the school district has met its proportional share requirement.

NEW SECTION

WAC 392-172A-04050 Due process and state complaints regarding parentally placed students in a private school. (1) Due process procedures are not available for complaints that a school district has failed to meet the requirements regarding consultation, determination of need and provision of services, including the provision of services indicated on the student's services plan.

(2) Due process procedures may be used by a parent who is alleging that a school district has failed to meet child find requirements related to the parentally placed students in private schools.

(3) Any due process request regarding the child find requirements described in subsection (2) of this section must be filed with the school district in which the private school is located and a copy must be forwarded to the OSPI in accordance with the due process procedures in WAC 392-172A-05080 through 392-172A-05125.

(4) State complaints. Any complaint that OSPI or a school district has failed to meet the requirements in WAC 392-172A-04010 through 392-172A-04015 and 392-172A-04025 through 392-172A-04075 must be filed in accordance with the state complaint procedures described in WAC 392-172A-05025 through 392-172A-05040.

(5) A complaint filed by a private school official under WAC 392-172A-04030 must be filed with the OSPI in accordance with the procedures in that section.

NEW SECTION

WAC 392-172A-04055 Requirement that funds not benefit a private school. Public funds provided and property derived from those funds shall not benefit any private school or agency.

A school district must use funds provided under the act to meet the special education and related services needs of students enrolled in private schools, but not for:

- (1) The needs of a private school; or
- (2) The general needs of the students enrolled in the private school.

NEW SECTION

WAC 392-172A-04060 Use of personnel. (1) School district or other public agency personnel may be made available to nonsectarian private schools and agencies only to the extent necessary to provide services required by the special

education student if those services are not normally provided by the private school.

(2) Each school district or other public agency providing services to students enrolled in nonsectarian private schools or agencies shall maintain continuing administrative control and direction over those services.

(3) Services to private school special education students shall not include the payment of salaries of teachers or other employees of private schools or agencies, except for services performed outside regular hours of the school day and under public supervision and control.

NEW SECTION

WAC 392-172A-04065 Prohibition on the use of separate classes. A school district may not use federal funds available under section 611 or 619 of the act for classes that are organized separately on the basis of school enrollment or religion of the students if:

- (1) The classes are at the same site; and
- (2) The classes include students enrolled in public schools and students enrolled in private schools.

NEW SECTION

WAC 392-172A-04070 Property, equipment and supplies. (1) A school district must control and administer the funds used to provide special education and related services for students eligible for those services in private schools, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the act.

(2) Equipment and supplies used with students in a private school or agency may be placed on nonsectarian private school premises for the period of time necessary for the program. Equipment and supplies placed on private school premises will be used only for Part B purposes.

(3) Records shall be kept of equipment and supplies and an accounting made of the equipment and supplies which shall assure that the equipment is used solely for the purposes of the program. Equipment and supplies placed in private schools must be able to be removed from the private school without remodeling the private school facility.

(4) The equipment and supplies shall be removed from the private school or agency if necessary to avoid its being used for other purposes or if it is no longer needed for Part B purposes.

(5) Funds shall not be used for repairs, minor remodeling, or to construct facilities for private schools or agencies.

NEW SECTION

WAC 392-172A-04075 Other service arrangements for students, including students placed in sectarian schools. (1) In addition to services to private school students who are unilaterally enrolled by their parents, private school students and home schooled students are entitled to enroll on a part-time basis in their resident district and receive special education and related services for which they are enrolled, pursuant to chapter 392-134 WAC.

(2) No services, material, or equipment of any nature shall be provided to any private school or agency subject to sectarian (i.e., religious) control or influence.

(3) No services, material, or equipment of any nature shall be provided to students on the site of any private school or agency subject to sectarian control or influence.

**STUDENTS IN PRIVATE OR PUBLIC SCHOOLS
PLACED OR REFERRED BY SCHOOL DISTRICTS**

NEW SECTION

WAC 392-172A-04080 Applicability and authorization. (1) The provisions of WAC 392-172A-04080 through 392-172A-04095 apply only to students eligible for special education who have been placed in or referred to a nonpublic agency or another public agency or school district by a resident school district as a means of providing special education and related services.

(2) School districts are authorized to:

(a) Enter into interdistrict agreements with other school districts pursuant to chapter 392-135 WAC; or

(b) Contract with nonpublic agencies pursuant to this chapter and WAC 392-121-188 and public agencies to provide special education and related services to eligible students if the school district cannot provide an appropriate education for the student within the district.

NEW SECTION

WAC 392-172A-04085 Responsibility of the school district. (1) A school district who places a student eligible for special education with another public agency or approved nonpublic agency for special education and related services shall develop a written contract, interdistrict or interagency agreement which shall include, but not be limited to, the following elements:

(a) Names of the parties involved;

(b) The name(s) of the special education student(s) for whom the contract is drawn;

(c) Location and setting of the services to be provided;

(d) Description of services provided, program administration and supervision;

(e) Charges and reimbursement including billing and payment procedures;

(f) Total contract cost;

(g) Other contractual elements including those identified in WAC 392-121-188 that may be necessary to assure compliance with state and federal rules.

(2) Each school district must ensure that a student eligible for special education services placed in or referred to a nonpublic agency, other public agency, or other school district is provided special education and related services:

(a) In conformance with an IEP that meets the requirements of this chapter;

(b) At no cost to the parents.

(3) The student shall be provided with a FAPE that meet all general and special education regulations that apply to the student, except that the certificated special education endorsed teachers providing special education services do not

have to meet the highly qualified standards for core academic content areas as described in section 9101 of the ESEA.

(4) The school district remains responsible for evaluations and IEP meetings for the student. If the school district requests that the nonpublic agency, or other public agency conduct evaluations or IEP meetings, the district will ensure that all applicable requirements of Part B of the act are met.

(5) The student has all of the rights of a student eligible for special education who is served within the school district.

NEW SECTION

WAC 392-172A-04090 Approval of nonpublic agencies. (1) A school district shall not award a contract to a nonpublic agency to provide special education to a student until the OSPI approves the nonpublic agency.

(2) The school district shall notify the special education section of the OSPI, in writing, of their intent to serve a student through contract with a nonpublic agency.

(3) The OSPI shall provide the school district and the nonpublic agency with the procedures and application for nonpublic agency approval. In addition, the school district shall conduct an on-site visit of the nonpublic agency.

(4) Upon review of the completed application which includes the results of the on-site visit, the OSPI may conduct an independent on-site visit, if appropriate, and shall determine whether the application should be approved or disapproved.

(5) The OSPI shall make information regarding currently approved nonpublic agencies available to all school districts and to the public.

(6) School districts shall ensure that an approved nonpublic agency is able to provide the services required to meet the unique needs of any student being placed according to the provisions of WAC 392-172A-04075 through 392-172A-04095.

(7) Nonpublic agencies located in other states must first be approved by the state education agency of the state in which the educational institution is located. Documentation of the approval shall be provided to OSPI. In the event the other state does not have a formal approval process, the nonpublic agency shall meet the requirements for approval in this state under the provisions of this chapter.

NEW SECTION

WAC 392-172A-04095 Application requirements for nonpublic agency approval. The application for initial approval and three-year renewal will include the following:

(1) The nonpublic agency is approved by the state board as a private school, and has at least one certificated teacher with a special education endorsement, and other certificated staff who meet state standards for providing special education and related services. If the program is located in a hospital or the educational program is within a treatment facility, the nonpublic agency will assure that the educational component of the facility has education and related services staff who meet certification requirements developed by the professional educators standards board, and has at least one certificated teacher with a special education endorsement.

(2) The facility meets applicable fire codes of the local or state fire marshal, including inspections and documentation of corrections of violation.

(3) The facility meets applicable health and safety standards.

(4) The facility can demonstrate through audits that it is financially stable, and has accounting systems that allow for separation of school district funds.

(5) The facility has procedures in place that address staff hiring and evaluation including:

(a) Checking of personal and professional references for employees;

(b) Criminal background checks in accordance with state rules for public school employees;

(c) Regular schedule of staff evaluations of the competencies that enable the staff to work with students.

(6) The facility has a policy of nondiscrimination.

(7) The facility meets state education rules for hours and days of instruction.

(8) The facility understands and has procedures in place to protect the procedural safeguards of the students eligible for special education and their families.

NEW SECTION

WAC 392-172A-04100 Notification of nonpublic agency program changes. (1) An approved nonpublic agency must notify any school districts with whom they contract and the OSPI of any major program changes that occur during the approval period, including adding additional services or changing the type of programs available to students. OSPI will review these program changes with affected districts to determine whether the nonpublic agency remains able to provide contracted services to public school students eligible for special education.

(2) An approved nonpublic agency must promptly notify any school districts with whom they contract and the OSPI of any conditions that would affect their ability to continue to provide contracted services to public school students eligible for special education.

(3) An approved nonpublic agency must promptly notify any school districts with whom they contract and the OSPI of any complaints it receives regarding services to students.

NEW SECTION

WAC 392-172A-04105 Suspension revocation or refusal to renew approval. OSPI may suspend, revoke or refuse to renew its approval of a nonpublic agency to contract with school districts for the provision of special education if the nonpublic agency:

(1) Fails to maintain the approval standards in WAC 392-172A-04090 through 392-172A-04100;

(2) Violates the rights of students eligible for special education; or

(3) Refuses to implement any corrective actions ordered by the OSPI.

NEW SECTION

WAC 392-172A-04110 State responsibility for non-public agency placements. In implementing the nonpublic agency provisions of WAC 392-172A-04080 through 392-172A-04105, the state shall:

(1) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(2) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a special education student; and

(3) Provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them.

STUDENTS ELIGIBLE FOR SPECIAL EDUCATION SERVICES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE

NEW SECTION

WAC 392-172A-04115 Placement of students when FAPE is at issue. (1) If a student eligible for special education has a FAPE available and the parents choose to place the student in a private school or facility, the school district is not required by this chapter to pay for the student's education, including special education and related services, at the private school or facility. However, the school district shall include that student in the population whose needs are addressed consistent with WAC 392-172A-04000 through 392-172A-04075.

(2) Disagreements between the parents and a school district regarding the availability of a program appropriate for the student and the question of financial reimbursement are subject to the due process procedures at WAC 392-172A-05080 through 392-172A-05125.

(3) If the parents of a student, who previously received special education and related services under the authority of a school district, enroll the student in a private preschool, elementary or secondary school, or other facility without the consent of or referral by a school district or other public agency, a court or an administrative law judge may require a school district or other public agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that a school district or other public agency had not made a free appropriate public education available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by a school district or other public agency.

(4) The cost of reimbursement may be reduced or denied if:

(a)(i) At the most recent individualized education program meeting that the parents attended prior to removal of the student from the public school, the parents did not inform the team that they were rejecting the placement proposed by a school district to provide a FAPE to their student, including stating their concerns and their intent to enroll their student in a private school at public expense; or

(ii) At least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to a school district of the information described in (a)(i) of this subsection; or

(b) Prior to the parents' removal of the student from the public school, a school district informed the parents, through the notice requirements described in this chapter, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

(c) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(5) Notwithstanding the notice requirement in subsection (4)(a)(i) of this section, the cost of reimbursement must not be reduced or denied for failure to provide the notice if:

(a) The school district prevented the parent from providing the notice; or

(b) The parent had not received the procedural safeguards containing notice of the requirement to notify a school district of the information required in subsection (4)(a)(i) of this section.

(6) An administrative law judge or court may, in its discretion, determine that the cost of reimbursement will not be reduced or denied for failure to provide the notice in subsection (4)(a)(i) of this section if:

(a) The parents are not literate or cannot write in English; or

(b) Compliance with subsection (4)(a)(i) of this section would likely result in serious emotional harm to the student.

SAFEGUARDS

NEW SECTION

WAC 392-172A-05000 Opportunity to examine records—Parent participation in meetings. (1) The parents of a student eligible for special education must be afforded an opportunity to inspect and review all education records. Inspection and review of education records is provided consistent with WAC 392-172A-05180 through 392-172A-05245.

(2)(a) The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student.

(b) Each school district must provide notice consistent with WAC 392-172A-03100 (1) and (3) to ensure that parents of students eligible for special education have the opportunity to participate in meetings described in (a) of this subsection.

(c) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(3)(a) Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child.

(b) In implementing the requirements of (a) of this subsection, the school district must use procedures consistent with the procedures described in WAC 392-172A-03100 (1) through (3).

(c) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(d) A placement decision may be made by a group without the involvement of a parent, if the school district is unable to obtain the parent's participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement.

(4) When conducting IEP team meetings and placement meetings and in carrying out administrative matters such as scheduling, exchange of witness lists and status conferences for due process hearing requests, the parent and the district may agree to use alternative means of meeting participation such as video conferences and conference calls.

NEW SECTION

WAC 392-172A-05005 Independent educational evaluation. (1)(a) Parents of a student eligible for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's evaluation subject to subsections (2) through (7) of this section.

(b) Each school district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in subsection (7) of this section.

(c) For the purposes of this section:

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

(2)(a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the school district.

(b) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the school district must either:

(i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the school district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

(3) If the school district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the school district may ask for the parent's reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the educational evaluation.

(5) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(7)(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in (a) of this subsection, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

NEW SECTION

WAC 392-172A-05010 Prior notice and contents. (1) Written notice that meets the requirements of subsection (2) of this section must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district:

(a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or

(b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

(2) The notice required under this section must include:

(a) A description of the action proposed or refused by the agency;

(b) An explanation of why the agency proposes or refuses to take the action;

(c) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(d) A statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(e) Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice;

(f) A description of other options that the IEP team considered and the reasons why those options were rejected; and

(g) A description of other factors that are relevant to the agency's proposal or refusal.

(3)(a) The notice required under subsections (1) and (2) of this section must be:

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in (b) of this subsection have been met.

NEW SECTION

WAC 392-172A-05015 Procedural safeguards notice.

(1) School districts must provide a copy of the procedural safeguards that are available to the parents of a student eligible for special education one time a school year, and:

(a) Upon initial referral or parent request for evaluation;

(b) Upon receipt of the first state complaint and receipt of the first due process complaint in a school year;

(c) When a decision is made to remove a student for more than ten school days in a year, and that removal constitutes a change of placement; and

(d) Upon request by a parent.

(2) A school district may place a current copy of the procedural safeguards notice on its internet web site if a web site exists.

(3) The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under this chapter that relate to:

(a) Independent educational evaluations;

(b) Prior written notice;

(c) Parental consent;

(d) Access to education records;

(e) An opportunity to present and resolve complaints through the due process hearing request and state complaint procedures, including:

(i) The time period in which to file a state complaint and due process hearing request;

(ii) The opportunity for the school district to resolve the due process hearing request; and

- (iii) The difference between the due process hearing request and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decision timelines, and relevant procedures;
 - (f) The availability of mediation;
 - (g) The student's placement during the pendency of any due process hearing;
 - (h) Procedures for students who are subject to placement in an interim alternative educational setting;
 - (i) Requirements for unilateral placement by parents of students in private schools at public expense;
 - (j) Hearings on due process hearing requests, including requirements for disclosure of evaluation results and recommendations;
 - (k) Civil actions, including the time period in which to file those actions; and
 - (l) Attorneys' fees.
- (4)(a) The procedural safeguards notice must be:
- (i) Written in language understandable to the general public; and
 - (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:
- (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - (ii) That the parent understands the content of the notice; and
 - (iii) That there is written evidence that the requirements in (b) of this subsection have been met.

NEW SECTION

WAC 392-172A-05020 Electronic mail. A parent of a student eligible for special education may elect to receive prior written notices, procedure safeguards notices and notices relating to due process hearing requests by an electronic mail communication, if the school district makes that option available.

STATE CITIZEN COMPLAINT PROCEDURES

NEW SECTION

WAC 392-172A-05025 Procedures for filing a complaint. (1) An organization or individual, including an organization or individual from another state, may file with the OSPI, special education section, a written, signed complaint that the OSPI, or a subgrantee of the OSPI, including but not limited to an ESD, school district, or other subgrantee is violating or has violated Part B of the Individuals with Disabilities Education Act or regulations implementing the act.

- (2)(a) A written complaint filed with OSPI will include:
- (i)(A) A statement that the agency has violated or is violating one or more requirements of Part B of IDEA including the state and federal regulations implementing the act; or
 - (B) A statement that the school district is not implementing a mediation agreement or a resolution agreement;

- (ii) The facts on which the statement is based;
 - (ii) The signature and contact information, including an address of the complainant; and
 - (iv) The name and address of the school district, or other agency subject to the complaint.
- (b) If the allegations are with respect to a specific student the information must also include:
- (i) The name and address of the student, or in the case of a homeless child or youth, contact information for the student;
 - (ii) The name of the school the student attends and the name of the school district;
 - (iii) A description of the nature of the problem of the student, including the facts relating to the problem; and
 - (iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- (c) The complainant must send a copy of the complaint to the agency serving the student at the same time the complainant files the complaint with OSPI. Complaints under this chapter are filed with the director of special education, OSPI.
- (d) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.
- (e) The OSPI has developed a form for use by persons or organizations filing a complaint. Use of the form is not required, but the complaint must contain the elements addressed in (a) and (b) of this subsection.

NEW SECTION

WAC 392-172A-05030 Investigation of the complaint and decision. (1) Upon receipt of a properly filed complaint, the OSPI shall send a copy of the complaint to the school district or other agency for their investigation of the alleged violations. A complaint against OSPI shall be investigated pursuant to WAC 392-172A-05015.

(2) The school district or other agency shall respond in writing to the OSPI, and include documentation of the investigation, no later than twenty calendar days after the date of receipt of the complaint.

(3) The response to the OSPI shall clearly state whether:

- (a) The allegations contained in the complaint are denied and the basis for such denial; or

- (b) The allegations are admitted and with proposed reasonable corrective action(s) deemed necessary to correct the violation.

(4) The OSPI shall provide the complainant a copy of the response to the complaint and provide the complainant an opportunity to reply to the response.

(5) The OSPI will also provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations contained in the complaint. If the additional information contains new information, the OSPI may, in its discretion, open a new complaint.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the OSPI, the OSPI will make an independent determination as to whether the public agency has or

is violating a requirement of Part B of the act, the federal regulations implementing the act, this chapter, or whether the public agency is not implementing a mediation or resolution agreement.

(7) The OSPI shall issue a written decision to the complainant that addresses each allegation in the complaint including findings of fact, conclusions, and the reasons for the decision. The decision will be issued within sixty days of receipt of the complaint unless:

(a) Exceptional circumstances related to the complaint require an extension; or

(b) The complainant and school district or other agency agrees in writing to extend the time to use mediation or an alternative dispute resolution method.

(8) If OSPI finds a violation, the decision will include any necessary corrective action to be undertaken and any documentation to be provided to ensure that the corrective action is completed. If the decision is that a school district has failed to provide appropriate services, the decision will address:

(a) How to remediate the failure to provide those services, including, as appropriate, compensatory education, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(b) Appropriate future provision of services for all students eligible for special education.

(9) Corrective action ordered by OSPI must be completed within the timelines established in the written decision, unless another time period is established through an extension of the timeline. If compliance by a local school district or other public agency is not achieved pursuant to subsection (8) of this section, the superintendent of public instruction shall initiate fund withholding, fund recovery, or any other sanction deemed appropriate.

NEW SECTION

WAC 392-172A-05035 Citizen complaints and due process hearings. (1) If a written complaint is received that is also the subject of a due process hearing under this chapter or contains multiple issues, of which one or more are part of that hearing, the OSPI must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in this section.

(2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

(a) The hearing decision is binding; and

(b) The OSPI must inform the complainant to that effect.

(3) A complaint alleging a school district's failure to implement a due process decision must be resolved by the OSPI.

NEW SECTION

WAC 392-172A-05040 Complaints against OSPI. (1) Upon receipt of a complaint against the OSPI alleging a vio-

lation under this section, the superintendent will designate an investigator within ten days to investigate the complaint.

(2) Investigation by the OSPI may include on-site investigations, interviews, and other documentation as appropriate.

(3) Upon completion of the investigation, the investigator shall provide the superintendent of public instruction with a written report on the results of the investigation and shall issue a written decision including findings of facts, conclusions and the reasons for the decision. The decision will be provided to the complainant as soon as possible but in no event later than sixty calendar days after the date of receipt of such complaint by the superintendent of public instruction.

(4) If corrective actions are required, the decision will include the corrective measures deemed necessary to correct any violation. Any such corrective measures deemed necessary shall be instituted as soon as possible, but no later than the date for the corrective action, addressed in the decision.

NEW SECTION

WAC 392-172A-05045 Informing citizens about complaint procedures. The OSPI shall inform parents and other interested individuals about the citizen complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Widely disseminating copies of the state's procedures to parents and other interested individuals, including protection and advocacy agencies, parent training and information centers, independent living centers, and other appropriate entities;

(2) Posting information about the complaint procedures on the web site;

(3) Conducting in-service training sessions on the complaint process through educational service districts; and

(4) Including information about the complaint procedures at statewide conferences.

MEDIATION

NEW SECTION

WAC 392-172A-05060 Mediation purpose—Availability. (1) The purpose of mediation is to offer both the parent and the school district an opportunity to resolve disputes and reach a mutually acceptable agreement concerning the identification, evaluation, educational placement or provision of FAPE to the student through the use of an impartial mediator.

(2) Mediation is voluntary and requires the agreement of both parties. It may be terminated by either party at any time during the mediation process.

(3) Mediation cannot be used to deny or delay a parent's right to a due process hearing under this chapter, or to deny any other rights afforded under this chapter.

(4) Mediation services are provided by the OSPI at no cost to either party, including the costs of meetings described in WAC 392-172A-05075. To access the statewide mediation system, a request for mediation services may be made in writing or verbally to administrative agents for the OSPI. Written confirmation of the request shall be provided to both

parties by an intake coordinator and a mediator shall be assigned to the case.

(5) The OSPI will provide mediation services for individuals whose primary language is not English or who use another mode of communication unless it is clearly not feasible to do so. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

NEW SECTION

WAC 392-172A-05065 Qualifications and selection of mediators. (1) Mediation shall be conducted by qualified and impartial mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services.

(2) An individual who serves as a mediator:

(a) May not be an employee of any school district or other public or private agency that is providing education or related services to a student who is the subject of the mediation process; and

(b) Shall not have a personal or professional conflict of interest; and

(c) A person who otherwise qualifies as a mediator is not an employee of a school district or other public agency solely because he or she is paid by the agency to serve as a mediator.

(3)(a) The OSPI, through its contracted administrative agents, shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(b) Mediators will be selected on a random, rotational or other impartial basis.

NEW SECTION

WAC 392-172A-05070 Resolution of a dispute through mediation. (1) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

(a) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(2) A written, signed mediation agreement is enforceable in a state court of competent jurisdiction or in a district court of the United States.

(3) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal or state court.

NEW SECTION

WAC 392-172A-05075 Meeting to encourage mediation. (1) A school district may establish procedures to offer parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party:

(a) Who is under contract with appropriate alternative dispute resolution entity or a parent training and information center; and

(b) Who would explain the benefits of the mediation process, and encourage the parents to use the process.

(2) A school district or other public agency may not deny or delay a parent's right to a due process hearing under this chapter if the parent fails to participate in the meeting described in this section.

(3) A school district shall submit its procedures for implementing this section to the OSPI for review and approval, including projected costs for carrying out the process.

DUE PROCESS HEARING PROCEDURES

NEW SECTION

WAC 392-172A-05080 Right to a due process hearing. (1) A parent or a school district may file a due process hearing request on any of the matters relating to the identification, evaluation or educational placement, or the provision of FAPE to a student.

(2) The due process hearing request must allege a violation that occurred not more than two years before the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint except the timeline does not apply to a parent if the parent was prevented from filing a due process hearing request due to:

(a) Specific misrepresentations by the school that it had resolved the problem forming the basis of the due process hearing request; or

(b) The school district withheld information from the parent that was required under this chapter to be provided to the parent.

(3)(a) Information about any free or low-cost legal and other relevant services available in the area is maintained on OSPI's web site and is provided by the office of administrative hearings to parents whenever a due process hearing request is filed by either the parent or the school district; and

(b) Districts must provide this information to parents whenever a parent requests the information.

NEW SECTION

WAC 392-172A-05085 Due process hearing request filing and response. (1)(a) To file a due process hearing request, the parent or the school district (party), or the attorney representing a party, must file the request, which must remain confidential, directly with the other party; and

(b) The party filing the due process hearing request must also mail or provide a copy of the due process hearing request directly to OSPI, Administrative Resources Section, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504.

(c) When a parent is filing a due process hearing request, the party to be served is the superintendent of the school district, or public agency responsible for the student.

(2) The due process hearing request required in subsection (1) of this section must include:

(a) The name of the student;

(b) The address of the residence of the student;

(c) The name of the school the student is attending, and the name of the district or public agency that is responsible for the student's special education program in the school;

(d) In the case of a homeless child or youth, available contact information for the student in addition to the information in (c) of this subsection;

(e) A description of the nature of the problem of the student related to the proposed or refused initiation or change, including facts relating to the problem; and

(f) A proposed resolution of the problem to the extent known and available to the party at the time.

(3) OSPI has developed a due process hearing request form to assist parents and school districts filing a due process hearing. Parents and school districts are not required to use this form, and may use the form, or another form or other document, so long as the form or document that is used, meets the requirements in subsection (2) of this section.

(4) A party may not have a hearing on a due process hearing request until the party, or the attorney representing the party, files a due process hearing request that meets the requirements of subsection (2) of this section.

(5)(a) The due process hearing request will be deemed sufficient unless the party receiving the due process hearing request notifies the administrative law judge and the other party in writing, within fifteen days of receipt of the due process hearing request, that the receiving party believes the due process hearing request does not meet the requirements in subsection (2) of this section.

(b) Within five days of receipt of notification that a due process hearing request is not sufficient, the administrative law judge must make a determination on the face of the due process hearing request of whether the request meets the requirements of subsection (2) of this section, and must immediately notify the parties in writing of that determination.

(6) A party may amend its due process hearing request only if:

(a) The other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing request through a resolution meeting held pursuant to the procedures in WAC 392-172A-05090; or

(b) The administrative law judge grants permission, except that the administrative law judge may only grant permission to amend not later than five days before the due process hearing begins.

If a party is allowed to amend the due process hearing request under (a) or (b) of this subsection, the timelines for the resolution meeting in WAC 392-172A-05090 (2)(a) and the time period to resolve in WAC 392-172A-05090 (2)(b) begin again with the filing of the amended due process hearing request.

(7)(a) If the school district has not sent a prior written notice under WAC 392-172A-05010 to the parent regarding the subject matter contained in a parent's due process hearing request, the school must send the parent a response, within ten days of receiving the due process hearing request, that includes:

(i) An explanation of why the agency proposed or refused to take the action raised in the due process hearing request;

(ii) A description of other options that the IEP team or evaluation group considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the district's proposed or refused action.

(b) A response by a school district under subsections (7) and (8) of this section shall not be construed to preclude the school district from asserting that the parent's due process hearing request was insufficient, where appropriate.

(8) Except as provided in subsection (7)(a) of this section, the party receiving a due process hearing request must send the party a response that specifically addresses the issues raised in the due process hearing request within ten days of receiving the due process hearing request.

NEW SECTION

WAC 392-172A-05090 Resolution process. (1)(a) Within fifteen days of receiving notice of the parent's due process hearing request, and prior to the initiation of a due process hearing under WAC 392-172A-05100, the school district must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process hearing request and that:

(i) Includes a representative of the school district who has decision-making authority on behalf of that district; and

(ii) May not include an attorney of the school district unless the parent is accompanied by an attorney.

(b) The purpose of the meeting is for the parent of the child to discuss the due process hearing request, and the facts that form the basis of the request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request.

(c) The meeting described in (a) of this subsection need not be held if:

(i) The parent and the school district agree in writing to waive the meeting; or

(ii) The parent and the school district agree to use the mediation process described in WAC 392-172A-05060.

(d) The parent and the school district determine the relevant members of the IEP team to attend the meeting.

(2)(a) If the school district has not resolved the due process hearing request to the satisfaction of the parent within thirty days of the receipt of the due process hearing request, the due process hearing may occur.

(b) Except as provided in subsection (3) of this section, the timeline for issuing a final decision under WAC 392-172A-05105 begins at the expiration of this thirty-day period.

(c) Unless the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding (a) and (b) of this subsection, the failure of the parent filing a due process hearing request to participate in the resolution meet-

ing will delay the timelines for the resolution process and due process hearing until the meeting is held.

(d) If the school district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in WAC 392-172A-05090, the school district may, at the conclusion of the thirty-day period, request that an administrative law judge dismiss the parent's due process hearing request.

(e) If the school district fails to hold the resolution meeting specified in subsection (1) of this section within fifteen days of receiving notice of a parent's due process hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of an administrative law judge to begin the due process hearing timeline.

(3) The forty-five day timeline for the due process hearing starts the day after one of the following events:

(a) Both parties agree in writing to waive the resolution meeting;

(b) After either the mediation or resolution meeting starts but before the end of the thirty-day period, the parties agree in writing that no agreement is possible;

(c) If both parties agree in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or school district withdraws from the mediation process.

(4)(a) If a resolution to the dispute is reached at the meeting described in subsection (1)(a) and (b) of this section, the parties must execute a legally binding agreement that is:

(i) Signed by both the parent and a representative of the school district who has the authority to bind the district; and

(ii) Enforceable in any state court of competent jurisdiction or in a district court of the United States.

(b) If the parties execute an agreement pursuant this section, a party may void the agreement within three business days of the agreement's execution.

NEW SECTION

WAC 392-172A-05095 Administrative law judges.

(1) A due process hearing is conducted for OSPI by the office of administrative hearings.

(2) Administrative law judges that conduct the hearings:

(a) Must not be:

(i) An employee of OSPI or the school district that is involved in the education or care of the student; or

(ii) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

(b) Must possess knowledge of, and the ability to understand, the provisions of the act, federal and state regulations pertaining to the act, and legal interpretations of the act by federal and state courts;

(c) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(d) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(3) An administrative law judge who otherwise qualifies to conduct a hearing under subsection (2) of this section is not

an employee of the OSPI solely because he or she is paid using OSPI funds.

(4) OSPI maintains a list of the persons who serve as administrative law judges which includes a statement of the qualifications of each of those persons.

NEW SECTION

WAC 392-172A-05100 Hearing rights. These hearing rights govern both due process hearings conducted pursuant to WAC 392-172A-05080 through 392-172A-05125 and hearings for disciplinary matters conducted pursuant to WAC 392-172A-05160 and 392-172A-05165.

(1) Any party to a due process hearing has the right to:

(a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students eligible for special education;

(b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing, or two business days if the hearing is expedited pursuant to WAC 392-172A-05160;

(d) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(e) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(2)(a) At least five business days prior to a due process hearing conducted pursuant to this section, or two business days prior to a hearing conducted pursuant to WAC 392-172A-05165, each party must disclose to all other parties all evaluations completed by that date and the recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(b) An administrative law judge may bar any party that fails to comply with (a) of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees otherwise.

(4) A parent may file a separate due process hearing request on an issue separate from a due process hearing request already filed.

(5) Parents involved in hearings must be given the right to:

(a) Have the student who is the subject of the hearing present;

(b) Open the hearing to the public; and

(c) Have the record of the hearing and the findings of fact and decisions described in subsection (1)(d) and (e) of this section.

(6) To the extent not modified by the hearing procedures addressed in this section and the timelines and procedures for civil actions addressed in WAC 392-172A-05115 the general rules applicable for administrative hearings contained in chapter 10-08 WAC govern the conduct of the due process hearing.

NEW SECTION

WAC 392-172A-05105 Hearing decisions. (1) An administrative law judge's determination of whether a student received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, an administrative law judge may find that a student did not receive a FAPE only if the procedural inadequacies:

- (a) Impeded the student's right to a FAPE;
- (b) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
- (c) Caused a deprivation of educational benefit.

(3) Nothing in subsections (1) and (2) of this section shall be construed to preclude an administrative law judge from ordering a school district to comply with the procedural requirements contained in this chapter.

(4) The state deletes personally identifiable information contained in due process hearing decisions, transmits those decisions to the state advisory panel and makes decisions available to the public.

NEW SECTION

WAC 392-172A-05110 Timelines and convenience of hearings. (1) Not later than forty-five days after the expiration of the thirty day resolution period, or the adjusted time periods described in WAC 392-172A-05090(3):

- (a) A final decision shall be reached in the hearing; and
- (b) A copy of the decision shall be mailed to each of the parties.

(2) An administrative law judge may grant specific extensions of time beyond the period in subsection (1) of this section at the request of either party.

(3) Each due process hearing must be conducted at a time and place that is reasonably convenient to the parents and student involved.

NEW SECTION

WAC 392-172A-05115 Civil action. (1) Any party aggrieved by the findings and decision made under WAC 392-172A-05105 through 392-172A-05110 or 392-172A-05165 has the right to bring a civil action with respect to the due process hearing request. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(2) The party bringing the action shall have ninety days from the date of the decision of the administrative law judge to file a civil action in federal or state court.

(3) In any action brought under subsection (1) of this section, the court:

- (a) Receives the records of the administrative proceedings;
- (b) Hears additional evidence at the request of a party; and
- (c) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(4) The district courts of the United States have jurisdiction of actions brought under section 615 of the act without regard to the amount in controversy.

(5) Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the act, the due process procedures under WAC 392-172A-05085 and 392-172A-05165 must be exhausted to the same extent as would be required had the action been brought under section 615 of the act.

NEW SECTION

WAC 392-172A-05120 Attorneys' fees. (1) In any action or proceeding brought under 20 U.S.C. Sec. 1415 of the act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

(a) The prevailing party who is the parent of a student eligible or referred for special education;

(b) To a prevailing party who is a school district, or OSPI, against the attorney of a parent who files a due process request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(c) To a prevailing school district or OSPI against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(2)(a) Funds under Part B of the act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 20 U.S.C. Sec. 1415 and 34 CFR Secs. 300.500 through 300.599.

(b) Subsection (2)(a) of this section does not preclude a school district or OSPI from using funds under Part B of the act for conducting an action or proceeding under 20 U.S.C. Sec. 1415.

(3)(a) Fees awarded under subsection (1) of this section must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

(b) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under 20 U.S.C. Sec. 1415 for services performed after a written offer of settlement to a parent if:

(i) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(ii) The offer is not accepted within ten days; and

(iii) The court or administrative law judge finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(c) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action.

(i) A resolution session meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action; or

(ii) An administrative hearing or judicial action for purposes of this section.

(4) Notwithstanding subsection (3)(b) of this section an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(5) Except as provided in subsection (5) of this section, the court will reduce, accordingly, the amount of the attorneys' fees awarded under this section if the court finds that:

(a) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(b) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(c) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(d) The attorney representing the parent did not provide to the school district the appropriate information in the due process request notice in accordance with WAC 392-172A-06085(2).

(6) The provisions of subsection (4) of this section do not apply in any action or proceeding if the court finds that the school district unreasonably protracted the final resolution of the action or proceeding or there was a violation under the provisions of 20 U.S.C. Sec. 1415.

NEW SECTION

WAC 392-172A-05125 Student's status during proceedings. (1) Except for due process hearings involving special education discipline procedures, during the pendency of any administrative hearing or judicial proceeding regarding the due process hearing proceedings, the student involved in the hearing request must remain in his or her current educational placement, unless the school district and the parents of the child agree otherwise.

(2) If the hearing request involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(3) If the hearing request involves an application for initial Part B services for a child who is transitioning from Part C of the act to Part B and is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child had been receiving. If the student is found eligible for special education and related services and the parent consents to the initial provision of special education and related services, then the school district must provide those special education and related services that are not in dispute between the parent and the school district.

(4) If the administrative law judge agrees with the student's parents that a change of placement is appropriate through the final decision or during the pendency of the due process hearing, that placement must be treated as an agreement between the school district and the parents for purposes of subsection (1) of this section.

SURROGATE PARENTS

NEW SECTION

WAC 392-172A-05130 Surrogate parents. (1) School districts must ensure that the rights of a student are protected when:

(a) No parent as defined in WAC 392-172A-01125 can be identified;

(b) The school district, after reasonable efforts, cannot locate a parent;

(c) The student is a ward of the state; or

(d) The student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act.

(2) School districts must develop procedures for assignment of an individual to act as a surrogate for the parents. This must include a method:

(a) For determining whether a student needs a surrogate parent;

(b) For assigning a surrogate parent to the student; and

(c) Ensuring that an assignment of a surrogate parent is provided within thirty days of the district's determination that a surrogate parent is required.

(3) If a student is a ward of the state, the judge overseeing the student's case, may appoint a surrogate parent, provided that the surrogate meets the requirements in subsections (4)(a) and (5) of this section.

(4) School districts must ensure that a person selected as a surrogate parent:

(a) Is not an employee of the OSPI, the school district, or any other agency that is involved in the education or care of the student;

(b) Has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and

(c) Has knowledge and skills that ensure adequate representation of the student.

(5) A person otherwise qualified to be a surrogate parent under subsection (4) of this section is not an employee of the OSPI, school district or other agency solely because he or she is paid by the agency to serve as a surrogate parent.

(6) In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to subsection (4)(a) of this section until a surrogate parent can be appointed that meets all of the requirements of subsection (4) of this section.

(7) The surrogate parent may represent the student in all matters relating to the identification, evaluation, educational placement and the provision of FAPE to the student.

TRANSFER OF RIGHTS AT AGE OF MAJORITYNEW SECTION

WAC 392-172A-05135 Transfer of parental rights to the student at age of majority. (1) When a student eligible for special education reaches the age of eighteen or is deemed to have reached the age of majority, consistent with RCW 26.28.010 through 26.28.020, unless the student is declared incapacitated as to person under chapter 11.88 RCW, the following shall occur:

(a) The school district shall provide any notices required under this chapter to both the student and the parents; and

(b) All other rights accorded to parents under the act transfer to the student.

(2) All rights accorded to parents under the act transfer to students at the age of majority who are incarcerated in an adult or juvenile, state, or local correctional institution.

(3) Whenever a school district transfers rights under this section, it shall notify the student and the parents of the transfer of rights.

DISCIPLINE PROCEDURESNEW SECTION

WAC 392-172A-05140 Purpose. The purpose of WAC 392-172A-05140 through 392-172A-05155 is to ensure that students eligible for special education services are not improperly excluded from school for disciplinary reasons and are provided services in accordance with WAC 392-172A-05145. Each school district serving special education students shall take steps to ensure that each employee, contractor, and other agent is knowledgeable of the disciplinary procedures to be followed for students eligible for special education and students who may be deemed to be eligible for special education, and knowledgeable of the rules and procedures contained in chapter 392-400 WAC governing discipline for all students.

NEW SECTION

WAC 392-172A-05145 Authority of school personnel. (1) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a student eligible for special education services, who violates a code of student conduct.

(2)(a) School personnel may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities under this section, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155.

(b) After a student has been removed from his or her current placement for ten school days in the same school year,

during any subsequent days of removal the school district must provide services to the extent required under subsection (4) of this section.

(3) When disciplinary changes in placement exceed ten consecutive school days, and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to subsection (5) of this section, school personnel may apply the relevant disciplinary procedures to students eligible for special education in the same manner and for the same duration as a district would apply discipline procedures to students without disabilities, except that services shall be provided in accordance with subsection (4) of this section.

(4) A student who is removed from the student's current placement pursuant to subsection (3) or (5) of this section must:

(a) Continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

(b) Receive, as appropriate when a student's removal is not a manifestation of the student's disability, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(c) The services required by (a), (d), (e), and (f) of this subsection may be provided in an interim alternative educational setting.

(d) A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a student without disabilities who is similarly removed.

(e) After a student eligible for special education has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under WAC 392-172A-05155, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

(f) If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate services under (a) of this subsection.

(5)(a) Within ten school days of any decision to change the placement of a student eligible for special education because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team (as determined by the parent and the school district) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

(ii) If the conduct in question was the direct result of the school district's failure to implement the IEP.

(b) The conduct must be determined to be a manifestation of the student's disability if the school district, the parent, and relevant members of the student's IEP team determine that a condition in (a)(i) or (ii) of this subsection was met.

(c) If the school district, the parent, and relevant members of the student's IEP team determine the conduct was manifestation of the student's disability, the school district must take immediate steps to remedy those deficiencies.

(6) If the school district, the parent, and relevant members of the student's IEP team determine the conduct was manifestation of the student's disability, the IEP team must either:

(a) Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or

(b) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(c) Except as provided in subsection (7) of this section, return the student to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.

(7) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than forty-five school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

(a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a school district;

(b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a school district; or

(c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a school district.

(8) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student eligible for special education because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents the procedural safeguards notice.

(9) Definitions. For purposes of this section, the following definitions apply:

(a) Controlled substance means a drug or other substance identified under Schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(b) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under that act or under any other provision of federal law.

(c) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of Section 1365 of Title 18, United States Code.

(d) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of subsection (g) of Section 930 of Title 18, United States Code.

NEW SECTION

WAC 392-172A-05150 Determination of setting. The student's IEP team determines the interim alternative educational setting for services under WAC 392-172A-07105 (3), (4)(e) and (7).

NEW SECTION

WAC 392-172A-05155 Change of placement because of disciplinary removals. For purposes of removals of a student eligible for special education from the student's current educational placement, because of disciplinary removals, a change of placement occurs if:

(1) The removal is for more than ten consecutive school days; or

(2) The student has been subjected to a series of removals that constitute a pattern:

(a) Because the series of removals total more than ten school days in a school year;

(b) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and

(c) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

(3) The school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(4) The determination regarding a disciplinary change of placement is subject to review through due process and judicial proceedings.

NEW SECTION

WAC 392-172A-05160 Appeal of placement decisions and manifestation determinations. (1) The parent of a student eligible for special education who disagrees with any decision regarding placement under WAC 392-172A-05145 and 392-172A-05155, or the manifestation determination under WAC 392-172A-05145(5), or a school district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a due process hearing. The hearing is requested by filing a due process hearing request pursuant to WAC 392-172A-05080 and 392-172A-05085.

(2)(a) An administrative law judge under WAC 392-172A-05095 hears, and makes a determination regarding an appeal under subsection (1) of this section.

(b) In making the determination under (a) of this subsection, the administrative law judge may:

(i) Return the student to the placement from which the student was removed if the administrative law judge deter-

mines that the removal was a violation of WAC 392-172A-05145 through 392-172A-05155 or that the student's behavior was a manifestation of the student's disability; or

(ii) Order a change of placement of the student to an appropriate interim alternative educational setting for not more than forty-five school days if the administrative law judge determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(c) The procedures under subsection (1) of this section and (b) of this subsection may be repeated, if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

(3) Whenever a hearing is requested under subsection (1) of this section, the parents and the school district involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of WAC 392-172A-05080 through 392-172A-05090 and 392-172A-05100 through 392-172A-05110, except:

(a) The due process hearing must be expedited, and must occur within twenty school days of the date the due process hearing request is filed. The administrative law judge must make a determination within ten school days after the hearing.

(b) Unless the parents and school district agree in writing to waive the resolution meeting described in (b)(i) of this subsection, or agree to use the mediation process:

(i) A resolution meeting must occur within seven days of receiving notice of the due process hearing request; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days of the receipt of the due process hearing request.

(4) The administrative hearing decisions on expedited due process hearings may be appealed, by initiating a civil action consistent with WAC 392-172A-05115.

NEW SECTION

WAC 392-172A-05165 Placement during an appeal through a due process hearing. When either the parent or the school district requests a due process hearing, the student must remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period specified in WAC 392-172A-05145 (3) or (7), whichever occurs first, unless the parent and the school district agree otherwise.

NEW SECTION

WAC 392-172A-05170 Protections for students not determined eligible for special education and related services. (1) A student who has not been determined to be eligible for special education and related services under this chapter and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this chapter if the school district had knowledge as determined in accordance with subsection (2) of this section that the student was a student eligible for special education before the behavior that precipitated the disciplinary action occurred.

(2) Basis of knowledge. A school district must be deemed to have knowledge that a student is eligible for special education if before the behavior that precipitated the disciplinary action occurred:

(a) The parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

(b) The parent of the student requested an evaluation of the student pursuant to WAC 392-172A-03005; or

(c) The teacher of the student, or other personnel of the school district, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school district.

(3) A school district would not be deemed to have knowledge under subsection (2) of this section if:

(a) The parent of the student:

(i) Has not allowed an evaluation of the student pursuant to WAC 392-172A-03000 through 392-172A-03080; or

(ii) Has refused services under this chapter; or

(b) The student has been evaluated in accordance with WAC 392-172A-03005 through 392-172A-03080 and determined to not be eligible for special education and related services under this part.

(4)(a) If a school district does not have knowledge that a student is eligible for special education prior to taking disciplinary measures against the student, the student may be disciplined using the same disciplinary measures applied to students without disabilities who engage in comparable behaviors consistent with (b) of this subsection.

(b)(i) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under WAC 392-172A-05145, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the student is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the agency must provide special education and related services in accordance with this chapter and follow the discipline requirements, including the requirements of Section 612 (a)(1)(A) of the act.

NEW SECTION

WAC 392-172A-05175 Referral to and action by law enforcement and judicial authorities. (1) Nothing in this chapter prohibits a school district or other agency from reporting a crime committed by a student to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student eligible for special education.

(2) An agency reporting a crime committed by a student eligible for special education must ensure that copies of the special education and disciplinary records of the student are

transmitted for consideration by the appropriate authorities to whom the agency reports the crime, to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

CONFIDENTIALITY OF STUDENT INFORMATION AND EDUCATIONAL RECORDS

NEW SECTION

WAC 392-172A-05180 Definitions—Destruction of records, educational records, participating agency. As used in WAC 392-172A-07150 through 392-172A-07215:

(1) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(2) Education records means the type of records covered under the definition of "education records" in the Family Educational Rights and Privacy Act, 34 CFR Part 99.

(3) "Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained in implementing this chapter, and includes the OSPI, school districts and other public agencies.

NEW SECTION

WAC 392-172A-05185 Notice to parents. (1) Parents of students eligible for special education have rights regarding the protection of the confidentiality of any personally identifiable information collected, used, or maintained under WAC 392-172A-05180 through 392-172A-05240, the Family Educational Rights and Privacy Act of 1974, as amended, state laws contained in Title 28A RCW that address personally identifiable information, regulations implementing state law, and Part B of IDEA.

(2) State forms, procedural safeguards and parent handbooks regarding special education are available in Spanish, Vietnamese, Russian, Cambodian, and Korean, and alternate formats on request.

(3) Personally identifiable information about students for use by the OSPI, special education section, may be contained in state complaints, due process hearing requests, monitoring hearing requests and decisions, safety net applications, and mediation agreements. The state may also receive personally identifiable information as a result of grant evaluation performance. This information is removed before forwarding information to other agencies or individuals requesting the information, unless the parent or adult student consents to release the information or the information is allowed to be released without parent consent under the regulations implementing the Family Educational Rights and Privacy Act, 34 CFR Part 99.

(4) School districts are responsible for child find activities for students who may be eligible for special education. If the state were to conduct any major identification, location, or evaluation activity, the state would publish notices in newspapers with circulation adequate to notify parents throughout the state of the activity, notify school districts and post information on its web site.

NEW SECTION

WAC 392-172A-05190 Access rights. (1) Each participating agency shall permit parents of students eligible for special education to inspect and review, during school business hours, any educational records relating to the student which are collected, maintained, or used by the district or other public agency under this chapter. The school district shall comply with a request promptly and before any meeting regarding an individualized education program or hearing or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. The school district shall respond, in no case, more than forty-five calendar days after the request has been made.

(2) The right to inspect and review educational records under this section includes:

(a) The right to a response from the school district to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the school district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent or adult student inspect and review records.

(3) A participating agency may presume that a parent has authority to inspect and review records relating to his or her student unless the school district or other public agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

NEW SECTION

WAC 392-172A-05195 Record of access. Each school district or other public agency shall keep a record of parties obtaining access to educational records collected, maintained, or used under this chapter including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. The agency is not required to keep a record of access by parents, and authorized employees with a legitimate educational interest in the records.

NEW SECTION

WAC 392-172A-05200 Records on more than one student. If any educational record includes information on more than one student, the parent of those students shall have the right to inspect and review only the information relating to their child or themselves, or to be informed of that specific information.

NEW SECTION

WAC 392-172A-05205 List of records. Each school district or other public agency shall provide parents and adult students on request a list of the types and locations of educational records collected, maintained, or used by the agency.

NEW SECTION

WAC 392-172A-05210 Fees. (1) A participating agency may charge a fee for copies of records which are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(2) A participating agency may not charge a fee to search for or to retrieve information under this chapter.

NEW SECTION

WAC 392-172A-05215 Amendment of records and hearing rights. (1) A parent of a student who believes that information in educational records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the student may request that the school district which maintains the information amend the information.

(2) The school district shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request.

(3) If the school district refuses to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing, conducted by the school district, in accordance with school district procedures.

(4) The school district, on request, shall provide the parent an opportunity for a hearing to challenge information, in the educational records, to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

(5) If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the agency shall amend the information accordingly and so inform the parent in writing.

(6) If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the agency shall inform the parents of the right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school district in the records it maintains on the student.

(7) Any explanation placed in the records of the student in compliance with this section shall:

(a) Be maintained by the school district as part of the records of the student as long as the records or the contested portion is maintained by the educational agency; and

(b) Be disclosed to any party to whom the records of the student (or the contested portion thereof) are disclosed.

NEW SECTION

WAC 392-172A-05220 Hearing on a request to amend records. A hearing initiated pursuant to WAC 392-172A-07185 to challenge information in educational records shall be conducted according to procedures developed by the school district or other public agency, and in conformance with the procedures in 34 CFR 99.22 that include at least the following elements:

(1) The hearing shall be held within a reasonable period of time after the school district has received the request;

(2) The parent shall be given notice of the date, place, and time reasonably in advance of the hearing;

(3) The hearing may be conducted by any party, including an official of the school district, who does not have a direct interest in the outcome of the hearing;

(4) The parent shall be afforded a full and fair opportunity to present evidence relevant to the amendment request and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(5) The school district shall provide a written decision to the parent within a reasonable period of time after the conclusion of the hearing; and

(6) The decision of the agency shall:

(a) Be based solely upon the evidence presented at the hearing; and

(b) Include a summary of the evidence and the reasons for the decision.

NEW SECTION

WAC 392-172A-05225 Consent for release of records. (1) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with subsection (2)(a) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR Part 99.

(2)(a) Except as provided in this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

(b) Parental consent, or the consent of an eligible student who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

(3) If a student is enrolled, or is going to enroll, in a private school that is not located in the school district of the student's residence, parental consent must be obtained before any personally identifiable information about the student is released between officials in the school district where the private school is located and officials in the school district of the student's residence, unless the parent is part-time enrolling the student in the resident district pursuant to chapter 392-134 WAC.

NEW SECTION

WAC 392-172A-05230 Safeguards. (1) Each participating agency shall protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages.

(2) One official at each participating agency shall be designated as the individual responsible for assuring the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information shall receive training or instruction regarding the procedures on protection of the confidentiality of personally identifiable information contained in this chapter,

state education law, the regulations implementing the Family Educational Rights and Privacy Act (34 CFR Part 99), and the school district's procedures.

(4) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

NEW SECTION

WAC 392-172A-05235 Destruction of educational records. (1) Each school district shall inform parents and adult students when personally identifiable information collected, maintained, or used in compliance with this chapter is no longer needed to provide educational services to the student, or is no longer required to be retained under state or federal law. State procedures for school district records retention are published by the secretary of state, division of archives and records management, and specify the length of time that education records must be retained.

(2) The information shall thereafter be destroyed at the request of the parent or adult student. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

NEW SECTION

WAC 392-172A-05240 Student rights to educational records. If the rights accorded to parents under this chapter are transferred to a student who reaches the age of eighteen, or is determined to be emancipated sooner, consistent with WAC 392-172A-05135, the rights regarding educational records are also transferred to the student. However, the school district must continue to provide any notice required under section 615 of the act to the student and the parents.

NEW SECTION

WAC 392-172A-05245 District procedures for confidential information. (1) School districts must ensure that their policies and procedures for protection of confidential information comply with WAC 392-172A-05180 through 392-172A-05240.

(2) OSPI reviews compliance through targeted monitoring activities, and state complaints.

(3) If school districts do not have procedures in place that comply with subsection (1) of this section, OSPI will require the school district to correct noncompliance through corrective actions that include but are not limited to:

- (a) Review and revision of district procedures; and
- (b) Technical assistance.

(4) To the extent that any violations that exist under this section are also violations under 34 CFR Part 99, complaints regarding a participating agency's failure to comply may be addressed to the Department of Education, Family Policy Compliance Office.

SCHOOL DISTRICT AND OTHER PUBLIC AGENCY REQUIREMENTS FOR PART B FUNDS

NEW SECTION

WAC 392-172A-06000 Condition of assistance. As a condition of receipt and expenditure of federal special education funds, a school district or other public agency shall annually submit a request for federal funds to the superintendent of public instruction, and conduct its special education and related services program in compliance with the requirements of this chapter. The request shall be made through an application that includes, but is not limited to the following assurances and types of information:

(1) Assurances that: The school district or other public agency meets each of the conditions contained in 34 CFR 300.201 through .213 relating to:

(a) Development of policies and procedures consistent with this chapter and Part B of the act;

(b) The provision of FAPE to students;

(c) Child find requirements for students; including evaluation;

(d) Development of an IEP;

(e) The provision of services in the least restrictive environment, and the availability of a continuum of services, including access to extracurricular and nonacademic activities;

(f) The provision of procedural safeguard protections and implementation of the procedural safeguards notices;

(g) Confidentiality of records and information;

(h) Transition of children from Part C to Part B services;

(i) Participation of students enrolled in private school programs, using a proportional share of Part B funds;

(j) Use of funds;

(k) Personnel preparation;

(l) Availability of documents relating to the eligibility of the school district;

(m) Provision to OSPI of all necessary information and data for the state's performance goals;

(n) Provision of instructional materials to blind persons or persons with print disabilities;

(o) Compliance with corrective actions as a result of monitoring, or dispute resolution processes; and

(p) A goal and detailed timetable for providing full educational opportunity to all special education students.

(2) Identification of the local district or other public agency designee responsible for child identification activities and confidentiality of information.

(3) Information related to participation of students enrolled in private school programs using a proportional share of Part B funds.

(4) Information that addresses the school district's progress or slippage in meeting the state's performance goals and in addressing the state's annual performance plan.

(5) A description of the use of funds received under Part B of the act.

(6) Any other information requested by the OSPI which is necessary for the management of the special education program.

NEW SECTION

WAC 392-172A-06005 Consistency with state policies. The school district or other public agency, in providing for the education of students eligible for special education must have in effect policies, procedures, and programs that are consistent with the state policies and procedures established in this chapter, that address the actions outlined in WAC 392-172A-06000 (1)(b) through (p).

NEW SECTION**WAC 392-172A-06010 School district use of funds.**

(1) Part B funds provided to school districts:

(a) Must be expended in accordance with the applicable provisions of this chapter;

(b) Must be used only to pay the excess costs of providing special education and related services to special education students, consistent with this chapter; and

(c) Must be used to supplement state, local and other federal funds and not to supplant those funds.

(2) The excess cost requirement prevents a school district from using funds provided under Part B of the act to pay for all of the costs directly attributable to the education of a student eligible for special education.

(3)(a) A school district meets the excess cost requirement if it has spent at least a minimum average amount for the education of its students eligible for special education before funds under Part B of the act are used.

(b) The excess cost amount is determined in accordance with the definition of excess costs in WAC 392-172A-01075. That amount may not include capital outlay or debt service.

(4) If two or more school districts jointly establish eligibility in accordance with WAC 392-172A-06075 and 392-172A-06080, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in those school districts for elementary or secondary school students, as the case may be.

NEW SECTION**WAC 392-172A-06015 Maintenance of effort.** (1)

Except as provided under WAC 392-172A-06020 and 392-172A-06025, funds provided to school districts or other public agencies under Part B of the IDEA may not be used to reduce the level of expenditures for the education of students eligible for special education made by it from local funds below the level of those expenditures for the preceding fiscal year.

(2) Except as provided in subsection (3) of this section, the OSPI determines that a school district complies with this section for purposes of establishing the school district's eligibility for an award for a fiscal year if the district budgets, for the education of special education students, at least the same total or per capita amount from either of the following sources as the district spent for that purpose from the same source for the most recent prior year for which information is available:

(a) Local funds only.

(b) The combination of state and local funds.

(3) A district that relies on subsection (2)(a) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of students eligible for special education in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available, if that year is, or is before, the first fiscal year beginning on or after July 1, 1997, or later, if the most recent fiscal year for which information is available and the standard in subsection (2)(a) of this section was used to establish its compliance with this section.

(4) The OSPI may not consider any expenditures made from funds provided by the federal government for which the OSPI is required to account to the federal government or for which the district is required to account to the federal government directly or through the OSPI in determining a district's compliance with the requirement in subsection (1) of this section.

NEW SECTION

WAC 392-172A-06020 Exception to maintenance of effort. A school district or other public agency may reduce the level of expenditures made by it under Part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:

(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;

(2) A decrease in the enrollment of students eligible for special education;

(3) The termination of the obligation of the district or agency, consistent with this chapter, to provide a program of special education to a particular student that is an exceptionally costly program as determined by the state, because the student:

(a) Has left the jurisdiction of the district or agency;

(b) Has reached the age at which the obligation of the district or agency to provide a free appropriate public education to the student has terminated; or

(c) No longer needs the program of special education.

(4) The termination of costly expenditures for long-term purchases such as the acquisition of equipment or the construction of school facilities.

(5) The reimbursement of the cost by the safety net fund operated by the state oversight committee.

NEW SECTION

WAC 392-172A-06025 Adjustment to local fiscal efforts in certain fiscal years. (1) Notwithstanding WAC 392-172A-06015 (1)(a) and (2) and 392-172A-06020(1), and except as provided in subsection (4) of this section, for any fiscal year for which the allocation received by a school district exceeds the amount the school district received for the previous fiscal year, the school district may reduce the level of expenditures otherwise required by WAC 392-172A-06015(1) by not more than fifty percent of the amount of that excess.

(2) If a school district exercises the authority under subsection (1) of this section, the school district must use an

amount of local funds equal to the reduction in expenditures under subsection (1) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the school district is using funds under the ESEA for those activities.

(3) Notwithstanding subsection (1) of this section, if OSPI determines that a school district is unable to establish and maintain programs of FAPE that meet the requirements of this chapter and Part B of the act, the OSPI must prohibit the school district from reducing the level of expenditures under subsection (1) of this section for that fiscal year.

(4) The amount of funds expended by a school district for early intervening services under WAC 392-172A-06085 shall count toward the maximum amount of expenditures that the school district may reduce under subsection (1) of this section.

NEW SECTION

WAC 392-172A-06030 School-wide programs under Title 1 of the ESEA. (1) A school district or other agency may use funds received under Part B of the IDEA for any fiscal year to carry out a school-wide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount used in any school-wide program may not exceed:

(a) The amount received by the district or agency under Part B for that fiscal year; divided by the number of students eligible for special education in the jurisdiction; multiplied by

(b) The number of students eligible for special education participating in the school-wide program.

(2) The funds described in subsection (1) of this section may be used without regard to WAC 392-172A-05010 (1)(a).

(3) The funds described in subsection (1) of this section must be considered as federal Part B funds for purposes of calculating excess cost and supplanting WAC 392-172A-05010 (1)(b) and (c).

(4) Except as provided in subsections (2) and (3) of this section, all other requirements of Part B must be met, including ensuring that students eligible for special education in school-wide program schools:

(a) Receive services in accordance with a properly developed IEP; and

(b) Are afforded all of the rights and services guaranteed to students eligible for special education under the IDEA.

NEW SECTION

WAC 392-172A-06035 Permissive use of funds. (1) Funds provided to a school district under Part B of the act may be used for the following activities:

(a) For the costs of special education and related services, and supplementary aids and services, provided in a general education class or other education-related setting to a special education student in accordance with the IEP of the student, even if one or more nondisabled students benefit from these services.

(b) To develop and implement coordinated, early intervening educational services in accordance with WAC 392-172A-06085.

(c) To establish and implement cost or risk sharing funds, consortia, or cooperatives for the school district itself, or for school districts working in a consortium of which the district is a part, to pay for high cost special education and related services.

(2) A school district may use funds received under Part B of the act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of students eligible for special education, that are needed for the implementation of those case management activities.

NEW SECTION

WAC 392-172A-06040 Purchase of instructional materials. OSPI has elected to coordinate with the National Instructional Materials Access Center (NIMAC). School districts have the option of coordinating with NIMAC.

(1) Not later than December 3, 2006, a school district that chooses to coordinate with NIMAC, when purchasing print instructional materials, must acquire those instructional materials in accordance with subsection (2) of this section.

(2) If a school district chooses to coordinate with the NIMAC, as of December 3, 2006, it must:

(a) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to:

(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(b) Make all reasonable attempts to provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(c) In carrying out this section, the school district, to the maximum extent possible, must work with the state instructional resources center.

(3) For the purposes of this section:

(a) Blind persons or other persons with print disabilities means students served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C. 135a;

(b) National Instructional Materials Access Center or NIMAC means the center established pursuant to section 674(e) of the act;

(c) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in section 674 (e)(3)(B) of the act;

(d) Specialized formats has the meaning given the term in section 674 (e)(3)(D) of the act.

(4) The definitions in subsection (3) of this section apply to each school district, whether or not the school district chooses to coordinate with the NIMAC.

(5) Rights of a school district. Nothing in this section shall be construed to require a school district to coordinate with the NIMAC.

(6) If a school district chooses not to coordinate with the NIMAC, the school district must provide an assurance to the OSPI that the school district will provide instructional materials to blind persons or other persons with print disabilities by other means in a timely manner.

(7) Nothing in this section relieves a school district of its responsibility to ensure that students eligible for special education who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

NEW SECTION

WAC 392-172A-06045 School district information for OSPI. (1) The school district must provide OSPI with information that is necessary to enable OSPI to carry out its duties under Part B of the act and state law, including, but not limited to child count, least restrictive environment, suspension and expulsion rates, disproportionality, and other information relating to the performance of students eligible for special education participating in programs carried out under Part B of the act.

(2) The information will be provided OSPI in the form and by the timelines specified for a particular report.

NEW SECTION

WAC 392-172A-06050 Public information. The school district must make available to parents of students eligible for special education and to the general public all documents relating to the eligibility of the agency under Part B of the act.

NEW SECTION

WAC 392-172A-06055 Records regarding migratory students eligible for special education. The LEA must cooperate in the secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory students eligible for special education for the purpose of electronically exchanging, among the states, health and educational information regarding those students.

NEW SECTION

WAC 392-172A-06060 Exception for prior policies and procedures. (1) If a school district has on file with the OSPI policies and procedures that demonstrate that the school district meets the requirements under WAC 392-172A-05000, including any policies and procedures filed under Part B of the act as in effect before December 3, 2004, the OSPI must consider the school district to have met that

requirement for purposes of receiving assistance under Part B of the act.

(2) Subject to subsection (3) of this section, policies and procedures submitted by a school district in accordance with this subpart remain in effect until the school district submits to the OSPI the modifications that the school district determines are necessary.

(3) The OSPI may require a school district to modify its policies and procedures, but only to the extent necessary to ensure the school district's compliance with Part B of the act or state law, if:

(a) After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the act or federal or state regulations developed to carry out the act, are amended;

(b) There is a new interpretation of an applicable provision of the act by federal or state courts; or

(c) There is an official finding of noncompliance with federal or state law or regulations.

NEW SECTION

WAC 392-172A-06065 Notification of a school district in case of ineligibility. (1) In the event the superintendent of public instruction or designee determines that a school district is not eligible under Part B of the act, or is not complying with corrective actions as a result of monitoring, state complaints, or due process decisions and the superintendent intends to withhold or recover funds in whole or in part, the school district or other public agency shall be provided:

(a) Written notice of intent to withhold or recover funds and the reasons supporting its notice;

(b) The school district's opportunity for a hearing before the superintendent of public instruction or designee prior to a denial of the request.

(2) The superintendent of public instruction shall provide an opportunity for a hearing before the OSPI disapproves the request in accordance with the following procedures:

(a) The applicant shall request the hearing within thirty days of receiving notice of the action of the superintendent of public instruction.

(b) Within thirty days after it receives a request, the superintendent of public instruction shall hold a hearing to review its action. At the hearing, the district shall have the opportunity to provide the superintendent's designee with documentary evidence demonstrating that the superintendent erred in reaching its determination.

(c) The superintendent shall consider any new evidence provided and respond in writing to the school district within thirty days, by affirming the initial determination, rescinding its initial determination, or issuing a revised determination.

(d) If the district remains unsatisfied with the superintendent's determination, it may appeal the agency's decision by filing an appeal with the office of administrative hearings within thirty days of receiving OSPI's final determination. Procedures for filing an appeal of a decision under this section shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW and chapter 10.08 WAC.

NEW SECTION**WAC 392-172A-06070 School district compliance.**

(1) If the OSPI, after reasonable notice and an opportunity for a hearing, finds that a school district determined to be eligible under this subpart is failing to comply with any requirement described in WAC 392-172A-06000 through 392-172A-06060, the OSPI must reduce or must not provide any further payments to the school district until the OSPI is satisfied that the school district is complying with that requirement.

(2) Any school district or other public agency in receipt of a notice of intent to withhold or recover funds of the school district shall, by means of a public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public, within its jurisdiction.

(3) In carrying out its responsibilities under this section, OSPI must consider any due process hearing decision resulting in a decision that is adverse to the school district involved in the decision.

NEW SECTION

WAC 392-172A-06075 Collaborative requests. The superintendent of public instruction may require districts to submit a collaborative request for payments under Part B of the Individuals with Disabilities Education Act if it is determined that a single district or other public agency would be disapproved because the district or other public agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of special education students. Districts that apply for Part B funds in a collaborative request must meet the same minimum requirements as a single district or other public agency applicant. The request must be signed by the superintendent of each participating school district or other public agency. The districts are jointly responsible for implementing programs receiving payments under Part B of the Individuals with Disabilities Education Act. The total amount of funds made available to the affected school districts or other public agencies shall be equal to the sum each would have received separately.

NEW SECTION

WAC 392-172A-06080 Requirements for establishing eligibility. School districts that establish joint eligibility under this section must:

(1) Adopt policies and procedures that are consistent with the state's policies and procedures consistent with WAC 392-172A-06005; and

(2) Be jointly responsible for implementing programs that receive assistance under Part B of the act.

NEW SECTION**WAC 392-172A-06085 Early intervening services.**

(1) A school district may not use more than fifteen percent of the amount the school district receives under Part B of the act for any fiscal year, less any amount reduced by the school district pursuant to WAC 392-172A-06015 if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordi-

nated, early intervening services, which may include inter-agency financing structures. Those services are for students in kindergarten through grade twelve, with a particular emphasis on students in kindergarten through grade three, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(2) In implementing coordinated, early intervening services under this section, a school district may carry out activities that include:

(a) Professional development, which may be provided by entities other than the school district, for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(b) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(3) Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the act or to delay appropriate evaluation of a student suspected of having a disability.

(4) Each school district that develops and maintains coordinated, early intervening services under this section must annually report to the OSPI on:

(a) The number of students served under this section who received early intervening services; and

(b) The number of students served under this section who received early intervening services and subsequently receive special education and related services under Part B of the act during the preceding two year period.

(5) Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

NEW SECTION**WAC 392-172A-06090 Direct services by the OSPI.**

(1) OSPI must use the payments that would otherwise have been available to a school district to provide special education and related services directly to students eligible for special education in the area served by that school district, if the OSPI determines that the school district:

(a) Has not provided the information needed to establish the eligibility of the school district, or elected not to apply for its Part B allotment, under Part B of the act;

(b) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;

(c) Is unable or unwilling to be consolidated with one or more school districts in order to establish and maintain the programs; or

(d) Has one or more students eligible for special education who can best be served by a regional or state program or

service delivery system designed to meet the needs of these students.

(2)(a) In meeting the requirements in subsection (1) of this section, the OSPI may provide special education and related services directly, by contract, or through other arrangements.

(b) The excess cost requirements of WAC 392-172A-01075 do not apply to the OSPI.

(3) The OSPI may provide special education and related services in the manner and at the location as the OSPI considers appropriate. The education and services must be provided in accordance with this chapter.

NEW SECTION

WAC 392-172A-06095 State agency eligibility. Any state agency that desires to receive a subgrant for any fiscal year for Part B funding must demonstrate to the satisfaction of the OSPI that:

(1) All children with disabilities who are participating in programs and projects funded under Part B of the act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(2) The agency meets the other conditions of this subpart that apply to school districts.

STATE PROCEDURES—MONITORING— ENFORCEMENT AND STATE PROGRAM INFORMATION

NEW SECTION

WAC 392-172A-07000 Methods of ensuring services.

(1) OSPI must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in this section and the OSPI, in order to ensure that all services that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under (c) of this subsection. The agreement or mechanism shall contain:

(a) An identification of, or a method of defining, the financial responsibility of each agency for providing services to ensure FAPE to students eligible for special education. The financial responsibility of each noneducational public agency, including the state medicaid agency and other public insurers of students eligible for special education, must precede the financial responsibility of the school district.

(b) The conditions, terms, and procedures under which a school district must be reimbursed by other agencies.

(c) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(d) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and

appropriate delivery of services described in subsection (2)(a) of this section.

(2)(a) If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to subsection (1) of this section, to provide or pay for any services that are also considered special education or related services such as, but not limited to, assistive technology devices and services, related services, whether provided as specially designed instruction or related services; supplementary aids and services, and transition services that are necessary for ensuring FAPE to students eligible for special education, the noneducational public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subsection (1) of this section.

(b) A noneducational public agency described in subsections (1)(a) and (2) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(c) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in (a) of this subsection, the school district developing the student's IEP must provide or pay for these services to the student in a timely manner. The school district is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the school district or state agency in accordance with the terms of the interagency agreement or other mechanism described in subsection (1) of this section.

(3) The requirements of subsection (1) of this section may be met through:

(a) State statute or regulation;

(b) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(c) Other appropriate written methods determined by the superintendent of the office of public instruction.

NEW SECTION

WAC 392-172A-07005 Students eligible for special education who are covered by public benefits or insurance or private insurance. (1) A school district may use the Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, subsection (2) of this section.

(2) With regard to services required to provide FAPE to an eligible student, the school district:

(a) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the act;

(b) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but may pay the cost that the parents otherwise would be required to pay;

(c) May not use a child's benefits under a public benefits or insurance program if that use would:

(i) Decrease available lifetime coverage or any other insured benefit;

(ii) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the student is in school;

(iii) Increase premiums or lead to the discontinuation of benefits or insurance; or

(iv) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(d) Must obtain parental consent, each time that access to public benefits or insurance is sought for a new procedure; and must notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(3) With regard to services required to provide FAPE to an eligible student under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent. Each time the public agency proposes to access the parents' private insurance proceeds, the agency must:

(a) Obtain parental consent; and

(b) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(4)(a) If a school district is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(b) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance such as deductible or co-pay amounts.

(5) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(6) If a public agency spends reimbursements from federal funds such as Medicaid, for services under this part, those funds will not be considered state or local funds for purposes of the maintenance of effort provisions.

(7) Nothing in this part should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under Title XIX, or Title XXI of the Social Security Act, 42 U.S.C. Secs. 1396 through 1396v and 42 U.S.C. Secs. 1397aa through 1397jj, or any other public benefits or insurance program.

MONITORING

NEW SECTION

WAC 392-172A-07010 Monitoring. (1) The OSPI shall monitor selected local school districts special education

programs, so that all districts are monitored at least once every six years. The focus of monitoring is to:

(a) Improve educational results and functional outcomes for all students eligible for special education;

(b) Ensure that school districts meet the program requirements under Part B of the act with a particular emphasis on those requirements that are most closely related to improving educational results for students eligible for special education;

(c) Determine the school district's compliance with this chapter, chapter 28A.155 RCW, and federal regulations implementing 20 U.S.C. Sec. 1400, et seq. in order to validate compliance with this chapter;

(d) Validate information included in school district or other public agency requests for federal funds; and

(e) Measure district performance on relative targets and priorities from state performance plans.

(2) Procedures for monitoring school districts and other public agencies may include any or all of the following:

(a) Collection of previsit data;

(b) Conduct of on-site visits;

(c) Comparison of a sampling of evaluation reports and individualized education programs with the services provided; and

(d) Review and analysis of such quantifiable and qualitative indicators as are needed to measure performance in the following areas:

(i) Provision of a FAPE in the least restrictive environment;

(ii) State exercise of general supervision, including child find, effective monitoring, and the use of resolution meetings, mediation, and a system of transition services; and

(iii) Disproportionate representation of racial and ethnic groups in special education and related services to the extent the representation is the result of inappropriate identification.

(3) As part of the monitoring process, a monitoring report shall be submitted to the school district. The monitoring report shall include, but not be limited to:

(a) Findings of noncompliance, if any;

(b) Required student specific corrective actions; and

(c) Areas that will require a corrective action plan and/or improvement plan to address any systemic issues determined through the monitoring.

(4) The school district shall have thirty calendar days after the date of its receipt of the monitoring report to provide the OSPI with supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report. In the event that the school district submits supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report, the OSPI shall determine whether or not any revisions are necessary, the extent to which the proposed action is acceptable and will issue a final monitoring report within thirty calendar days after receipt of the supplemental response.

(5) The school district will have ninety calendar days after the date of its receipt of the final monitoring report to provide the OSPI with a proposed corrective action/improvement plan, if required, which sets forth the measures the district shall take and time period(s) within which the district shall act in order to remediate any areas of noncompliance.

(6) If the school district does not comply with a corrective action plan approved pursuant to subsections (4) and (5) of this section, the OSPI shall institute procedures to ensure compliance with applicable state and federal rules and priorities and targets from the state performance plan. Such procedures may include one or more of the following:

(a) Verification visits by OSPI staff, or its designee, to:

(i) Determine whether the school district is taking the required corrective action(s);

(ii) Expedite the school district's response to the final monitoring report; and

(iii) Provide any necessary technical assistance to the school district or other public agency in its efforts to comply.

(b) Withholding, in whole or part, a specified amount of state and/or federal special education funds, in compliance.

(c) Requesting assistance from the state auditors office to initiate an audit.

(7) When monitoring districts under this section or when enforcing other provisions of this subpart relating to the district's obligations to provide OSPI with data under WAC 392-172A-06000 through 392-172A-06060:

(a) If the OSPI determines, for two consecutive years, that a district needs assistance in implementing the OSPI's annual performance requirements, OSPI will take one or more of the following actions:

Advise the district of available sources of technical assistance that may help the district address the areas in which the district needs assistance, which may include assistance from the OSPI, Office of Special Education Programs, other offices of the Department of Education, other federal agencies, technical assistance providers approved by the Department of Education, and other federally or state funded non-profit agencies, and require the district to work with appropriate entities. Such technical assistance may include:

(i) The provision of advice by experts to address the areas in which the district needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service districts, national centers of technical assistance, and private providers of scientifically based technical assistance.

(b) If the OSPI determines, for three or more consecutive years, that a district needs intervention in implementing the OSPI's annual performance requirements, OSPI will take one or more of the following actions:

(i) Require the district to prepare a corrective action plan or improvement plan if the OSPI determines that the district should be able to correct the problem within one year;

(ii) Withhold, in whole or in part, any further payments to the district under Part B of the act.

(c) Notwithstanding (a) or (b) of this subsection, at any time that the OSPI determines that a district needs substantial intervention in implementing the requirements of Part B of the act or that there is a substantial failure to comply with any condition of a school district's eligibility under Part B of the act, OSPI will withhold, in whole or in part, any further payments to the district under Part B of the act, in addition to any other actions taken under (a) or (b) of this subsection.

PERFORMANCE GOALS AND INDICATORS— STATE PERFORMANCE PLANS AND ANNUAL PERFORMANCE REPORTS

NEW SECTION

WAC 392-172A-07015 Performance goals and indicators. (1) The OSPI has established goals for the performance of special education students that promote the purposes of the Individuals with Disabilities Education Act, are consistent, to the maximum extent appropriate, with the state's four learning goals and essential academic learning requirements for all students, and are the same as the state's objectives for progress by students in its definition of adequate yearly progress, including the state's objectives for progress by students eligible for special education, under section 1111 (b)(2)(C) of the ESEA, 20 U.S.C. Sec. 6311. The performance goals are identified in the state's performance plan, which is based upon district data provided to OSPI.

(2) In addition, the OSPI has established performance indicators that are used to assess the state's and school district's progress toward achieving those goals that at a minimum address the performance of eligible students on assessments, dropout rates, transition, and graduation rates.

(3) The state reports annually to the department of education and to the public through its annual performance report on the progress of the state, and of students eligible for special education in the state, toward meeting the goals established under subsection (1) of this section.

NEW SECTION

WAC 392-172A-07020 State performance plans and data collection. (1) The OSPI has established a performance plan that evaluates the state's efforts to implement the requirements and purposes of Part B of the act, and describes how the state will improve such implementation. The plan is reviewed every six years, with any amendments provided to the department of education.

(2)(a) As part of the state performance plan, the OSPI has established measurable and rigorous targets for indicators established by the department of education under the priority areas of general supervision including child find, effective monitoring, use of resolution meetings, mediation, and a system of transition services.

(b) The OSPI must collect valid and reliable information from the districts, monitoring, and state data, as needed to report annually to the department of education on their indicators.

(c) Data collected on specific indicators through state monitoring or sampling are collected on those indicators for

each school district at least once during the six year period of the state performance plans.

(3) Nothing in Part B of the act shall be construed to authorize the development of a statewide or nationwide data base of personally identifiable information on individuals involved in studies or other collections of data under Part B of the act.

NEW SECTION

WAC 392-172A-07025 State use of targets and reporting. (1) The OSPI uses the targets established in the state's performance plan and the priority areas to analyze the performance of each school district.

(2)(a) The OSPI reports annually to the public on the performance of each school district located in the targets in the state's performance plan; and makes the state's performance plan available through public means, including posting on the web site of the OSPI, distribution to the media, and distribution through public agencies, subject to subsection (4) of this section.

(b) If the OSPI collects performance data through monitoring or sampling, the OSPI includes the most recently available performance data on each school district and the date the data were obtained.

(3) The OSPI must report annually to the department of education on the performance of the state under its performance plan.

(4) The OSPI does not report any information to the public or to the department of education on performance that would result in the disclosure of personally identifiable information about individual students, or where the available data are insufficient to yield statistically reliable information.

NEW SECTION

WAC 392-172A-07030 State enforcement. If the OSPI determines that a school district is not meeting the requirements of Part B of the act, including the targets in the state's performance plan, OSPI must prohibit the school district from reducing the school district's maintenance of effort under WAC 392-172A-06015 for any fiscal year, in addition to any other authority it has to monitor and enforce the requirements of Part B of the act.

CHILD COUNT, DISPROPORTIONALITY, SUSPENSION AND EXPULSION

NEW SECTION

WAC 392-172A-07035 Child count. The OSPI reports to the secretary of the department of education no later than February 1 of each year the number of special education students aged three through twenty-one residing in the state who are receiving special education and related services. This report is based on the school districts' reports to OSPI which are due by December 1 of each year.

(1) Information required in the report includes:

(a) The number of special education students receiving special education and related services on December 1 of that school year;

(b) The number of special education students aged three through five who are receiving free, appropriate public education;

(c) The number of those special education students aged six through seventeen and eighteen through twenty-one within each disability category, as defined in the definition of "special education students"; and

(d) The number of those special education students aged three through twenty-one for each year of age (three, four, five, etc.).

(2) For the purpose of this part, a student's age is the student's actual age on the date of the child count: December 1.

(3) A student may not be reported under more than one disability category.

(4) If a special education student has more than one disability, the student is reported as follows:

(a) A student with deaf-blindness and not reported as having a developmental delay must be reported under the category "deaf-blindness."

(b) A student who has more than one disability (other than deaf-blindness or developmental delay) must be reported under the category "multiple disabilities."

(5) The office of the superintendent of public instruction shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of special education students receiving special education and related services on the dates in question. School districts must provide OSPI a certification signed by an authorized official of the district, stating that the information provided by the district is an accurate and unduplicated count of special education students receiving special education and related services on the dates in question.

(6) The OSPI will include in its report special education students who are enrolled in a school or program that is operated or supported by a public agency, and that:

(a) Provides them with both special education and related services; or

(b) Provides them only with special education if they do not need related services to assist them in benefiting from that special education.

(7) The superintendent may not include special education students in its reports who:

(a) Are not enrolled in a school or program operated or supported by a public agency;

(b) Are not provided special education that meets state standards;

(c) Are not provided with a related service that they need to assist them in benefiting from special education;

(d) Are counted by the state's lead agency for Part C services; or

(e) Are receiving special education funded solely by the federal government including students served by the U.S. Departments of the Interior or Education.

SUSPENSION AND EXPULSION AND DISPROPORTIONALITY

NEW SECTION

WAC 392-172A-07040 Disproportionality. (1) The state collects and examines data annually from school districts to determine if significant disproportionality based on race or ethnicity is occurring in the state with respect to:

(a) The identification of students eligible for special education, including the identification of students in accordance with a particular impairment described in this chapter;

(b) The placement in particular educational settings of these students; and

(c) The incidence duration and type of disciplinary actions including suspension and expulsions.

(2) Disproportionality is determined by a ratio of the risk that a student from a particular racial or ethnic group is identified as eligible for special education, placed in a particular eligibility category, placed in a particular setting, or is subject to discipline, compared to the risk factor for all other students in that district.

(3) Significant disproportionality means:

(a) The overall percentage of students eligible for special education in the district is greater than the statewide average plus one percent;

(b) The weighted risk ratio for a school district as calculated by the state is greater than 3.0 in one or more racial or ethnic groups by disability category or discipline when compared to all students within the school district, and placement when compared to all eligible students within the school district; and

(c) Placement of one or more racial or ethnic groups on the least restrictive environment tables published by the OSPI annually is greater than the statewide average plus one percent, to the extent the representation is the result of inappropriate identification.

(4)(a) In the case of a determination of significant disproportionality with respect to the identification of students eligible for special education, the placement in particular educational settings of these students, or discipline, the OSPI shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the act;

(b) Require any school district identified under subsection (1) of this section to reserve the maximum amount of funds under WAC 392-172A-06085 to provide comprehensive coordinated early intervening services to serve students in the school district, particularly, but not exclusively, students in those groups that were significantly over identified; and

(c) Require the school district to publicly report on the revision of policies, practices, and procedures described under (b) of this subsection.

NEW SECTION

WAC 392-172A-07045 Suspension and expulsion rates for students eligible for special education. (1) Annu-

ally, school districts shall report to the state on the rates of long-term suspensions and expulsions of students eligible for special education and nondisabled students for the preceding school year. The state shall examine this data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring:

(a) Among school districts or other public agencies; or

(b) Between nondisabled students and students eligible for special education within school districts or other public agencies.

(2) If discrepancies are occurring, the state shall review and if appropriate, require revisions in state, school district or other public agency policies, procedures, and practices to ensure compliance with the act.

(3) Policies, procedures, and practices to be reviewed and, if appropriate, revised, include:

(a) The development and implementation of individualized education programs;

(b) The use of positive behavioral interventions and supports; and

(c) Procedural safeguards.

NEW SECTION

WAC 392-172A-07050 State use of funds. OSPI reserves funds for state-level activities, including state administration and other state-level activities, in accordance with the provisions of 34 CFR Sec. 300.704. OSPI makes distributions of unreserved or unused grant funds, that it receives pursuant to section 611 of the act, to school districts allocated through subgrants in accordance with the provisions of 34 CFR Sec. 300.705.

NEW SECTION

WAC 392-172A-07055 State safety net fund for high need students. (1) The state has established a special education safety net fund for students eligible for special education. The rules for applying for reimbursement for the fund are contained in WAC 392-14-600 through 392-14-685 or as may be amended.

(2) Part B funding is available through the safety net fund to reimburse high need, low incidence, catastrophic, or extraordinary aid for applicants with eligible high need special education students whose cost is greater than three times the average per pupil expenditure; and whose placement is consistent with least restrictive environment provisions and other applicable rules regarding placement, including placement in nonpublic agencies.

(3) Disbursements provided under subsection (2) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a student eligible for special education under the state Medicaid program under Title XIX of the Social Security Act.

(4) The costs associated with educating a high need student eligible for special education, in subsections (2) and (3) of this section, are only those costs associated with providing direct special education and related services to the student that are identified in that student's IEP, including the cost of room and board for a residential placement determined necessary, consistent to implement a student's IEP.

(5) The disbursements to an applicant must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a student to ensure FAPE for such student.

(6) Federal funds reserved for the safety net fund from the appropriation for any fiscal year, but not expended to eligible applicants for safety net funding must be allocated to school districts in the same manner as other funds from the appropriation for that fiscal year are allocated to school districts during their final year of availability.

(7) The funds in the high cost fund remain under the control of the state until disbursed to a school district to support a specific child who qualifies under this section and the state regulations for safety net funding described in subsection (1) of this section.

(8) Nothing in this section:

(a) Limits or conditions the right of a student eligible for special education who is assisted under Part B of the act to receive a FAPE in the least restrictive environment; or

(b) Authorizes the state or a school district to establish a limit on what may be spent on the education of a student eligible for special education.

STATE ADVISORY COUNCIL

NEW SECTION

WAC 392-172A-07060 State advisory council. (1)

The special education state advisory council is established in order to help facilitate the provision of special education and related services to meet the unique needs of special education students.

(2) The membership of the council is appointed by the superintendent of the office of public instruction and shall include at least one representative of each of the following groups or entities:

(a) Parents of children, aged birth to twenty-six, with disabilities;

(b) Individuals with disabilities;

(c) Teachers;

(d) Institutions of higher education that prepare special education and related services personnel;

(e) Superintendents and principals, including officials who carry out activities under subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act;

(f) Local administrators of special education programs;

(g) State agencies involved in the financing or delivery of related services to special education students;

(h) Private schools;

(i) Not less than one vocational, community, or business organization concerned with the provision of transition services to students eligible for special education;

(j) State agency employee responsible for services to children in foster care;

(k) State juvenile and adult corrections agencies;

(l) Other individuals or groups as may hereafter be designated and approved by the superintendent of public instruction.

A majority of the members of the advisory council shall be individuals with disabilities or parents of special education students.

(3) The council's purposes are to:

(a) Advise the superintendent of public instruction and make recommendations on all matters related to special education and specifically advise the superintendent of unmet needs within the state in the education of special education students;

(b) Comment publicly on any rules or regulations proposed by the state regarding the education of special education students;

(c) Advise the state in developing evaluations and reporting such information as may assist the state in its data requirements under section 618 of the act;

(d) Advise the state in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the Individuals with Disabilities Education Act; and

(e) Advise the state in developing and implementing policies relating to the coordination of services for special education students.

(4) The council shall follow the procedures in this subsection.

(a) The advisory council shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory council shall submit an annual report of council activities and suggestions to the superintendent of public instruction. This report must be made available to the public in a manner consistent with other public reporting requirements of this chapter.

(c) Official minutes will be kept on all council meetings and shall be made available to the public on request to the OSPI.

NEW SECTION

WAC 392-172A-07065 Records related to grant funds. (1) The superintendent of public instruction and districts shall keep records that show:

(a) The amount of funds under the grant;

(b) How the funds were used;

(c) The total cost of the project;

(d) The share of that cost provided from other sources; and

(e) Other records to facilitate an effective audit.

(2) Records shall be maintained to show program compliance, including records related to the location, evaluation and placement of special education students and the development and implementation of individualized education programs. Program and fiscal information records shall be available to authorized representatives of the OSPI for the purpose of compliance monitoring.

(3) Records shall be retained for six years after completion of the activities for which grant funds were used.

NEW SECTION

WAC 392-172A-07070 Public participation. The state provides opportunities for public hearings, including adequate notice of the hearings and opportunity for written and

oral comment prior to the adoption of any policies and procedures needed to comply with Part B of the act, or the submission of a state plan.

WSR 07-14-087

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 29, 2007, 1:32 p.m., effective July 30, 2007]

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

Purpose: The department is amending WAC 388-513-1325 Determining available income for a single client for long-term care (LTC) services:

- Correcting WAC references to the appropriate supplemental security income (SSI) related WACs.
- Defining LTC services in the title as institutional, waiver, or hospice.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1325.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530.

Adopted under notice filed as WSR 07-11-131 on May 22, 2007.

Changes Other than Editing from Proposed to Adopted Version: Added subsection [(2)](g) referencing WAC for sponsored immigrants and how to determine if sponsors' income counts in determining benefits.

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

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

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

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

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

Date Adopted: June 27, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-01-051, filed 12/8/99, effective 1/8/00)

WAC 388-513-1325 Determining available income for an SSI-related single client for long-term care (LTC) services (institutional, waiver or hospice). This section describes income the department considers available when determining an SSI-related single client's eligibility for LTC services (institutional, waiver or hospice).

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

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

(a) WAC ((388-450-0005 (3) and (4), ~~Income Ownership and availability~~)) 388-475-0600 Definition of income;

(b) WAC ((388-450-0085, ~~Self-employment income Allowable expenses~~)) 388-475-0650 Available income;

(c) WAC ((388-450-0210 (4)(b), (e), and (h), ~~Countable income for medical programs~~)) 388-475-0700 Income eligibility;

(d) WAC ((388-506-0620, ~~SSI-related medical clients~~)) 388-475-0750 Countable unearned income;

(e) WAC ((388-511-1130, ~~SSI-related income availability~~)) 388-475-0840(3) Self employment income-allowable expenses; ((and))

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

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

WSR 07-14-090

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed June 29, 2007, 2:35 p.m., effective August 1, 2007]

Effective Date of Rule: August 1, 2007.

Purpose: The department's new rules and amendments to existing rules ensure clear and consistent policies for hospital reimbursement and ensure compliance with federal and state guidelines. The rules add new sections to: Ensure all disproportionate share hospital (DSH) programs are identified in rule and ensure that sufficient program detail is provided; amend sections pertaining to DSH requirements to ensure consistency with federal guidelines; describe how hospitals qualify for DSH payments; add definitions that apply to DSH payments; amend sections pertaining to the certified public expenditure (CPE) payment program to clarify CPE payment program policies and ensure consistency with federal guidelines embodied in the state plan; and amend sections pertaining to supplemental distributions to approved trauma centers in response to hospital provider input to the department; and incorporate into rule that the department is terminating the upper payment limit (UPL) program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-4925, 388-550-4935, 388-550-4670, 388-550-4900, 388-550-5000, 388-550-5125, 388-550-5130, 388-550-5150, 388-550-5200, 388-550-5210, 388-550-5220, 388-550-5400, 388-550-5410, 388-550-5425, and 388-550-5450.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Adopted under notice filed as WSR 07-10-101, 07-10-102, and 07-10-103 on May 1, 2007.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's Note below.

A final cost-benefit analysis is available by contacting Ayuni Wimpee, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1835, fax (360) 753-9152, e-mail wimpeah@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 11, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 11, Repealed 0.

Date Adopted: June 29, 2007.

Blake D. Chard
for Robin Arnold Williams
Secretary

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 07-15 issue of the Register.

WSR 07-14-092
PERMANENT RULES
DEPARTMENT OF COMMUNITY,
TRADE AND ECONOMIC DEVELOPMENT
(Energy Policy Division)

[Filed June 29, 2007, 2:47 p.m., effective July 30, 2007]

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

Purpose: Adopt rules that establish efficiency standards for certain products sold or installed in the state assure consumers and businesses that such products meet minimum efficiency performance levels thus saving energy and money on utility bills.

Statutory Authority for Adoption: Chapter 19.260 RCW.

Adopted under notice filed as WSR 07-01-117 on December 20, 2006.

Changes Other than Editing from Proposed to Adopted Version: Remove clothes washers, commercial prerinse spray valves, and transformers from the definitions as they are no longer covered by this rule making and were in the filing by error.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 7, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 20, 2007.

Juli Wilkerson
Director

Chapter 194-24 WAC

APPLIANCE ENERGY EFFICIENCY

NEW SECTION

WAC 194-24-010 Authority. The authority to develop these rules is granted to the department in Title 19.260 RCW.

NEW SECTION

WAC 194-24-020 Purpose. The purpose of these rules is to establish efficiency standards for certain products sold or installed in the state assuring consumers and businesses that such products meet minimum efficiency performance levels thus saving energy and money on utility bills. This chapter applies equally to products regardless of whether they are sold, offered for sale, or installed as a stand-alone product or as a component of another product.

NEW SECTION

WAC 194-24-030 Definitions. The following words and terms have the following meanings for the purposes of this chapter unless otherwise indicated:

(1) "Automatic commercial ice cube machine" means a factory-made assembly, not necessarily shipped in one package, consisting of a condensing unit and ice-making section operating as an integrated unit with means for making and harvesting ice cubes. It may also include integrated components for storing or dispensing ice, or both.

(2) "Ballast" means a device used with an electric discharge lamp to obtain necessary circuit conditions, such as voltage, current, and waveform, for starting and operating the lamp.

(3)(a) "Commercial refrigerators and freezers" means refrigerators, freezers, or refrigerator-freezers designed for use by commercial or institutional facilities for the purpose of storing or merchandising food products, beverages, or ice at specified temperatures that:

(i) Incorporate most components involved in the vapor-compression cycle and the refrigerated compartment in a single cabinet; and

(ii) May be configured with either solid or transparent doors as a reach-in cabinet, pass-through cabinet, roll-in cabinet, or roll-through cabinet.

(b) "Commercial refrigerators and freezers" does not include:

- (i) Products with 85 cubic feet or more of internal volume;
- (ii) Walk-in refrigerators or freezers;
- (iii) Consumer products that are federally regulated pursuant to 42 U.S.C. Sec. 6291 et seq.;
- (iv) Products without doors; or
- (v) Freezers specifically designed for ice cream.

(4) "Compensation" means money or any other valuable thing, regardless of form, received or to be received by a person for services rendered.

(5) "Department" means the department of community, trade, and economic development.

(6) "High-intensity discharge lamp" means a lamp in which light is produced by the passage of an electric current through a vapor or gas, and in which the light-producing arc is stabilized by bulb wall temperature and the arc tube has a bulb wall loading in excess of three watts per square centimeter.

(7) "Metal halide lamp" means a high-intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors.

(8) "Metal halide lamp fixture" means a light fixture designed to be operated with a metal halide lamp and a ballast for a metal halide lamp.

(9) "Pass-through cabinet" means a commercial refrigerator or freezer with hinged or sliding doors on both the front and rear of the unit.

(10) "Probe-start metal halide ballast" means a ballast used to operate metal halide lamps which does not contain an igniter and which instead starts lamps by using a third starting electrode "probe" in the arc tube.

(11) "Reach-in cabinet" means a commercial refrigerator or freezer with hinged or sliding doors or lids, but does not include roll-in or roll-through cabinets or pass-through cabinets.

(12)(a) "Roll-in cabinet" means a commercial refrigerator or freezer with hinged or sliding doors that allow wheeled racks of product to be rolled into the unit.

(b) "Roll-through cabinet" means a commercial refrigerator or freezer with hinged or sliding doors on two sides of the cabinet that allow wheeled racks of product to be rolled through the unit.

(13)(a) "Single-voltage external AC to DC power supply" means a device that:

- (i) Is designed to convert line voltage alternating current input into lower voltage direct current output;
- (ii) Is able to convert to only one DC output voltage at a time;
- (iii) Is sold with, or intended to be used with, a separate end-use product that constitutes the primary power load;
- (iv) Is contained within a separate physical enclosure from the end-use product;
- (v) Is connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord, or other wiring; and
- (vi) Has a nameplate output power less than or equal to 250 watts.

(b) "Single-voltage external AC to DC power supply" does not include:

- (i) Products with batteries or battery packs that physically attach directly to the power supply unit;
- (ii) Products with a battery chemistry or type selector switch and indicator light; or
- (iii) Products with a battery chemistry or type selector switch and a state of charge meter.

(14) "State-regulated incandescent reflector lamp" means a lamp that is not colored or designed for rough or vibration service applications, that has an inner reflective coating on the outer bulb to direct the light, an E26 medium screw base, and a rated voltage or voltage range that lies at least partially within 115 to 130 volts, and that falls into one of the following categories:

(a) A bulged reflector or elliptical reflector bulb shape and which has a diameter which equals or exceeds 2.25 inches;

(b) A reflector, parabolic aluminized reflector, or similar bulb shape and which has a diameter of 2.25 to 2.75 inches.

(15)(a) "Unit heater" means a self-contained, vented fan-type commercial space heater that uses natural gas or propane, and that is designed to be installed without ducts within a heated space.

(b) "Unit heater" does not include any products covered by federal standards established pursuant to 42 U.S.C. Sec. 6291 et seq., or any product that is a direct vent, forced flue heater with a sealed combustion burner.

NEW SECTION

WAC 194-24-040 Implementation dates, end dates, and applicability. (1) This chapter applies to the following types of new products manufactured after the stated date and installed for compensation, the dates these rules take effect and, in the case of federal preemption, are rescinded:

(a) Automatic commercial ice cube machines (January 1, 2008, to December 31, 2009);

(b) Commercial refrigerators and freezers (January 1, 2007, to December 31, 2009);

(c) Unit heaters (January 1, 2007, to July 31, 2008);

(d) Single-voltage external AC to DC power supplies (starting January 1, 2008) except power supplies that are classified as devices for human use under the Federal Food, Drug, and Cosmetic Act and require U.S. Food and Drug Administration listing and approval as a medical device;

(e) State-regulated incandescent reflector lamps (starting January 1, 2007); and

(f) Metal halide lamp fixtures (starting January 1, 2008).

(2) No new commercial refrigerator or freezer, state-regulated incandescent reflector lamp, or unit heater manufactured on or after January 1, 2007, may be sold or offered for sale in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040.

(3) No new automatic commercial ice cube machine, single-voltage external AC to DC power supply, or metal halide lamp fixtures manufactured on or after January 1, 2008, may be sold or offered for sale in the state unless the efficiency of

the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040.

(4) On or after January 1, 2008, no commercial refrigerator or freezer, state-regulated incandescent reflector lamp, or unit heater manufactured on or after January 1, 2007, may be installed for compensation in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040.

(5) On or after January 1, 2009, no new automatic commercial ice cube machine, single-voltage external AC to DC power supply, or metal halide lamp fixtures manufactured on or after January 1, 2008, may be installed for compensation in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040.

NEW SECTION

WAC 194-24-050 Labeling. Manufacturers of new products covered by these rules shall identify each product offered for sale or installation in the state as in compliance with this chapter by means of a mark, label, or tag on the product and packaging at the time of sale or installation. The marking required by the state of California in their Appliance Efficiency Regulations dated July 1, 2006, Section 1607 or as revised will meet this requirement.

NEW SECTION

WAC 194-24-060 Testing and certification. (1) Products must be tested as set out by the California energy commission in their Appliance Efficiency Regulations dated July 1, 2006, Sections 1603 and 1604.

(2) If products tested are found not to be in compliance with the minimum efficiency standards established under RCW 19.260, the department may:

(a) Charge the manufacturer of the product for the cost of product purchase and testing; and

(b) Make information available to the public on products found not to be in compliance with the standards.

(3) Manufacturers shall submit a copy of test reports for any covered products offered for sale or installation if requested by the department.

(4) The following minimum information must be provided to the CEC as specified in their Appliance Efficiency Regulations dated July 1, 2006, Section 1606 for all covered appliances:

(a) Manufacturer name;

(b) Brand name (if different);

(c) Model number(s);

(d) Test method used (unless the standard is prescriptive and requires no specific test procedure to determine compliance);

(e) A statement that the model number(s) specified has been tested in accordance with required test methods, if applicable;

(f) A statement that the specified model meets the state's efficiency standards;

(g) A contact person with address, phone number and e-mail address;

(h) A declaration signed by a responsible company official attesting to the accuracy of the information included in the submittal.

(5) Manufacturers must provide to the department a certification from the California energy commission for each unique product that will be sold to a Washington buyer. The exception is that no certification is required for single voltage external AC to DC power supplies but the information listed in (4) of this section must be provided to the department.

(6) All appliances covered by these rules that are listed in the California data base of approved appliances shall be acceptable for sale in the state of Washington except for single voltage external AC to DC power supplies which are not currently listed in the California data base.

(7) The energy policy division director shall inform manufacturers within forty-five days of receipt of certification if their products meet these rules or what other information is required by the department.

(8) All required information and certification shall be submitted to the: Washington Department of Community, Trade and Economic Development, Energy Policy Division, P.O. Box 43173, Olympia, WA 98504-3173, Attn: Executive Assistant.

NEW SECTION

WAC 194-24-070 Penalties for noncompliance. The energy policy division shall investigate complaints received concerning violations of these rules. Any manufacturer or distributor who violates this chapter shall be issued a warning by the director of the department for any first violation. Repeat violations are subject to a civil penalty of not more than two hundred fifty dollars per day.

WSR 07-14-094

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed June 29, 2007, 4:19 p.m., effective July 30, 2007]

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

Purpose: WAC 458-40-640 contains the stumpage value area map establishing the stumpage value area and hauling distance zone map used by harvesters of timber to determine the proper stumpage value area and haul zone when calculating the taxable stumpage value of timber harvested from private land. This rule is revised for use during the second half of 2007.

Citation of Existing Rules Affected by this Order: Amending WAC 458-40-640 Timber excise tax—Stumpage value area (map).

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 84.33.096.

Other Authority: RCW 84.33.091.

Adopted under notice filed as WSR 07-10-130 on May 2, 2007.

A final cost-benefit analysis is available by contacting Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 570-6133, fax (360) 586-5543, e-mail markbohe@dor.wa.gov.

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

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

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

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

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

Date Adopted: June 29, 2007.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

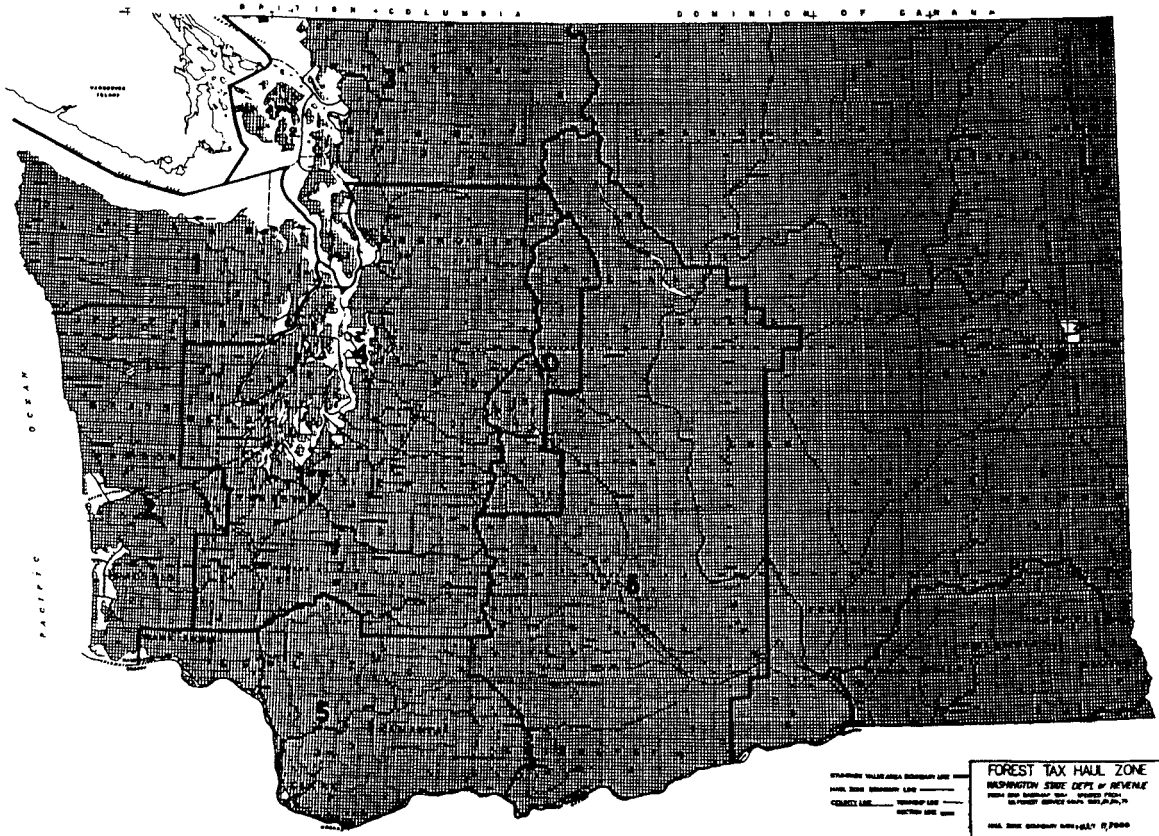
AMENDATORY SECTION (Amending WSR 04-14-032, filed 6/29/04, effective 7/30/04)

WAC 458-40-640 Timber excise tax—Stumpage value area (map). The stumpage value area and hauling distance zone map contained in this rule must be used to determine the proper stumpage value table and haul zone to be used in calculating the taxable stumpage value of timber harvested from private land.

WAC 458-40-640 Stumpage value area and hauling zone—Map

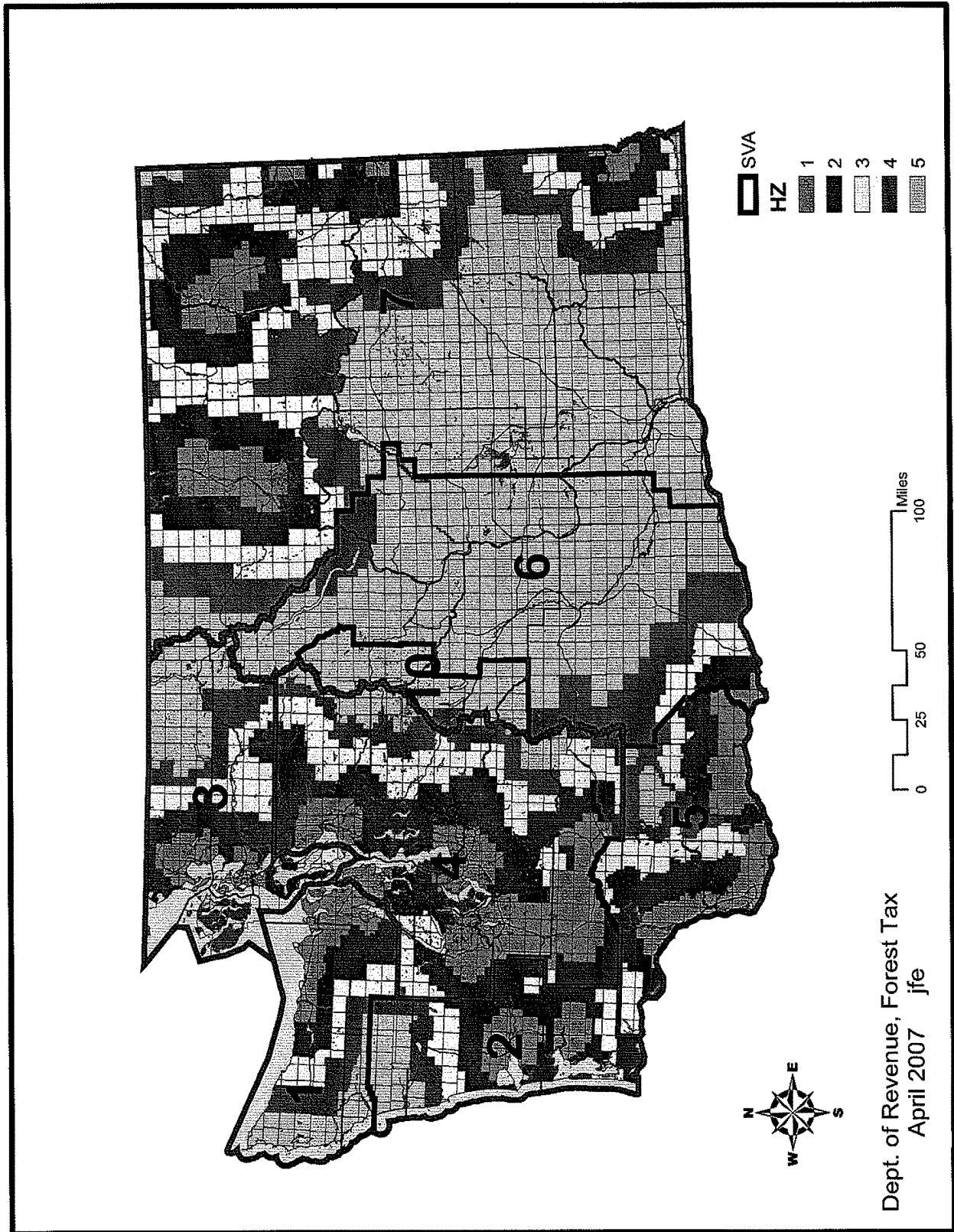
Harvesters may obtain a larger scale map by writing to the Washington State Department of Revenue, Special Programs Division, Forest Tax Section, Post Office Box 47472, Olympia, Washington 98504-7472; or by calling 1-800-548-8829.

((STRICKEN GRAPHIC



STRICKEN GRAPHIC))

Forest Tax SVA and Haul Zone Map



WSR 07-14-095
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed June 29, 2007, 4:20 p.m., effective July 1, 2007]

Effective Date of Rule: July 1, 2007.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The stumpage value rule is required by statute (RCW 84.33.091) to be effective on July 1, 2007.

Purpose: WAC 458-40-660 contains the stumpage values used by harvesters of timber to calculate the timber excise tax. This rule is being revised to provide the stumpage values to be used during the second half of 2007.

Citation of Existing Rules Affected by this Order: Amending WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 84.33.096.

Other Authority: RCW 84.33.091.

Adopted under notice filed as WSR 07-10-130 on May 2, 2007.

A final cost-benefit analysis is available by contacting Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 570-6133, fax (360) 586-5543, e-mail mark-bohe@dor.wa.gov.

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

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

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

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

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

Date Adopted: June 29, 2007.

Janis P. Bianchi
 Assistant Director
 Interpretations and
 Technical Advice Division

AMENDATORY SECTION (Amending WSR 07-02-039, filed 12/26/06, effective 1/1/07)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) Introduction. This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) Stumpage value tables. The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2007:

**((TABLE 1—Proposed Stumpage Value Table
 Stumpage Value Area 1
 January 1 through June 30, 2007**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽⁴⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$612	\$605	\$598	\$591	\$584
		2	510	503	496	489	482
		3	473	466	459	452	445
		4	468	461	454	447	440
Western Redcedar ⁽²⁾	RC	1	631	624	617	610	603
Western Hemlock ⁽³⁾	WH	1	339	332	325	318	311
		2	330	323	316	309	302
		3	317	310	303	296	289
		4	315	308	301	294	287
Red Alder	RA	1	356	349	342	335	328
		2	211	204	197	190	183
Black Cottonwood	BC	1	69	62	55	48	41
Other Hardwood	OH	1	177	170	163	156	149
Douglas-Fir Poles & Piles	DFL	1	786	779	772	765	758
Western Redcedar Poles	RCL	1	1383	1376	1369	1362	1355
Chipwood ⁽⁴⁾	CHW	1	+	+	+	+	+
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽⁴⁾ Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Alaska Cedar.

⁽³⁾ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

⁽⁴⁾ Stumpage value per ton.

⁽⁵⁾ Stumpage value per cord.

⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁷⁾ Stumpage value per lineal foot.

**TABLE 2—Proposed Stumpage Value Table
Stumpage Value Area 2**
January 1 through June 30, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽⁴⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$612	\$605	\$598	\$591	\$584
		2	522	515	508	501	494
		3	502	495	488	481	474
		4	502	495	488	481	474
Western-Redcedar ⁽²⁾	RC	1	631	624	617	610	603
Western-Hemlock ⁽²⁾	WH	1	351	344	337	330	323
		2	351	344	337	330	323
		3	351	344	337	330	323
		4	335	328	321	314	307
Red-Alder	RA	1	356	349	342	335	328
		2	211	204	197	190	183
Black-Cottonwood	BC	1	69	62	55	48	41
Other-Hardwood	OH	1	177	170	163	156	149
Douglas-Fir Poles & Piles	DFL	1	786	779	772	765	758
Western-Redcedar Poles	RCL	1	1383	1376	1369	1362	1355
Chipwood ⁽⁴⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽⁴⁾ Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Alaska-Cedar.

⁽²⁾ Includes Western-Hemlock, Mountain-Hemlock, Pacific-Silver-Fir, Noble-Fir, Grand-Fir, Subalpine-Fir, and all Spruce. Pacific-Silver-Fir, Noble-Fir, Grand-Fir, and Subalpine-Fir are all commonly referred to as "White-Fir."

⁽⁴⁾ Stumpage value per ton.

⁽⁵⁾ Stumpage value per cord.

⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁷⁾ Stumpage value per lineal foot.

**TABLE 3—Proposed Stumpage Value Table
Stumpage Value Area 3**
January 1 through June 30, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽⁴⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$612	\$605	\$598	\$591	\$584
		2	519	512	505	498	491
		3	489	482	475	468	461
		4	429	422	415	408	401
Western-Redcedar ⁽²⁾	RC	1	631	624	617	610	603
Western-Hemlock and-Other-Conifer ⁽²⁾	WH	1	346	339	332	325	318
		2	346	339	332	325	318
		3	346	339	332	325	318
		4	336	329	322	315	308
Red-Alder	RA	1	356	349	342	335	328
		2	211	204	197	190	183
Black-Cottonwood	BC	1	69	62	55	48	41
Other-Hardwood	OH	1	177	170	163	156	149
Douglas-Fir Poles & Piles	DFL	1	786	779	772	765	758
Western-Redcedar Poles	RCL	1	1383	1376	1369	1362	1355
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽⁴⁾ Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western-Larch.

⁽²⁾ Includes Alaska-Cedar.

⁽²⁾ Includes Western-Hemlock, Mountain-Hemlock, Pacific-Silver-Fir, Noble-Fir, Grand-Fir, Subalpine-Fir, and all Spruce. Pacific-Silver-Fir, Noble-Fir, Grand-Fir, and Subalpine-Fir are all commonly referred to as "White-Fir."

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 4—Proposed Stumpage Value Table
Stumpage Value Area 4**
January 1 through June 30, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir ⁽²⁾	DF	1	\$612	\$605
		2	546	539	532	525	518
		3	502	495	488	481	474
		4	502	495	488	481	474
Lodgepole Pine	LP	1	208	201	194	187	180
Ponderosa Pine	PP	1	285	278	271	264	257
		2	204	197	190	183	176
Western Redcedar ⁽²⁾	RC	1	631	624	617	610	603
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	339	332	325	318	311
		2	338	331	324	317	310
		3	338	331	324	317	310
		4	336	329	322	315	308
Red Alder	RA	1	356	349	342	335	328
		2	211	204	197	190	183
Black Cottonwood	BC	1	69	62	55	48	41
Other Hardwood	OH	1	177	170	163	156	149
Douglas-Fir Poles & Piles	DFL	1	786	779	772	765	758
Western Redcedar Poles	RCL	1	1383	1376	1369	1362	1355
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 5—Proposed Stumpage Value Table
Stumpage Value Area 5**
January 1 through June 30, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir ⁽²⁾	DF	1	\$661	\$654
		2	513	506	499	492	485
		3	488	481	474	467	460
		4	488	481	474	467	460
Lodgepole Pine	LP	1	208	201	194	187	180
Ponderosa Pine	PP	1	285	278	271	264	257
		2	204	197	190	183	176
Western Redcedar ⁽²⁾	RC	1	631	624	617	610	603
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	339	332	325	318	311
		2	336	329	322	315	308
		3	336	329	322	315	308
		4	327	320	313	306	299
Red Alder	RA	1	356	349	342	335	328
		2	211	204	197	190	183
Black Cottonwood	BC	1	69	62	55	48	41
Other Hardwood	OH	1	177	170	163	156	149
Douglas-Fir Poles & Piles	DFL	1	786	779	772	765	758
Western Redcedar Poles	RCL	1	1383	1376	1369	1362	1355
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 6—Proposed Stumpage Value Table
Stumpage Value Area 6**
January 1 through June 30, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽⁴⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir ⁽²⁾	DF	1	\$361	\$354
Lodgepole Pine	LP	1	208	201	194	187	180
Ponderosa Pine	PP	1	285	278	271	264	257
		2	204	197	190	183	176
Western Redcedar ⁽³⁾	RC	1	489	482	475	468	461
True Firs and Spruce ⁽⁴⁾	WH	1	239	232	225	218	211
Western White Pine	WP	1	281	274	267	260	253
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	489	482	475	468	461
Small Logs ⁽⁵⁾	SML	1	42	41	40	39	38
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

⁽⁴⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.

⁽⁹⁾ Stumpage value per lineal foot.

**TABLE 7—Proposed Stumpage Value Table
Stumpage Value Area 7**
January 1 through June 30, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽⁴⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir ⁽²⁾	DF	1	\$400	\$393
Lodgepole Pine	LP	1	278	271	264	257	250
Ponderosa Pine	PP	1	285	278	271	264	257
		2	204	197	190	183	176
Western Redcedar ⁽³⁾	RC	1	489	482	475	468	461
True Firs and Spruce ⁽⁴⁾	WH	1	302	295	288	281	274
Western White Pine	WP	1	281	274	267	260	253
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	489	482	475	468	461
Small Logs ⁽⁵⁾	SML	1	36	35	34	33	32
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

⁽⁴⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.

⁽⁹⁾ Stumpage value per lineal foot.

**TABLE 8—Proposed Stumpage Value Table
Stumpage Value Area 10**
January 1 through June 30, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$598	\$591	\$584	\$577	\$570
		2	532	525	518	511	504
		3	488	481	474	467	460
		4	488	481	474	467	460
Lodgepole Pine	LP	1	208	201	194	187	180
Ponderosa Pine	PP	1	285	278	271	264	257
		2	204	197	190	183	176
Western Redcedar ⁽²⁾	RC	1	617	610	603	596	589
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	325	318	311	304	297
		2	324	317	310	303	296
		3	324	317	310	303	296
		4	322	315	308	301	294
Red Alder	RA	1	342	335	328	321	314
		2	197	190	183	176	169
Black Cottonwood	BC	1	55	48	41	34	27
Other Hardwood	OH	1	163	156	149	142	135
Douglas-Fir Poles & Piles	DFL	1	772	765	758	751	744
Western Redcedar Poles	RCL	1	1369	1362	1355	1348	1341
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska-Cedar.

⁽⁴⁾ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 1—Proposed Stumpage Value Table
Stumpage Value Area 1**

July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$518	\$511	\$504	\$497	\$490
		2	453	446	439	432	425
		3	448	441	434	427	420
		4	448	441	434	427	420
Western Redcedar ⁽²⁾	RC	1	715	708	701	694	687
Western Hemlock ⁽³⁾	WH	1	316	309	302	295	288
		2	305	298	291	284	277
		3	298	291	284	277	270
		4	298	291	284	277	270
Red Alder	RA	1	544	537	530	523	516
		2	510	503	496	489	482
Black Cottonwood	BC	1	72	65	58	51	44
Other Hardwood	OH	1	165	158	151	144	137
Douglas-Fir Poles & Piles	DFL	1	753	746	739	732	725
Western Redcedar Poles	RCL	1	1224	1217	1210	1203	1196
Chipwood ⁽⁴⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Alaska-Cedar.

⁽³⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.

⁽⁴⁾ Stumpage value per ton.

⁽⁵⁾ Stumpage value per cord.

⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁷⁾ Stumpage value per lineal foot.

**TABLE 2—Proposed Stumpage Value Table
Stumpage Value Area 2**
July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$518	\$511	\$504	\$497	\$490
		2	458	451	444	437	430
		3	458	451	444	437	430
		4	458	451	444	437	430
Western Redcedar ⁽²⁾	RC	1	715	708	701	694	687
Western Hemlock ⁽³⁾	WH	1	316	309	302	295	288
		2	316	309	302	295	288
		3	315	308	301	294	287
		4	315	308	301	294	287
Red Alder	RA	1	544	537	530	523	516
		2	510	503	496	489	482
Black Cottonwood	BC	1	72	65	58	51	44
Other Hardwood	OH	1	165	158	151	144	137
Douglas-Fir Poles & Piles	DFL	1	753	746	739	732	725
Western Redcedar Poles	RCL	1	1224	1217	1210	1203	1196
Chipwood ⁽⁴⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Alaska-Cedar.
⁽³⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
⁽⁴⁾ Stumpage value per ton.
⁽⁵⁾ Stumpage value per cord.
⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁷⁾ Stumpage value per lineal foot.

**TABLE 3—Proposed Stumpage Value Table
Stumpage Value Area 3**
July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$518	\$511	\$504	\$497	\$490
		2	493	486	479	472	465
		3	479	472	465	458	451
		4	464	457	450	443	436
Western Redcedar ⁽³⁾	RC	1	715	708	701	694	687
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	316	309	302	295	288
		2	316	309	302	295	288
		3	313	306	299	292	285
		4	313	306	299	292	285
Red Alder	RA	1	544	537	530	523	516
		2	510	503	496	489	482
Black Cottonwood	BC	1	72	65	58	51	44
Other Hardwood	OH	1	165	158	151	144	137
Douglas-Fir Poles & Piles	DFL	1	753	746	739	732	725
Western Redcedar Poles	RCL	1	1224	1217	1210	1203	1196
Chipwood ⁽⁵⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

TABLE 4—Proposed Stumpage Value Table
Stumpage Value Area 4
 July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$575	\$568	\$561	\$554	\$547
		2	498	491	484	477	470
		3	479	472	465	458	451
		4	461	454	447	440	433
Lodgepole Pine	LP	1	264	257	250	243	236
Ponderosa Pine	PP	1	296	289	282	275	268
		2	208	201	194	187	180
Western Redcedar ⁽³⁾	RC	1	715	708	701	694	687
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	345	338	331	324	317
		2	345	338	331	324	317
		3	345	338	331	324	317
		4	345	338	331	324	317
Red Alder	RA	1	544	537	530	523	516
		2	510	503	496	489	482
Black Cottonwood	BC	1	72	65	58	51	44
Other Hardwood	OH	1	165	158	151	144	137
Douglas-Fir Poles & Piles	DFL	1	753	746	739	732	725
Western Redcedar Poles	RCL	1	1224	1217	1210	1203	1196
Chipwood ⁽⁵⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
 (2) Includes Western Larch.
 (3) Includes Alaska-Cedar.
 (4) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
 (5) Stumpage value per ton.
 (6) Stumpage value per cord.
 (7) Stumpage value per 8 lineal feet or portion thereof.
 (8) Stumpage value per lineal foot.

TABLE 5—Proposed Stumpage Value Table
Stumpage Value Area 5
 July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$528	\$521	\$514	\$507	\$500
		2	467	460	453	446	439
		3	467	460	453	446	439
		4	390	383	376	369	362
Lodgepole Pine	LP	1	264	257	250	243	236
Ponderosa Pine	PP	1	296	289	282	275	268
		2	208	201	194	187	180
Western Redcedar ⁽³⁾	RC	1	715	708	701	694	687
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	316	309	302	295	288
		2	307	300	293	286	279
		3	293	286	279	272	265
		4	217	210	203	196	189
Red Alder	RA	1	544	537	530	523	516
		2	510	503	496	489	482
Black Cottonwood	BC	1	72	65	58	51	44
Other Hardwood	OH	1	165	158	151	144	137
Douglas-Fir Poles & Piles	DFL	1	753	746	739	732	725
Western Redcedar Poles	RCL	1	1224	1217	1210	1203	1196
Chipwood ⁽⁵⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
 (2) Includes Western Larch.
 (3) Includes Alaska-Cedar.
 (4) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
 (5) Stumpage value per ton.
 (6) Stumpage value per cord.
 (7) Stumpage value per 8 lineal feet or portion thereof.
 (8) Stumpage value per lineal foot.

**TABLE 6—Proposed Stumpage Value Table
Stumpage Value Area 6**
July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$349	\$342	\$335	\$328	\$321
Lodgepole Pine	LP	1	264	257	250	243	236
Ponderosa Pine	PP	1	296	289	282	275	268
		2	208	201	194	187	180
Western Redcedar ⁽³⁾	RC	1	504	497	490	483	476
True Firs and Spruce ⁽⁴⁾	WH	1	259	252	245	238	231
Western White Pine	WP	1	256	249	242	235	228
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	632	625	618	611	604
Small Logs ⁽⁵⁾	SML	1	33	32	31	30	29
Chipwood ⁽⁵⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
⁽⁹⁾ Stumpage value per lineal foot.

**TABLE 7—Proposed Stumpage Value Table
Stumpage Value Area 7**
July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$349	\$342	\$335	\$328	\$321
Lodgepole Pine	LP	1	264	257	250	243	236
Ponderosa Pine	PP	1	296	289	282	275	268
		2	208	201	194	187	180
Western Redcedar ⁽³⁾	RC	1	504	497	490	483	476
True Firs and Spruce ⁽⁴⁾	WH	1	259	252	245	238	231
Western White Pine	WP	1	256	249	242	235	228
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	632	625	618	611	604
Small Logs ⁽⁵⁾	SML	1	33	32	31	30	29
Chipwood ⁽⁵⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
⁽⁹⁾ Stumpage value per lineal foot.

TABLE 8—Proposed Stumpage Value Table
Stumpage Value Area 10
 July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$561	\$554	\$547	\$540	\$533
		2	484	477	470	463	456
		3	465	458	451	444	437
		4	447	440	433	426	419
Lodgepole Pine	LP	1	264	257	250	243	236
Ponderosa Pine	PP	1	296	289	282	275	268
		2	208	201	194	187	180
Western Redcedar ⁽³⁾	RC	1	701	694	687	680	673
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	331	324	317	310	303
		2	331	324	317	310	303
		3	331	324	317	310	303
		4	331	324	317	310	303
Red Alder	RA	1	530	523	516	509	502
		2	496	489	482	475	468
Black Cottonwood	BC	1	58	51	44	37	30
Other Hardwood	OH	1	151	144	137	130	123
Douglas-Fir Poles & Piles	DFL	1	739	732	725	718	711
Western Redcedar Poles	RCL	1	1210	1203	1196	1189	1182
Chipwood ⁽⁵⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber**—Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber**—Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ((January)) July 1 through ((June 30)) December 31, 2007:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10
 ((January)) July 1 through ((June 30)) December 31, 2007

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	- \$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	- \$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	- \$30.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- \$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
(~~January~~) July 1 through (~~June 30~~) December 31, 2007**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	- \$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$20.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$30.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- \$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1:	SVA's 1 through 6, and 10	\$0.00
Class 2:	SVA 7	\$0.00
Note:	The adjustment will not be allowed on special forest products.	

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

WSR 07-14-096

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 05-16—Filed June 29, 2007, 4:39 p.m., effective July 30, 2007]

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

Purpose: To amend outdated rules to respond to emergent needs of clients and stakeholders.

Citation of Existing Rules Affected by this Order: Amending Chapter 173-98 WAC, Uses and limitations of the water pollution control revolving fund and chapter 173-95A

WAC, Uses and limitations of the centennial clean water fund.

Statutory Authority for Adoption: RCW 90.48.035 Rule-making authority.

Adopted under notice filed as WSR 07-06-085 on March 7, 2007.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's Note below.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 43, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 71, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 71, Repealed 0.

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

Date Adopted: June 29, 2007.

Jay J. Manning
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 07-15 issue of the Register.

WSR 07-14-103

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2007-03—Filed July 2, 2007, 1:33 p.m., effective August 2, 2007]

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

Purpose: WAC 284-24A-011 was adopted in December 2004. During that rule making a section caption included an incorrect reference. This amendment will correct that reference.

Citation of Existing Rules Affected by this Order: Amending WAC 284-24A-011.

Statutory Authority for Adoption: RCW 48.02.060 and 48.18.545.

Adopted under notice filed as WSR 07-09-099 on April 18, 2007.

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

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

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

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

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

Date Adopted: July 2, 2007.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2004-01, filed 12/29/04, effective 7/1/05)

WAC 284-24A-011 What types of information must an insurer provide in addition to the reason(s) for the adverse action to comply with WAC 284-24A-010((3)) (2)? (1) Insurers must provide information that helps the consumer determine why the consumer was charged a higher premium or determined to be ineligible for coverage by the insurer. The following information must be included with the reason for the adverse action:

(a) A description of the attribute of credit history that adversely affected the consumer's insurance score;

(b) How the attribute of credit history affected the insurance score; and

(c) Any actions that are available to the consumer that may improve this attribute of the insurance score.

(2) If an insurer refers to insurance industry research or studies to justify the effect of an insurance score on premiums or eligibility for coverage, the insurer must file those studies with the insurance commissioner so that they are available for public disclosure.

WSR 07-14-104

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2007-04—Filed July 2, 2007, 1:36 p.m., effective August 2, 2007]

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

Purpose: These permanent amendments to WAC 284-07-050 clarify quarterly financial statement filing dates. These amendments further the commissioner's commitment to update Title 284 WAC to improve clarity and efficiency.

Citation of Existing Rules Affected by this Order: Amending WAC 284-07-050.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.500, and 48.46.200.

Adopted under notice filed as WSR 07-09-100 on April 18, 2007.

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

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

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

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

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

Date Adopted: July 2, 2007.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2002-07, filed 10/23/02, effective 11/23/02)

WAC 284-07-050 Financial statement instructions.

(1) For the purpose of this section, the following definitions shall apply:

(a) "Insurer" shall have the same meaning as set forth in RCW 48.01.050. It also includes health care service contractors registered under chapter 48.44 RCW and health maintenance organizations registered under chapter 48.46 RCW, and fraternal benefit societies registered under chapter 48.36A RCW.

(b) "Insurance" shall have the same meaning as set forth in RCW 48.01.040. It also includes prepayment of health care services as set forth in RCW 48.44.010(3) and prepayment of comprehensive health care services as set forth in RCW 48.46.020(1).

(2) Each authorized insurer is required to file with the commissioner an annual statement for the previous calendar year in the general form and context as promulgated by the National Association of Insurance Commissioners (NAIC) for the kinds of insurance to be reported upon, and shall also file a copy thereof with the NAIC. To effectuate RCW 48.05.250, 48.05.400, 48.36A.260, 48.44.095 and 48.46.080 and to enhance consistency in the accounting treatment accorded various kinds of insurance transactions, the valuation of assets, and related matters, insurers shall adhere to the appropriate Annual Statement Instructions and the Accounting Practices and Procedures Manuals promulgated by the NAIC.

(3) This section does not relieve an insurer from its obligation to comply with specific requirements of the insurance code or rules (~~thereunder~~).

(4) Annual statements:

(a) ~~((Until December 31, 2002, for domestic insurers, the statements are to be filed in triplicate to assist with public viewing and copying. Two statements must be permanently bound on the left side. The third statement must be unbound. The statements are to be filed in the Olympia office.~~

~~(b) Until December 31, 2002, for foreign insurers, except for health care service contractors and health maintenance organizations, one statement shall be filed in the Olympia office. For health care service contractors and health maintenance organizations, two left side permanently bound and one unbound statement shall be filed in the Olympia office to assist with public viewing and copying.~~

~~(e) After December 31, 2002,)) Annual statements for all domestic ((and foreign)) insurers must be filed electronically with the commissioner. ((This includes the annual statement for the year ended December 31, 2002.)) Insurers must electronically transmit the annual statement, as described in subsection (2) of this section, in PDF or other format as noted on the commissioner's web site. The commissioner has the discretion to allow an insurer to file annual statements on paper. The insurer must demonstrate that filing in electronic form will create an undue financial hardship for the insurer. Applications for permission to file on paper must be received by the commissioner at least ninety days before the annual statement is due.~~

~~((d)) (b) To comply with statutory requirements that annual statements must be verified by the oaths of at least two of the insurer's officers, insurers may:~~

(i) Use a method of electronic signature verification that has been approved by the commissioner for use by the insurer; or

(ii) File a paper copy of the signature and jurat page of the annual statement at the time of the electronic filing of the annual statement. This paper copy must contain the original signature of the company officers and the notary administering the oath. ~~((A foreign insurer may use facsimile signatures or reproductions of original signatures for its paper copy.~~

~~(e)) (c) Both the electronic annual statement and the verification of that statement by the oaths of two officers must be received by the commissioner to complete an annual statement filing. The date of receipt of the later of the electronic annual statement or verification is considered the receipt date of the annual statement.~~

(5)(a) Each domestic insurer shall file quarterly statements of its financial condition with the commissioner and with the NAIC. Each foreign insurer shall file quarterly statements of its financial condition with the NAIC. The commissioner may require a foreign insurer to file quarterly statements with the commissioner whenever, in the commissioner's discretion, there is a need to more closely monitor the financial activities of the foreign insurer. The statements shall be filed in the commissioner's office not later than the forty-fifth day ~~or the fifteenth day of the second month~~ after the end of the insurer's calendar quarters, whichever is later. The quarterly statements shall be in the form and content as promulgated by the NAIC for quarterly reporting by insurers, shall be prepared according to appropriate Annual and Quarterly Statement Instructions and the Accounting Practices and Procedures Manuals promulgated by the NAIC and shall be supplemented with additional information required by this title and by the commissioner. ~~((The statement is to be completed and filed in the same manner and places as the annual statement.))~~ Quarterly statements for the fourth quarter are not required.

(b) Quarterly statements ~~((beginning with the statement for the quarter ended March 31, 2003,))~~ must be filed with the commissioner by electronically transmitting the quarterly statement as described in this subsection, in PDF or other format as noted on the commissioner's web site.

(6) As a part of any investigation by the commissioner, the commissioner may require an insurer to file monthly financial statements whenever, in the commissioner's discre-

tion, there is a need to more closely monitor the financial activities of the insurer. Monthly financial statements shall be filed in the commissioner's office no later than the twenty-fifth day of the month following the month for which the financial statement is being filed. Such monthly financial statements shall be the internal financial statements of the company. In addition, the commissioner may require these internal financial statements to be accompanied by a schedule converting the financial statements to reflect financial position according to statutory accounting practices and submitted in a form using the same format and designation as the insurer's quarterly financial statements of insurers. "Financial statements" as used in this subsection includes:

- (a) Statement of assets;
- (b) Liabilities, capital and surplus;
- (c) Statements of revenue and expenses; and
- (d) Statements of cash flows.

(7) Health care service contractors shall use the Health Statement Form promulgated by the NAIC for their statutory filings.

(8) Each health care service contractor's and health maintenance organization's annual statement shall be accompanied by an additional data statement form (IC-13A-HC/IC-14-HMO).

(9) The commissioner may allow a reasonable extension of the time for filing the financial statements. A request for an extension must be in writing. The request must be received prior to the due date of the filing and must state good cause for the extension. An extension can only be granted in writing; paper, fax, or e-mail is considered "writing" for purposes of this subsection.

WSR 07-14-117

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed July 3, 2007, 11:13 a.m., effective August 3, 2007]

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

Purpose: To amend (1) WAC 390-28-020 Definition—Applicant, to remove reference to the out-of-date subsection; (2) WAC 390-28-070 Hearing to modify reporting—By affidavit or sworn statement, to correct a grammatical error; and (3) WAC 390-28-080 Hearing to modify reporting—Evidence, record, adverse decisions, to comply with a provision of the Administrative Procedure Act, RCW 34.05.449(5), and identify those rare circumstances that would give rise to the commission deciding to hear all or a portion of the details related to a reporting modification request in closed session.

Citation of Existing Rules Affected by this Order: Amending 3 WAC 390-28-020, 390-28-070, and 390-28-080.

Statutory Authority for Adoption: RCW 42.17.370.

Adopted under notice filed as WSR 07-12-096 on June 6, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: June 28, 2007.

Vicki Rippie
Executive Director

AMENDATORY SECTION (Amending WSR 91-22-083, filed 11/5/91, effective 12/6/91)

WAC 390-28-080 Hearing to modify reporting—Evidence, record, adverse decisions. (1) All evidence presented at hearings (~~of the commission~~) held pursuant to chapter 390-28 WAC and RCW 42.17.370(10) shall be considered to be a public record (~~— Provided, That~~). There is a presumption that all hearings and evidence presented in hearing records are open to the public. Requests for closure of hearings or portions of hearings or hearing records generally will be denied. However, pursuant to RCW 34.05.449(5) and 42.17.370(10), the commission may close the hearing (~~and hold an executive session~~) or a portion of the hearing or hearing record. The commission may close a hearing or portion of a hearing or hearing record for a limited purpose to protect compelling interests and where closure is specifically justified if it finds that it is necessary to allow the applicant to:

(a) Provide sufficient evidence to assure that proper findings are made regarding the name of an entity the disclosure of which would likely adversely affect the competitive position of the applicant as provided in RCW 42.17.370(10); or

(b) Provide other information or relevant legal authorities for which it finds a compelling interest has otherwise been shown by the applicant to close the hearing.

(2)(a) Before concluding that closure of a hearing or portion of a hearing or hearing record is warranted, the commission must find by clear and convincing evidence that:

(i) The applicant has satisfied a basis for seeking closure under subsection (1)(a) or (b) of this section;

(ii) An open hearing or record to report the information would work a manifestly unreasonable hardship on the applicant;

(iii) Anyone present when the closure request is made has been given an opportunity to object to the closure;

(iv) The proposed method for closing the hearing or hearing record is the least restrictive means available for protecting the threatened interests, after considering alternatives;

(v) The commission has had the opportunity to weigh the competing interests of the applicant seeking closure and the public's interests;

(vi) Closing the hearing or portion of the hearing or hearing record will not frustrate the purposes of chapter 42.17 RCW; and

(vii) The proposed protective order is not broader in its application or duration than necessary to serve its purpose.

(b) All evidence presented at any portion of a (~~hearing held in executive~~) closed session identifying the matters for which the applicant requests modification under these rules shall be considered (~~and held~~) confidential by the commission pursuant to a protective order which shall be entered by the commission unless otherwise ordered by a court of competent jurisdiction. In the event that an administrative law judge determines that testimony in private may be necessary, the judge shall immediately adjourn the hearing and refer the matter to the commission.

~~((2))~~ (3) Any decision or order adverse to an applicant rendered by the commission or the administrative law judge shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.

AMENDATORY SECTION (Amending Order 85-04, filed 10/31/85)

WAC 390-28-070 Hearing to modify reporting—By affidavit or sworn statement. (1) An applicant may choose to waive a personal appearance at a hearing conducted pursuant to chapter 390-28 WAC. In the event that an applicant chooses to waive such appearance, that person shall submit a written, sworn statement setting out in detail the rationale for requesting modification or suspension.

(2) The commission, or the administrative law judge, shall proceed to decide the application in the same manner as if an appearance were made(~~—Provided, That~~). However, in the event the commission or the administrative law judge is not able to reach a conclusion on the request because of an insufficiency of the evidence, (~~it may adjourn~~) the hearing may be adjourned for the purposes of gathering further evidence, or (~~it may deny~~) the application may be denied.

AMENDATORY SECTION (Amending WSR 91-22-083, filed 11/5/91, effective 12/6/91)

WAC 390-28-020 Definition—Applicant. The term applicant for the purposes of chapter 390-28 WAC shall mean any person as defined in RCW 42.17.020(~~(2+)~~) that seeks a modification pursuant to RCW 42.17.370(10) and these rules.

WSR 07-14-125
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed July 3, 2007, 12:10 p.m., effective August 3, 2007]

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

Purpose: This filing amends WAC 388-444-0005 to update the requirements for the food stamp employment and training (E&T) program and adopt WorkFirst participation requirements in place of E&T requirements for persons who must participate in WorkFirst.

The change also allows the department to use the food stamp allotment and the temporary assistance to needy families (TANF) grant to determine the maximum monthly hours a WorkFirst participant may be engaged in work experience or unpaid work under the Fair Labor Standards Act.

Citation of Existing Rules Affected by this Order: Amending WAC 388-444-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Other Authority: 7 C.F.R. 273.7, 7 C.F.R. 273.25.

Adopted under notice filed as WSR 07-11-134 on May 22, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 29, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-026, filed 11/29/06, effective 1/1/07)

WAC 388-444-0005 Food stamp employment and training (FS E&T) program—General requirements. (1) To receive Basic Food some people must register for work and participate in the food stamp employment and training (FS E&T) program.

(2) We determine if you must register for work and participate in FS E&T under WAC 388-444-0010:

(a) If we require you to register for work and participate in FS E&T you are nonexempt from FS E&T.

(b) If you meet one of the conditions under WAC 388-444-0015, you are exempt from FS E&T. If you are exempt, you may choose to receive services through the FS E&T program.

(3) If you are nonexempt from FS E&T requirements, we register you for work:

(a) When you apply for Basic Food benefits or are added to someone's assistance unit; and

(b) Every twelve months thereafter.

(4) If you are nonexempt, you must meet all the FS E&T program requirements in subsections (5) through (7) of this section. If you fail to meet the requirements without good cause, we disqualify you from receiving Basic Food benefits:

(a) We define good cause for not meeting FS E&T requirements under WAC 388-444-0050; and

(b) We disqualify nonexempt persons who fail to meet E&T requirements as described under WAC 388-444-0055.

(5) If you are nonexempt, you must:

(a) Report to us or your FS E&T service provider and participate as required;

(b) Provide information regarding your employment status and availability for work when we ask for it;

(c) Report to an employer when we refer you; and

(d) Accept a bona fide offer of suitable employment. We define unsuitable employment under WAC 388-444-0060.

(6) If you are nonexempt, you must participate in one or more of the following FS E&T activities:

(a) Job search;

(b) Paid or unpaid work;

(c) Training or work experience;

(d) General education development (GED) classes; or

(e) English as a second language (ESL) classes.

(7) If you must participate in WorkFirst under WAC 388-310-0200, you have certain requirements for the Food Stamp Employment and Training Program:

(a) Your FS E&T requirement is to fully participate in the WorkFirst activities approved in your Individual Responsibility Plan (IRP) under WAC 388-310-0500; and

(b) If ~~((everyone who receives Basic Food with you receives TANF benefits and))~~ your IRP includes unpaid community service or work experience, we use your TANF grant and the Basic Food ((allotment)) benefits received by members of your TANF assistance unit to determine the maximum hours of unpaid work we include in your plan.

(8) Your FS E&T activities including paid or unpaid work **will not** exceed one hundred twenty hours a month whether you are exempt or nonexempt.

WSR 07-14-126

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed July 3, 2007, 12:15 p.m., effective November 7, 2007]

Effective Date of Rule: November 7, 2007.

Purpose: To conform with 2006 legislative changes impacting chapter 42.17 RCW. The rule addresses contribution limits for superior court candidates when the candidate's name is not on the ballot and a certificate of election is issued.

Statutory Authority for Adoption: RCW 42.17.370 and 3SHB 1226.

Adopted under notice filed as WSR 07-11-025 on May 4, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 28, 2007.

Vicki Rippie
Executive Director

NEW SECTION

WAC 390-17-303 Superior court candidates—Eligibility to receive contributions. (1) Candidates for judicial office are subject to the contribution limits in RCW 42.17.645 and the timing restriction on contributions of a candidate's personal funds in RCW 42.17.105(8). Pursuant to Article 4, Section 29, Amendment 41 of the state Constitution and RCW 42.17.645, candidates for the office of judge of the superior court may only receive contributions for each election in which the candidate is on the ballot or appears as a write-in candidate.

(2) For purposes of RCW 42.17.645:

(a) Only superior court candidates who appear on the primary election ballot or as write-in candidates in the primary election may receive contributions with respect to that primary; and

(b) Only superior court candidates who appear on the general election ballot or as write-in candidates in the general election may receive contributions with respect to that general election.

(3)(a) A superior court candidate who is issued a certificate of election before the primary election and whose name does not appear on either the primary or general election ballot may receive contributions pursuant to RCW 42.17.645:

(i) Through the last day for withdrawal of declarations of candidacy pursuant to RCW 29A.24.131; or

(ii) If there is a reopening of filing for the position and no other candidate files, the last day for reopening of filing pursuant to RCW 29A.24.171 and 29A.24.181.

(b) Contributions remaining in the account of such a superior court candidate who is issued a certificate of election must be returned to contributors within two weeks of certification. Primary election related contributions are to be returned using the first-in, first-out accounting method. Any contributions received with respect to the general election must be returned in full to contributors.

(4) A superior court candidate who is issued a certificate of election after the primary election and whose name does not appear on the general election ballot may receive contributions pursuant to RCW 42.17.645. However, contributions received with respect to the general election must be returned in full to contributors within two weeks of certification.

WSR 07-14-128

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed July 3, 2007, 12:22 p.m., effective August 3, 2007]

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

Purpose: Fees support public health activities in the office of drinking water and need to be adjusted to compensate for the inflationary costs of administering the program. The fees are increased by the 2007 fiscal growth factor cap of 3.38% as set under RCW 43.135.055 by the state expenditure limit committee.

Citation of Existing Rules Affected by this Order: Amending WAC 246-290-990.

Statutory Authority for Adoption: RCW 43.70.250 and 43.20B.020.

Adopted under notice filed as WSR 07-09-090 on April 18, 2007.

Changes Other than Editing from Proposed to Adopted Version: The fee increase is corrected in the table under subsection (1)(g) because it was calculated incorrectly for an expanding system requiring a detailed evaluation as determined by the department for water systems with less than one hundred services. The amount published in the proposed rule was \$1,352 and is changed in the final rule to \$1,355.

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

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

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

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

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

Date Adopted: July 3, 2007.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 07-02-025B, filed 12/22/06, effective 1/22/07)

WAC 246-290-990 Water system evaluation and project review and approval fees. (1) The fees for the review and approval of water system plans, project reports, construction documents, existing systems, and related evaluations required under chapters 246-290, 246-291, 246-293, 246-294, and 246-295 WAC are:

(a) Water system plans required under WAC 246-290-100, 246-290-105, 246-291-140, 246-293-220, and 246-293-230.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Water system plan (New and Updated)	\$((134)) <u>138</u>	\$((475)) <u>491</u>	\$((1,167)) <u>1,206</u>	\$((2,206)) <u>2,280</u>	\$((3,584)) <u>3,705</u>	\$((5,305)) <u>5,484</u>
Minor water system plan alteration	\$((30)) <u>31</u>	\$((112)) <u>115</u>	\$((284)) <u>293</u>	\$((547)) <u>565</u>	\$((889)) <u>919</u>	\$((1,305)) <u>1,349</u>

(b) Satellite management agency (SMA) plans for Group A and Group B water systems required under WAC 246-295-040.

Project Type	Total Active or Approved Services					
	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services	
SMA plan for ownership (New and Updated)	\$((475)) <u>491</u>	\$((1,167)) <u>1,206</u>	\$((2,206)) <u>2,280</u>	\$((3,584)) <u>3,705</u>	\$((5,305)) <u>5,484</u>	
SMA approval amendment	\$((99)) <u>102</u> per hour or appropriate fee from category above, whichever is less					
SMA plan for operation only (New and Updated)	\$((1,167)) <u>1,206</u>	\$((1,167)) <u>1,206</u>	\$((1,167)) <u>1,206</u>	\$((1,167)) <u>1,206</u>	\$((1,167)) <u>1,206</u>	

Note: SMAs owning water systems and submitting planning documents to the department for review shall be charged only the SMA fee.

(c) New plan elements required under WAC 246-290-100, 246-290-105, 246-290-125, 246-290-132, 246-290-135, 246-290-691, and 246-291-140 including:

- (i) Water use efficiency; and
- (ii) Wellhead protection, shall be reviewed separately by the department and the fee assessed shall reflect the time spent for this review and shall be calculated based on

~~((ninety-nine))~~ **one hundred two** dollars per hour. After the initial submittal, updated information shall be reviewed as part of the updated water system plan and the review fee shall be included in the applicable updated plan review fee listed under (a) or (b) of this subsection.

(d) Project reports required under WAC 246-290-110 and design reports required under WAC 246-291-120.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
All types of filtration or other complex treatment processes	\$((337)) <u>348</u>	\$((687)) <u>710</u>	\$((1,067)) <u>1,103</u>	\$((1,546)) <u>1,598</u>	\$((2,132)) <u>2,204</u>	\$((2,827)) <u>2,922</u>

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Chemical addition only, such as ion exchange, hypochlorination, or fluoridation	\$((99)) 102	\$((199)) 205	\$((337)) 348	\$((508-)) 525	\$((719)) 743	\$((962)) 994
Complete water system (an additional fee shall be assessed for review of treatment facility, if any)	\$((199)) 205	\$((475)) 491	\$((753)) 778	\$((1,100)) 1,137	\$((1,513)) 1,564	\$((1,994)) 2,061
System modifications requiring a detailed evaluation to determine whether the system, as modified, will comply with regulations (an additional fee shall be assessed for review of treatment facility, if any)	\$((134)) 138	\$((337)) 348	\$((547)) 565	\$((824)) 851	\$((1,167)) 1,206	\$((1,573)) 1,626

Note: In accordance with WAC 246-290-125, project reports are not required for minor projects that are described in sufficient detail in an approved water system plan, and have been reviewed as part of the process for approving the water system plan.

(e) Special reports or plans required under WAC 246-290-230, 246-290-235, 246-290-250, 246-290-470, 246-290-636, 246-290-640, 246-290-654, 246-290-676, 246-291-230 including:

- (i) Corrosion control recommendation report;
- (ii) Corrosion control study;
- (iii) Plan to cover uncovered reservoirs;
- (iv) Predesign study;

- (v) Uncovered reservoir plan of operation;
- (vi) Tracer study plan;
- (vii) Surface water or GWI treatment facility operations plan;
- (viii) Filtration pilot study; or
- (ix) GWI determination reports, shall be reviewed by the department and the fee assessed shall reflect the time spent for this review and shall be calculated based on (~~ninety-nine~~) one hundred two dollars per hour.

(f) Construction documents required under WAC 246-290-120 and design reports required under WAC 246-291-120.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
All types of filtration or other complex treatment processes	\$((337)) 348	\$((687)) 710	\$((1,067)) 1,103	\$((1,546)) 1,598	\$((2,132)) 2,204	\$((2,827)) 2,922
Chemical addition only, such as ion exchange, hypochlorination, or fluoridation	\$((99)) 102	\$((199)) 205	\$((337)) 348	\$((508)) 525	\$((719)) 743	\$((962)) 994
Complete new water system except treatment (an additional fee shall be assessed for review of treatment facility, if any)	\$((272)) 281	\$((613)) 633	\$((889)) 919	\$((1,238)) 1,279	\$((1,654)) 1,709	\$((2,132)) 2,204
New source only (an additional fee shall be assessed for review of treatment facility, if any)	\$((199)) 205	\$((370)) 382	\$((508)) 525	\$((687)) 710	\$((889)) 919	\$((1,134)) 1,172
One or more of the following submitted as a package and not requiring a detailed evaluation as determined by the department: Water line installation, booster pump station, modifications to source pumping, piping-valving, controls or storage reservoir (an additional fee shall be assessed for review of treatment facility, if any)	\$((134)) 138	\$((234)) 241	\$((370)) 382	\$((547)) 565	\$((753)) 778	\$((994)) 1,027
Documents submitted for projects such as water line installation, booster pump stations, modifications to source pumping, piping/valving, controls or storage reservoirs as determined by the department where such projects:						

Project Type	Group B	Group A				
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Comply with design standards established by the department; Are prepared by a professional engineer in accordance with WAC 246-290-040; and Do not require a detailed evaluation by the department.	\$((62)) 64	\$((115)) 118	\$((192)) 198	\$((272)) 281	\$((377)) 389	\$((496)) 512

(g) Existing system approval required under WAC 246-290-140 and 246-291-130. For the purpose of this subsection the department shall determine whether a system is expanding or nonexpanding.

Project Type	Group B	Group A				
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
NONEXPANDING system not requiring a detailed evaluation by the department	\$((260)) 268	\$((522)) 539	\$((785)) 811	\$((1,048)) 1,083	\$((1,311)) 1,355	\$((1,573)) 1,626
NONEXPANDING system requiring a detailed evaluation as determined by the department	\$((391)) 404	\$((785)) 811	\$((1,189)) 1,229	\$((1,573)) 1,626	\$((1,968)) 2,034	\$((2,362)) 2,441
EXPANDING system not requiring a detailed evaluation by the department	\$((522)) 539	\$((1,048)) 1,083	\$((1,573)) 1,626	\$((2,099)) 2,169	\$((2,626)) 2,714	\$((3,150)) 3,256
EXPANDING system requiring a detailed evaluation as determined by the department	\$((654)) 676	\$((1,311)) 1,355	\$((1,968)) 2,034	\$((2,626)) 2,714	\$((3,281)) 3,391	\$((3,939)) 4,072

(h) Monitoring waivers requested under WAC 246-290-300.

Project Type	Group B	Group A				
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Inorganic chemical monitoring waiver	Not applicable	\$((86)) 88 per source	\$((119)) 123 per source	\$((150)) 155 per source	\$((182)) 188 per source	\$((214)) 221 per source
Organic chemical monitoring waiver	Not applicable	\$((156)) 161 per source	\$((219)) 226 per source	\$((285)) 294 per source	\$((348)) 359 per source	\$((412)) 425 per source
Use waiver	Not applicable	\$((187)) 193 per source	\$((252)) 260 per source	\$((324)) 334 per source	\$((380)) 392 per source	\$((444)) 459 per source
Area wide waiver renewal	Not applicable	\$((187)) 193 per source	\$((233)) 240 per source	\$((278)) 287 per source	\$((324)) 334 per source	\$((357)) 369 per source
Inorganic chemical monitoring waiver renewal	Not applicable	\$((47)) 48 per source	\$((60)) 62 per source	\$((73)) 75 per source	\$((86)) 88 per source	\$((99)) 102 per source
Organic chemical monitoring waiver renewal	Not applicable	\$((92)) 95 per source	\$((131)) 135 per source	\$((171)) 176 per source	\$((208)) 215 per source	\$((246)) 254 per source
Use waiver renewal	Not applicable	\$((131)) 135 per source	\$((176)) 181 per source	\$((219)) 226 per source	\$((265)) 273 per source	\$((310)) 320 per source
Coliform monitoring waiver including departmental inspection requested by purveyor	Not applicable	\$((401)) 414	\$((496)) 512	\$((631)) 652	\$((803)) 830	Not applicable
Coliform monitoring waiver with third-party inspection report	Not applicable	\$((124)) 128	\$((124)) 128	\$((124)) 128	\$((124)) 128	Not applicable

(i) Other evaluations and approvals. As applicable, these fees will be charged in addition to the basic fees assessed under (a) through (h) of this subsection.

Project Type	Group B	Group A				
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Well-site evaluation and approval including the site inspection and hydrogeologic information review.	\$((199)) <u>205</u>	\$((299)) <u>309</u>	\$((352)) <u>363</u>	\$((437)) <u>451</u>	\$((547)) <u>565</u>	\$((687)) <u>710</u>
Regulatory monitoring plan ¹	No plan required	\$((192)) <u>198</u>	\$((260)) <u>268</u>	\$((326)) <u>337</u>	\$((391)) <u>404</u>	\$((456)) <u>471</u>
Unfiltered system annual comprehensive report	Not applicable	\$((391)) <u>404</u>	\$((654)) <u>676</u>	\$((917)) <u>947</u>	\$((1,179)) <u>1,218</u>	\$((1,441)) <u>1,489</u>
Water system compliance report	\$((112)) <u>115</u>	\$((112)) <u>115</u>	\$((112)) <u>115</u>	\$((112)) <u>115</u>	\$((112)) <u>115</u>	\$((112)) <u>115</u>

¹A comprehensive document containing coliform, inorganic chemical and organic chemical monitoring plans in accordance with WAC 246-290-300.

(2) To determine the appropriate fee for a noncommunity system, calculate the service equivalent by taking the average population served each day of operation and dividing by twenty-five for a transient noncommunity (TNC) system and two and one-half for nontransient noncommunity (NTNC) system. Use the number of service equivalents to find out what Group A size category to look under and submit the appropriate fee. (All noncommunity systems are Group A systems as described in WAC 246-290-020.)

(3) Additional review and approval fees may be assessed as follows:

(a) The basic fee covers an evaluation, or the review of an initial submittal and one resubmittal if required. If additional resubmittals are required, an additional twenty-five percent of the original fee will be assessed for each additional resubmittal. For water system plan and SMA plan preparation the basic fee also covers a preplanning conference. ~~(When the department is asked to participate in other meetings involving the plan such as community meetings, public hearings, or meetings with elected officials, the department is authorized to charge additional fees at the rate of ninety-nine dollars per hour);~~

(b) Fees for department project approval based on local technical review will be determined on a case-by-case basis as outlined in the applicable memorandum of understanding between the department and the respective local agency;

(c) Fees may be assessed for services which the department determines are not described under subsection (1) of this section. ~~If assessed, the fees will be calculated based on a rate of ((ninety-nine)) one hundred two dollars per hour.~~

Examples of these services include, but are not limited to:

- (i) Review and inspection of water reuse projects;
- (ii) Collection of water quality samples requested by purveyor;
- (iii) Review of alternate technologies requested by purveyor, manufacturer or authorized representative;
- (iv) Sanitary surveys, including the time spent as part of the annual on-site inspections for systems under WAC 246-290-690(3) that is in addition to the time necessary to assess watershed control and disinfection treatment;
- (v) Well field designs; or

(vi) Transfers of ownership under WAC 246-290-035 or 246-294-060.

(d) Additional fees assessed by the department shall be billed to the purveyor using an itemized invoice.

(4) If the legislature revises the water system operating permit fee under RCW 70.119A.110 to incorporate into it one or more fees for service currently assessed separately under this section, and the purveyor has paid that consolidated fee, the department shall not assess or collect a separate fee under this section for any such service.

(5) All fees required under this section except as noted in subsection (3) of this section, shall be submitted prior to the department's approval. Payment of fees shall be in the form of a check or money order made payable to: The Department of Health, P.O. Box 1099, Olympia, Washington 98507-1099. Payment of a fee shall not guarantee approval of the submitted document or evaluation request.

(6) Purveyors unable to determine the appropriate fee payment to submit should contact the department.

**WSR 07-14-130
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed July 3, 2007, 12:25 p.m., effective August 3, 2007]

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

Purpose: The proposed rule simplifies the current x-ray registration fee structure so that the department can use the department of licensing's master license service. Changes are made in WAC 246-254-053, which specifies the various fee components and amounts. This complies with the governor's enterprise business portal initiative and RCW 19.02.050.

Citation of Existing Rules Affected by this Order: Amending WAC 246-254-001, 246-254-010, 246-254-020, 246-254-050, and 246-254-053.

Statutory Authority for Adoption: RCW 19.02.050, 43.20B.020, 43.70.110, 43.70.250, 70.98.080.

Adopted under notice filed as WSR 07-10-118 on May 2, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 3, 2007.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending Order 208, filed 10/29/91, effective 11/29/91)

WAC 246-254-001 Purpose and scope. This chapter establishes fees charged for licensing, permitting, registration, and inspection services rendered by the ~~((division))~~ office of radiation protection as authorized under chapters 43.70, 70.98, and 70.121 RCW. These fees apply to owners and operators of radiation generating machines, users of radioactive material, operators of low-level radioactive waste disposal facilities, owners and operators of facilities emitting airborne radioactivity, and owners and operators of certain mineral processing and uranium or thorium milling operations and their associated tailings or waste.

AMENDATORY SECTION (Amending Order 208, filed 10/29/91, effective 11/29/91)

WAC 246-254-010 Definitions. As used in this chapter, the following definitions apply:

(1) "Application" means a completed RHF-1 or equivalent with supporting documentation requesting the department to grant authority to receive, possess, use, transfer, own or acquire radioactive material. For radiation machine facility registrations, "application" means the master business application and appropriate addenda used by the master license service of the department of licensing.

(2) "Compliance inspection" means a routinely scheduled visit to the licensee's facility and/or temporary job site(s) for the purpose of determining compliance with the radioactive material license and applicable regulations. This service is covered by the annual fee for the radioactive material license.

(3) "Department" means the department of health which has been designated as the state radiation control agency.

(4) "Direct staff time" means all work time directly applicable to or associated with a specific radioactive material licensee and includes license file review, inspection preparation, on-site visits, report writing, review and acknowledgement of correspondence, review of license applications, renewals and amendment requests, telephone contacts, and

staff or management conferences specifically related to the license. Travel time is not considered direct staff time.

(5) "Emission unit" means the point of release of airborne emissions of radioactive material.

(6) "Environmental cleanup monitoring" means an on-site visit by the department to a licensee's facility or site of operation to determine the status of corrective actions to remove environmental radiation contamination resulting from the licensee's operation. Such a monitoring visit may include, but is not limited to, the review of the licensee's records pertaining to the environmental cleanup, observation of the licensee's cleanup work, sampling by the department for analysis, associated laboratory work, and the analysis of the information collected by the department.

(7) "Facility" means all buildings, structures and operations on one contiguous site using or identified by one physical location address designation.

(8) "Follow-up inspection" means an on-site visit to a licensee's facility to verify that prompt action was taken to correct significant items of noncompliance found by the department in a previous inspection. The first follow-up inspection is covered by the annual fee for the radioactive material license.

(9) "Inspection" means an official examination or observation by the department including but not limited to tests, surveys and monitoring to determine compliance with rules, regulations, orders, requirements and conditions of the department.

(10) "Investigation" means an on-site visit to a licensee's facility or site of operation when, in the department's judgment, it is required for the purpose of reviewing specific conditions, allegations, or other information regarding unusual conditions, operations, or practices. This service is covered by the annual fee for the radioactive material license.

(11) "License" means a license issued by the department in accordance with the regulations adopted by the department.

(12) "New license application" means a request to use radioactive material from a person not currently a licensee or from a current licensee requesting authorization to use radioactive material in a new way such that a change of fee category is required.

(13) "Perpetual care and maintenance" means further maintenance, surveillance or other care of milling or tailings impoundment sites after termination of the site operator's decommissioning responsibilities and license.

(14) "Registration" means registration with the department by any person possessing a source of ionizing radiation in accordance with regulations adopted by the department.

(15) "Sealed source and device evaluation" means a radiological safety evaluation performed by the department on the design, manufacture, and test data of any single sealed source and/or device model for the purpose of registering the sealed source or device with the United States Nuclear Regulatory Commission.

AMENDATORY SECTION (Amending Order 208, filed 10/29/91, effective 11/29/91)

WAC 246-254-020 Payment of fees. (1) Applicants, licensees, permittees, and registrants requesting or receiving licenses, permits, registrations, and actions or services by the department shall pay the applicable fee or fees for the license, permit, registration, and action or service provided by the department.

(2) The department shall charge a fee for each:

- (a) Radiation machine facility registration, and radiation machine at the facility, if applicable;
- (b) Radioactive material license;
- (c) Service or action with respect to a radioactive material licensee not otherwise covered by fees;
- (d) Cubic foot of low-level radioactive waste volume received at a commercial disposal site;
- (e) Kilogram of uranium or thorium milled from ore; and
- (f) Air emission permit.

(3) The department shall charge a fee for each radioactive material license based on the single highest fee category describing activities subject to the conditions of the license.

(4) The department shall charge the applicable license fee for each category when multiple licenses are required.

(5) The department may require multiple radioactive material licenses based upon:

- (a) Physical separation of operations;
- (b) Organizational separations within a licensee's operation;
- (c) Complexity of uses of radioactive material such that two or more fee categories would apply to the operation.

(6) Each licensee, permittee, or registrant shall:

(a) Remit the full fee (i) at the fee rate established by rule at the time such fee is paid, and (ii) at least thirty days prior to the annual anniversary date for licensees or ~~((the biennial expiration date for registrants or))~~ (iii) on a payment schedule as provided in WAC 246-254-030 or other schedule as may be determined through partnership with the master license service of the department of licensing.

(b) Consider the annual anniversary to be the month and day of the expiration date of the existing radioactive material license, or other date as may be determined through partnership with the master license service of the department of licensing.

(7) The department shall refund one-half of the fee if an application is withdrawn prior to issuance of a radioactive material license.

(8) If there is a change by the applicant, licensee, permittee or registrant resulting in a higher fee category, the applicant, licensee, permittee, or registrant shall pay ~~((an additional fee))~~ a prorated fee for the remainder of the fee interval.

(9) Each licensee, permittee, or registrant shall remit the full amount of any quarterly billing or individual billing for licensing or compliance actions within thirty days of receipt of the bill.

(10) Fees due on or after the effective date of these regulations shall be at the rate prescribed in this chapter.

AMENDATORY SECTION (Amending Order 208, filed 10/29/91, effective 11/29/91)

WAC 246-254-050 Method of payment. (1) For radiation machine facility registration application and renewal fees, applicants and registrants shall submit payment to the master license service of the department of licensing.

(2) For all other fees and charges including shielding plan review and follow-up inspection fees, licensees, permittees and registrants shall:

~~((+))~~ (a) Submit fee payments by check, draft or money order made payable to the department of health; and

~~((=))~~ (b) Include fee payment with the application for license or submit the fee by mail, in person, or by courier to the address provided in the bill or bill correspondence.

AMENDATORY SECTION (Amending WSR 05-24-108, filed 12/7/05, effective 1/7/06)

WAC 246-254-053 Radiation machine facility registration fees. (1) Radiation machine facility fees apply to each person or facility owning, leasing ~~((and))~~ or using radiation-producing machines. The annual facility fee consists of the base registration fee and a per tube charge, where applicable.

((FEE TYPE	FEES
(a) Annual Base Registration Fee	\$68
(b) Late registration or re-registration	\$68
(c) Tube Fees	See Table 1

Group	First Tube	Each Additional Tube
(i) Group A: Dental, Podiatric, Veterinary, Bone Densitometers uses	\$69	\$35
(ii) Group B: Hospital, Medical, Chiropractic uses	\$190	\$100
(iii) Group C: Industrial, research, and other uses	\$107	\$35
(iv) Group D: Electron Microscopes, Mammographic X-ray Machines	NA	NA))

Type of Facility	Facility Base Fee	Added Fee per Tube
(i) <u>Dental, podiatric, veterinary uses</u>	<u>\$102</u>	<u>See following table</u>
(ii) <u>Hospital, medical, chiropractic uses</u>	<u>\$158</u>	<u>See following table</u>

(a) Radiation Machine Facility Fees		
Type of Facility	Facility Base Fee	Added Fee per Tube
(iii) <u>Industrial, research, educational, security, or other facilities</u>	\$140	See following table
(iv) <u>Mammography only</u>	\$68	N/A
(v) <u>Bone densitometry only</u>	\$68	N/A
(vi) <u>Electron microscopes only</u>	\$68	N/A
(vii) <u>Bomb squad only</u>	\$68	N/A
(viii) <u>Radiation safety program as specified in subsection (3) of this section</u>	\$4,441	N/A

(b) Radiation Machine Tube Fees	
Type of Tube	Added Fee per Tube
(i) <u>Dental (intraoral, panoramic, cephalometric, dental radiographic, and dental CT)</u>	\$35
(ii) <u>Veterinary (radiographic, fluoroscopic, portable, mobile)</u>	\$35
(iii) <u>Podiatric uses (radiographic, fluoroscopic)</u>	\$35
(iv) <u>Mammography</u>	N/A
(v) <u>Bone densitometry</u>	N/A
(vi) <u>Electron microscope</u>	N/A
(vii) <u>Bomb squad</u>	N/A
(viii) <u>Medical radiographic (includes R/F combinations, fixed, portable, mobile)</u>	\$100
(ix) <u>Medical fluoroscopic (includes R/F combinations, C-arm, Simulator, fixed, portable, mobile)</u>	\$100
(x) <u>Therapy (Grenz Ray, Orthovoltage, nonaccelerator)</u>	\$100
(xi) <u>Accelerators (therapy, other medical uses)</u>	\$100
(xii) <u>Computer tomography (CT, CAT scanner)</u>	\$100
(xiii) <u>Stereotactic (mammography)</u>	\$100
(xiv) <u>Industrial radiographic</u>	\$35

(b) Radiation Machine Tube Fees	
Type of Tube	Added Fee per Tube
(xv) <u>Analytical, X-ray fluorescence</u>	\$35
(xvi) <u>Industrial accelerators</u>	\$35
(xvii) <u>Airport baggage</u>	\$35
(xviii) <u>Cabinet (industrial, security, mail, other)</u>	\$35
(xiv) <u>Other industrial uses (includes industrial fluoroscopic uses)</u>	\$35

(2) X-ray shielding fees.

(a) Facilities regulated under the shielding plan requirements of WAC 246-225-030 or 246-227-150 are subject to a \$255 X-ray shielding review fee for each X-ray room plan submitted. A registrant may request an expedited plan review for an additional \$500 for each X-ray room plan. Expedited plan means the department will complete the plan review within two business days of receiving all required information from the registrant.

(b) If a facility regulated under WAC 246-225-030 or 246-227-150 operates without submittal and departmental approval of X-ray shielding calculations and a floor plan it will be subject to a shielding design follow-up fee of \$500.

(3) **Radiation safety fee.** If a facility or group of facilities under one administrative control employs two or more full-time individuals whose positions are entirely devoted to in-house radiation safety, the facility shall pay a flat, annual fee ~~((of \$4,441))~~ as specified in subsection (1)(a)(viii) of this section.

(4) **Consolidation of registration.** Facilities may consolidate X-ray machine registrations into a single registration after notifying the department in writing and documenting that a single business license applies ~~((if the geographical location (parcel number) is the same))~~ to all buildings, structures and operations on one contiguous site using or identified by one physical address location designation.

(5) Inspection fees.

(a) The cost of routine, periodic inspections, including the initial inspection, are covered under the base fee and tube registration fees as described in subsection (1) of this section.

(b) Facilities requiring follow-up inspections due to uncorrected noncompliances must pay an inspection follow-up fee of \$90.

(6) A facility's annual registration fee is valid for a specific geographical location and person only. It is not transferable to another geographical location or owner or user.

**WSR 07-14-131
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed July 3, 2007, 12:32 p.m., effective August 3, 2007]

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

Purpose: The purpose of this rule revision is to clarify and correct omissions made during the major revision made

in 2006 as well as to remove obsolete requirements and correct certain punctuation and typographical errors. This rule adopts a federal rule change which Washington state is required to adopt to be consistent with United States Nuclear Regulatory Commission (NRC) rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-240-451, 246-240-454, 246-240-457, 246-240-460, 246-240-463, 246-240-466, 246-240-469, 246-240-472, 246-240-475, 246-240-478, 246-240-481, 246-240-484, and 246-240-487; and amending WAC 246-235-100, 246-235-102, 246-240-010, 246-240-025, 246-240-066, 246-240-069, 246-240-072, 246-240-081, 246-240-110, 246-240-151, 246-240-154, 246-240-157, 246-240-163, 246-240-210, 246-240-213, 246-240-216, 246-240-219, 246-240-269, 246-240-278, and 246-240-399.

Statutory Authority for Adoption: RCW 70.98.050.

Adopted under notice filed as WSR 07-07-074 on March 16, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 20, Repealed 13; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 20, Repealed 13.

Date Adopted: July 3, 2007.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-235-100 Manufacture, preparation, or commercial transfer of radiopharmaceuticals for medical use. (1) An application for a specific license to manufacture and, prepare, or transfer for commercial distribution radiopharmaceuticals containing radioactive material for use by persons licensed under chapter 246-240 WAC for medical use in humans will be approved if:

(a) The applicant satisfies the general requirements specified in WAC 246-235-020;

(b) The applicant submits evidence that:

(i) The applicant is registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer; or

(ii) The applicant is licensed as a nuclear pharmacy by the state board of pharmacy;

(c) The applicant submits information on the radionuclide, chemical and physical form, maximum activity per vial, syringe, generator, or other container of the radiopharmaceutical, and shielding provided by the packaging of the

radioactive material which is appropriate for safe handling and storage of radiopharmaceuticals by medical use licensees; and

(d) The applicant satisfies the labeling requirements specified by the state board of pharmacy in WAC 246-903-020. For a drug manufacturer, the labels required by this subsection are in addition to the labeling required by the Food and Drug Administration (FDA) and may be separate from or, with the approval of FDA, may be combined with the labeling required by FDA.

(2) A nuclear pharmacy licensee:

(a) May prepare radiopharmaceuticals for medical use provided the radiopharmaceutical is prepared by or under the supervision of an authorized nuclear pharmacist.

(b) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(i) This individual qualifies as an authorized nuclear pharmacist as defined in WAC 246-240-010;

(ii) This individual meets the state board of pharmacy requirements in WAC 246-903-030, Nuclear pharmacists, and the requirements of WAC 246-240-081 and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(iii) This individual is designated as an authorized nuclear pharmacist in accordance with (d) of this subsection.

(c) The actions authorized in (a) and (b) of this subsection are permitted in spite of more restrictive language in license conditions.

(d) May designate a pharmacist as an authorized nuclear pharmacist if the individual is identified as of December 2, 1994, as an "authorized user" on a nuclear pharmacy license issued by the department, the U.S. NRC, or an agreement state.

(e) Shall provide to the department a copy of each individual's letter of notification from the state board of pharmacy recognizing the individual as a nuclear pharmacist, within thirty days of the date the licensee allows the individual to work as an authorized nuclear pharmacist under (b) of this subsection.

(3) A manufacturer or nuclear pharmacy licensee shall possess and use instrumentation to measure the radioactivity of radiopharmaceuticals. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radiopharmaceuticals, prior to transfer for commercial distribution. In addition, the licensee shall:

(a) Perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(b) Check each instrument for constancy and proper operation at the beginning of each day of use.

(4) Nothing in this section relieves the licensee from complying with applicable FDA, other federal, and state requirements governing radiopharmaceuticals.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-235-102 Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed under chapter 246-240 WAC for use as a calibration, transmission, or reference source or for the uses listed in WAC 246-240-251, 246-240-301, and 246-240-351 will be approved if:

(1) The applicant satisfies the general requirements in WAC 246-235-020;

(2) The applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(a) The radioactive material contained, its chemical and physical form and amount;

(b) Details of design and construction of the source or device;

(c) Procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(d) For devices containing radioactive material, the radiation profile of a prototype device;

(e) Details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;

(f) Procedures and standards for calibrating sources and devices;

(g) Legend and methods for labeling sources and devices as to their radioactive content; and

(h) Instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device: Provided that instructions which are too lengthy for the label may be summarized on the label and printed in detail on a brochure which is referenced on the label.

(3) The label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the named source or device is licensed by the department for distribution to persons licensed under chapter 246-240 WAC or under equivalent regulations of the United States Nuclear Regulatory Commission, an agreement state or a licensing state: Provided that the labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source.

(4) If the applicant desires that the source or device be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source.

(5) In determining the acceptable interval for test of leakage of radioactive material, the department will consider information that includes, but is not limited to:

(a) Primary containment (source capsule);

(b) Protection of primary containment;

(c) Method of sealing containment;

(d) Containment construction materials;

(e) Form of contained radioactive material;

(f) Maximum temperature withstood during prototype tests;

(g) Maximum pressure withstood during prototype tests;

(h) Maximum quantity of contained radioactive material;

(i) Radiotoxicity of contained radioactive material; and

(j) Operating experience with identical sources or devices or similarly designed and constructed sources or devices.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-010 Definitions. Address of use means the building or buildings that are identified on the license and where radioactive material may be received, prepared, used, or stored.

Area of use means a portion of an address of use that has been set aside for the purpose of receiving, preparing, using, or storing radioactive material.

Authorized medical physicist means an individual who:

(1) Meets the requirements in WAC 246-240-072 and 246-240-081; or

(2) Is identified as an authorized medical physicist or teletherapy physicist on:

(a) A specific medical use license issued by the department, the U.S. Nuclear Regulatory Commission or an agreement state ((prior to October 5, 2005-

~~3))~~);

(b) A medical use permit issued by a U.S. NRC master material licensee;

(c) A permit issued by a ~~((commission))~~ U.S. NRC or agreement state broad scope medical use licensee ~~((prior to October 5, 2005))~~; or

~~((4))~~ (d) A permit issued by a ~~((commission))~~ U.S. NRC master material license broad scope medical use permittee ~~((prior to October 5, 2005))~~.

Authorized nuclear pharmacist means a pharmacist who:

(1) Meets the requirements in WAC 246-240-075 and 246-240-081; or

(2) Is identified as an authorized nuclear pharmacist on:

(a) A specific license issued by the department, the U.S. NRC or an agreement state ((prior to October 5, 2005)), that authorizes medical use or the practice of nuclear pharmacy;

(b) A permit issued by a U.S. NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy;

(c) A permit issued by a U.S. NRC or agreement state broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or

(d) A permit issued by a U.S. NRC master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or

(3) Is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

~~(4) ((A permit issued by a commission master material licensee that authorizes medical use or the practice of nuclear pharmacy;~~

~~(5) A permit issued by a commission or agreement state broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or~~

~~(6) A permit issued by a commission master material license board scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or~~

~~(7))~~ Is designated as an authorized nuclear pharmacist in accordance with WAC 246-235-100(2).

Authorized user means a physician, dentist, or podiatrist who:

(1) Meets the requirements in WAC 246-240-081 and 246-240-154, 246-240-163, 246-240-210, 246-240-213, 246-240-216, 246-240-278, 246-240-301, or 246-240-399; or

(2) Is identified as an authorized user on:

(a) A department, U.S. NRC, or agreement state license ((prior to October 5, 2005;)) that authorizes the medical use of radioactive material((-);

~~((3))~~ (b) A permit issued by a ((commission)) U.S. NRC master material licensee that is authorized to permit the medical use of ((by-product)) radioactive material;

~~((4))~~ (c) A permit issued by a ((commission)) department, U.S. NRC, or agreement state specific licensee of broad scope that is authorized to permit the medical use of ((by-product)) radioactive material; or

~~((5))~~ (d) A permit issued by a ((commission)) U.S. NRC master material license broad scope permittee that is authorized to permit the medical use of ((by-product)) radioactive material.

Brachytherapy means a method of radiation therapy in which sources are used to deliver a radiation dose at a distance of up to a few centimeters by surface, intracavitary, intraluminal, or interstitial application.

Brachytherapy source means a radioactive source or a manufacturer-assembled source train or a combination of these sources that is designed to deliver a therapeutic dose within a distance of a few centimeters.

Client's address means the area of use or a temporary job site for the purpose of providing mobile medical service in accordance with WAC 246-240-125.

Dedicated check source means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years.

Dentist means an individual licensed by a state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice dentistry.

High dose-rate remote afterloader, as used in this chapter, means a brachytherapy device that remotely delivers a dose rate in excess of 12 gray (1200 rads) per hour at the point or surface where the dose is prescribed.

Low dose-rate remote afterloader, as used in this chapter, means a brachytherapy device that remotely delivers

a dose rate of less than or equal to 2 gray (200 rads) per hour at the point or surface where the dose is prescribed.

Management means the chief executive officer or other individual having the authority to manage, direct, or administer the licensee's activities, or that person's delegate or delegates.

Manual brachytherapy, as used in this chapter, means a type of brachytherapy in which the brachytherapy sources (e.g., seeds, ribbons) are manually placed topically on or inserted either into the body cavities that are in close proximity to a treatment site or directly into the tissue volume.

Medical event means an event that meets the criteria in WAC 246-240-651.

Medical institution means an organization in which more than one medical discipline is practiced.

Medical use means the intentional internal or external administration of radioactive material or the radiation from radioactive material to patients or human research subjects under the supervision of an authorized user.

Medium dose-rate remote afterloader, as used in this chapter, means a brachytherapy device that remotely delivers a dose rate of greater than 2 gray (200 rads), but less than or equal to 12 grays (1200 rads) per hour at the point or surface where the dose is prescribed.

Mobile medical service means the transportation of radioactive material to and its medical use at the client's address.

Output means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a brachytherapy source or a teletherapy, remote afterloader, or gamma stereotactic radiosurgery unit for a specified set of exposure conditions.

Patient intervention means actions by the patient or human research subject, whether intentional or unintentional, such as dislodging or removing treatment devices or prematurely terminating the administration.

Podiatrist means an individual licensed by a state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice podiatry.

Preceptor means an individual who provides, directs, or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a radiation safety officer.

Prescribed dosage means the specified activity or range of activity of unsealed radioactive material as documented:

(1) In a written directive; or

(2) In accordance with the directions of the authorized user for procedures performed under WAC 246-240-151 and 246-240-157.

Prescribed dose means:

(1) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(2) For teletherapy, the total dose and dose per fraction as documented in the written directive;

(3) For manual brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive; or

(4) For remote brachytherapy afterloaders, the total dose and dose per fraction as documented in the written directive.

Pulsed dose-rate remote afterloader, as used in this chapter, means a special type of remote afterloading brachytherapy device that uses a single source capable of delivering dose rates in the "high dose-rate" range, but:

(1) Is approximately one-tenth of the activity of typical high dose-rate remote afterloader sources; and

(2) Is used to simulate the radiobiology of a low dose-rate treatment by inserting the source for a given fraction of each hour.

Radiation safety officer means an individual who:

(1) Meets the requirements in WAC 246-240-069 and 246-240-081; or

(2) Is identified as a radiation safety officer on a specific medical use license issued by the department prior to October 5, 2005, the U.S. NRC or an agreement state; or

(3) A medical use permit issued by a commission master material licensee.

Sealed source and device registry means the national registry that contains all the registration certificates, generated by both the U.S. NRC and the agreement states, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for the product.

Stereotactic radiosurgery means the use of external radiation in conjunction with a stereotactic guidance device to very precisely deliver a therapeutic dose to a tissue volume.

Structured educational program means an educational program designed to impart particular knowledge and practical education through interrelated studies and supervised training.

Teletherapy, as used in this chapter, means a method of radiation therapy in which collimated gamma rays are delivered at a distance from the patient or human research subject.

Temporary job site means a location where mobile medical services are conducted other than those location(s) of use authorized on the license.

Therapeutic dosage means a dosage of unsealed radioactive material that is intended to deliver a radiation dose to a patient or human research subject for palliative or curative treatment.

Therapeutic dose means a radiation dose delivered from a source containing radioactive material to a patient or human research subject for palliative or curative treatment.

Treatment site means the anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

Type of use means use of radioactive material under WAC 246-240-151, 246-240-157, 246-240-201, 246-240-251, 246-240-301, 246-240-351, or 246-240-501.

Unit dosage means a dosage prepared for medical use for administration as a single dosage to a patient or human research subject without any further manipulation of the dosage after it is initially prepared.

Written directive means an authorized user's written order for the administration of radioactive material or radiation from radioactive material to a specific patient or human research subject, as specified in WAC 246-240-060.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-025 Notifications. (1) A licensee shall notify the department no later than thirty days after:

(a) An authorized user, an authorized nuclear pharmacist, a radiation safety officer, or an authorized medical physicist permanently discontinues performance of duties under the license or has a name change;

(b) The licensee's mailing address changes;

(c) The licensee's name changes, but the name change does not constitute a transfer of control of the license as described in WAC 246-232-050(2); (~~(e)~~)

(d) The licensee has added to or changed the areas of use identified in the application or on the license where radioactive material is used under either WAC 246-240-151 or 246-240-157; or

(e) The licensee permits an authorized user or an individual qualified to be a radiation safety officer, under WAC 246-240-069 and 246-240-081, to function as a temporary radiation safety officer and to perform the functions of a radiation safety officer in accordance with WAC 246-240-051(3).

(2) The licensee shall send the documents required in this section to the department at P.O. Box 47827, Olympia WA 98504-7827.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-066 Suppliers for sealed sources or devices for medical use. For medical use, a licensee may only use:

(1) Sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued under WAC 246-235-102.

(2) Sealed sources or devices noncommercially transferred from a U.S. NRC or agreement state medical use licensee; or

(3) Teletherapy sources manufactured and distributed in accordance with a license issued under chapter 246-232 WAC.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-069 Training for radiation safety officer. Except as provided in WAC 246-240-078, the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer under WAC 246-240-051 to be an individual who:

(1) Is certified by a specialty board whose certification process has been recognized by the department, the U.S. NRC, or an agreement state, and who meets the requirements of subsections (4) and (5) of this section. (Specialty boards whose certification process has been recognized by the department, the U.S. Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page, at <http://www.nrc.gov>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering

or biological science with a minimum of twenty college credits in physical science;

(b) Have five or more years of professional experience in health physics (graduate training may be substituted for no more than two years of the required experience) including at least three years in applied health physics; and

(c) Pass an examination administered by diplomates of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology, and radiation dosimetry; or

(i) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(ii) Have two years of full-time practical training and/or supervised experience in medical physics:

(A) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the commission or an agreement state; or

(B) In clinical nuclear medicine facilities providing diagnostic and/or therapeutic services under the direction of physicians who meet the requirements for authorized users (~~under these rules before October 24, 2005~~) in WAC 246-240-163 or 246-240-210; and

(iii) Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or

(d) Obtain written certification signed by a preceptor radiation safety officer that the individual has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; or

(2)(a) Has completed a structured educational program consisting of both:

(i) Two hundred hours of classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Radiation biology; and

(E) Radiation dosimetry; and

(ii) One year of full-time radiation safety experience under the supervision of the individual identified as the radiation safety officer on a department or agreement state license or license issued by the U.S. NRC that authorizes similar type(s) of use(s) of radioactive material involving the following:

(A) Shipping, receiving, and performing related radiation surveys;

(B) Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;

(C) Securing and controlling radioactive material;

(D) Using administrative controls to avoid mistakes in the administration of radioactive material;

(E) Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;

(F) Using emergency procedures to control radioactive material; and

(G) Disposing of radioactive material; or

(b) Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the department, the U.S. NRC, or an agreement state under WAC 246-240-072 and has experience in radiation safety for similar types of use of radioactive material for which the licensee is seeking the approval of the individual as radiation safety officer and who meets the requirements in subsections (4) and (5) of this section; or

(3) Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license or a medical physicist who has been certified by a specialty board whose certification process has been recognized by the department, the U.S. Nuclear Regulatory Commission or an agreement state under WAC 246-240-072 and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has radiation safety officer responsibilities; and

(4) Has obtained written certification, signed by a preceptor radiation safety officer, that the individual has satisfactorily completed the requirements in subsection (5) of this section, and in subsection (1)(a) and (b), or (c)(i) and (ii) of this section, or subsection (2)(a) or (b) of this section, or subsection (3) of this section and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; and

(5) Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by an authorized medical physicist, authorized user, authorized nuclear pharmacist, or radiation safety officer, as appropriate, who is authorized for the type(s) of use for which the licensee is seeking approval.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-072 Training for an authorized medical physicist. Except as provided in WAC 246-240-078, the licensee shall require the authorized medical physicist to be an individual who:

(1) Is certified by a specialty board whose certification process has been recognized by the department, the U.S. Nuclear Regulatory Commission or an agreement state and who meets the requirements in subsections (2)(b) and (3) of this section. (Specialty boards whose certification process has been recognized by the commission or an agreement state will be posted on the NRC's web page at <http://www.nrc.gov>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(b) Have two years of full-time practical training and/or supervised experience in medical physics:

(i) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the commission or an agreement state; or

(ii) In clinical radiation facilities providing high energy, external beam therapy (photons and electrons with energies greater than or equal to one million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in WAC 246-240-278 or 246-240-399;

(c) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(2)(a) Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use modalities for which the individual is seeking authorization. This training and work experience must be conducted in clinical radiation facilities that provide high energy, external beam therapy and brachytherapy services and must include:

(i) Performing sealed source leak tests and inventories;

(ii) Performing decay corrections;

(iii) Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(iv) Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(b) Has obtained written certification that the individual has satisfactorily completed the requirements in subsections (1)(a) and (b) and (3), or (2)(a) and (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written certification must be signed by a preceptor authorized medical physicist who meets the requirements in WAC 246-240-072 or equivalent U.S. NRC or agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(3) Has training for the type(s) of use in the modalities for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-081 Recentness of training. Training and experience specified in WAC 246-240-069, 246-240-072, 246-240-075, 246-240-078, 246-240-154, 246-240-163, 246-240-210, 246-240-213, 246-240-216, 246-240-278, 246-240-281, and 246-240-399(~~(, and 246-240-451 through 246-240-487 (inclusive))~~), must have been obtained within the seven years preceding the date of application or the individual must have had related continuing education and experience since the required training and experience was completed.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-110 Authorization for calibration, transmission, and reference sources. Any person authorized by WAC 246-240-016 for medical use of radioactive material may receive, possess, and use any of the following radioactive material for check, calibration, transmission, and reference use:

(1) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, manufactured and distributed by a person licensed under WAC 246-235-102 or equivalent agreement state or U.S. NRC regulations.

(2) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed by a person licensed under WAC 246-235-102, or equivalent agreement state or U.S. NRC regulations if the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions.

(3) Any radioactive material with a half-life not longer than one hundred twenty days in individual amounts not to exceed 0.56 GBq (15 mCi).

(4) Any radioactive material with a half-life longer than one hundred twenty days in individual amounts not to exceed the smaller of 7.4 MBq (200 µCi) or 1000 times the quantities in Schedule B of WAC 246-232-120.

(5) Technetium-99m in amounts as needed.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-151 Use of unsealed radioactive material for uptake, dilution, and excretion studies for which a written directive is not required. Except for quantities that require a written directive under WAC 246-240-060(2), a licensee may use any unsealed radioactive material prepared for medical use for uptake, dilution, or excretion studies that is:

(1) Obtained from a manufacturer or preparer licensed under WAC 246-235-100(1) or equivalent U.S. NRC or agreement state requirements; or

(2) Prepared by an authorized nuclear pharmacist, or a physician who is an authorized user and who meets the requirements specified in WAC 246-240-163, or 246-240-210 and 246-240-163 (3)(a)(ii)(G), or an individual under the supervision of either as specified in WAC 246-240-057; or

(3) Obtained from and prepared by an agreement state or U.S. NRC licensee for use in research in accordance with a radioactive drug research committee-approved protocol or an investigational new drug (IND) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with a radioactive drug research committee-approved application or an investigational new drug (IND) protocol accepted by FDA.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-154 Training for uptake, dilution, and excretion studies. Except as provided in WAC 246-240-078, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under WAC 246-240-151 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, the U.S. Nuclear Regulatory Commission or an agreement state and who meets the requirements of subsection (3)(b) of this section. (Specialty boards whose certification process has been recognized by the department, the U.S. NRC or an agreement state will be posted on the NRC's web page at <http://www.nrc.gov>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Meet the requirements in subsection (3)(a) of this section; and

(b) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(2) Is an authorized user under WAC 246-240-163 or 246-240-210 or equivalent agreement state or U.S. NRC requirements; or subsection (3)(a) of this section; or

(3)(a) Has completed sixty hours of training and experience, including a minimum of eight hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience must include:

(i) Classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of radioactive material for medical use; and

(E) Radiation biology; and

(ii) Work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-154, 246-240-163, or 246-240-210 or equivalent U.S. NRC or agreement state requirements, involving:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(C) Calculating, measuring, and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(E) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(F) Administering dosages of radioactive drugs to patients or human research subjects; and

(b) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in WAC 246-240-154, 246-240-163, or 246-240-210 or equivalent agreement state or U.S. NRC requirements, that the individual has satisfactorily completed the requirements in (a) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under WAC 246-240-151.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-157 Use of unsealed radioactive material for imaging and localization studies for which a written directive is not required. Except for quantities that require a written directive under WAC 246-240-060(2), a licensee may use any unsealed radioactive material prepared for medical use for imaging and localization studies that is:

(1) Obtained from a manufacturer or preparer licensed under WAC 246-235-100(1) or equivalent agreement state or U.S. NRC requirements; or

(2) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in WAC 246-240-163, or 246-240-210 and 246-240-163 (3)(a)(ii)(G), or an individual under the supervision of either as specified in WAC 246-240-057;

(3) Obtained from and prepared by an agreement state or U.S. NRC licensee for use in research in accordance with a radioactive drug research committee-approved protocol or an investigational new drug (IND) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with a radioactive drug research committee-approved application or an investigational new drug (IND) protocol accepted by FDA.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-163 Training for imaging and localization studies. Except as provided in WAC 246-240-078, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under WAC 246-240-157 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, the U.S. Nuclear Regulatory Commission or an agreement state and who meets the requirements in subsection (3)(b) of this section. (Specialty boards whose certification process has been recognized by the commission or an agreement state will be posted on the U.S. NRC's web page at <http://www.nrc>.)

gov.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Satisfy the requirements in subsection (3)(a) of this section; and

(b) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control;

(2) Is an authorized user under WAC 246-240-210 and meets the requirements in WAC 246-240-163 (3)(a)(ii)(G) and 246-240-210 or equivalent agreement state or U.S. NRC requirements (~~prior to October 24, 2005~~); or

(3)(a) Has completed seven hundred hours of training and experience, including a minimum of eighty hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience must include, at a minimum:

(i) Classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of radioactive material for medical use;

(E) Radiation biology; and

(ii) Work experience, under the supervision of an authorized user, who meets the requirements in WAC 246-240-163, or 246-240-210 and 246-240-163 (3)(a)(ii)(G), or equivalent agreement state or U.S. NRC requirements, involving:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(C) Calculating, measuring, and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(E) Using procedures to safely contain spilled radioactive material and using proper decontamination procedures;

(F) Administering dosages of radioactive drugs to patients or human research subjects; and

(G) Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(b) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in WAC 246-240-163, or 246-240-210 and 246-240-163 (3)(a)(ii)(G) or equivalent agreement state or U.S. NRC requirements, that the individual has satisfactorily completed the requirements in (a) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under WAC 246-240-151 and 246-240-157.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-210 Training for use of unsealed radioactive material for which a written directive is required. Except as provided in WAC 246-240-078, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under WAC 246-240-201 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, the U.S. Nuclear Regulatory Commission or an agreement state. (Specialty boards whose certification process has been recognized by the commission or an agreement state will be posted on the NRC's web page at <http://www.nrc.gov>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty that includes seven hundred hours of training and experience as described in subsection (2) of this section. Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postgraduate Training of the American Osteopathic Association;

(b) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed by-product material; and

(c) Obtain written certification that the individual has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under WAC 246-240-201. The written certification must be signed by a preceptor authorized user who meets the requirements in WAC 246-240-210 or equivalent U.S. NRC or agreement state requirements. The preceptor authorized user, who meets the requirements in WAC 246-240-210 must have experience in administering dosages in the same dosage category or categories (i.e., this section) as the individual requesting authorized user status; or

(2) Has completed seven hundred hours of training and experience, including a minimum of two hundred hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience must include:

(a) Classroom and laboratory training in the following areas:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Chemistry of radioactive material for medical use; and

(v) Radiation biology; and

(b) Work experience, under the supervision of an authorized user who meets the requirements in subsection (1) or (2) of this section, or equivalent U.S. NRC or agreement state requirements. A supervising authorized user, who meets the

requirements in this subsection, must also have experience in administering dosages in the same dosage category or categories (i.e., this section) as the individual requesting authorized user status. The work experience must involve:

(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) Calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(v) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;

(vi) Eluting generator systems, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(vii) Administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three cases in each of the following categories for which the individual is requesting authorized user status:

(A) Oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131 for which a written directive is required;

(B) Oral administration of greater than 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131. Experience with at least three cases in this also satisfies the requirement in (b)(vii)(A) of this subsection;

(C) Parenteral administration of any beta emitter, or a photon-emitting radionuclide with a photon energy less than 150 keV for which a written directive is required; and/or

(D) Parenteral administration of any other radionuclide for which a written directive is required; and

(E) Has obtained written certification that the individual has satisfactorily completed the requirements in subsection (1)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under WAC 246-240-201. The written certification must be signed by a preceptor authorized user who meets the requirements in this section, or equivalent U.S. NRC or agreement state requirements. The preceptor authorized user, who meets the requirements in this subsection (2), must also have experience in administering dosages in the same dosage category or categories (i.e., this section) as the individual requesting authorized user status.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-213 Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries). Except as provided in WAC 246-240-078, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection

(3) of this section and whose certification has been recognized by the department, the U.S. Nuclear Regulatory Commission or an agreement state. (Specialty boards whose certification process has been recognized by the commission or an agreement state will be posted on the NRC's web page at <http://www.nrc.gov>); or

(2) Is an authorized user under WAC 246-240-210 for uses listed in WAC 246-240-210 (2)(b)(vii)(A) and (B), ~~((A))~~ 246-240-216, or equivalent agreement state or U.S. NRC requirements; or

(3)(a) Has successfully completed eighty hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Chemistry of radioactive material for medical use; and

(v) Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-210, 246-240-213, 246-240-216, or equivalent agreement state or U.S. NRC requirements. A supervising authorized user who meets the requirements in WAC 246-240-210(2), must also have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(A) or (B). The work experience must involve:

(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) Calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) Using administrative controls to prevent a medical event involving the use of radioactive material;

(v) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) Administering dosages to patients or human research subjects, that includes at least three cases involving the oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written certification that the individual has satisfactorily completed the requirements in (a) and (b) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under WAC 246-240-201. The written certification must be signed by a preceptor authorized user who meets the requirements in WAC 246-240-210, 246-240-213, 246-240-216, or equivalent agreement state or U.S. NRC requirements. A preceptor authorized user, who meets the requirement in WAC 246-240-210(2), must also have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(A) or (B).

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-216 Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries). Except as provided in WAC 246-240-078, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3) of this section and whose certification has been recognized by the department, the U.S. NRC or an agreement state. (Specialty boards whose certification process has been recognized by the commission or an agreement state will be posted on the NRC's web page at <http://www.nrc.gov>); or

(2) Is an authorized user under WAC 246-240-210 for uses listed in WAC 246-240-210 (2)(b)(vii)(B), or equivalent agreement state or U.S. NRC requirements; or

(3)(a) Has successfully completed eighty hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Chemistry of radioactive material for medical use; and

(v) Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-210, 246-240-216, or equivalent agreement state or U.S. NRC requirements. A supervising authorized user, who meets the requirements in WAC 246-240-210(2), must also have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(B).

The work experience must involve:

(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) Calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) Using administrative controls to prevent a medical event involving the use of radioactive material;

(v) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) Administering dosages to patients or human research subjects, that includes at least three cases involving the oral administration of greater than 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written certification that the individual has satisfactorily completed the requirements in (a) and (b) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under WAC 246-240-201. The written certification must be signed by a preceptor authorized

user who meets the requirements in WAC 246-240-210, 246-240-216, or equivalent agreement state or U.S. NRC requirements. A preceptor authorized user, who meets the requirements in WAC 246-240-210(2), must have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(B).

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-219 Training for the parenteral administration of unsealed radioactive material requiring a written directive. Except as provided in WAC 246-240-078, the licensee shall require an authorized user for the parenteral administration requiring a written directive, to be a physician who:

(1) Is an authorized user under WAC 246-240-210 for uses listed in WAC 246-240-210 (2)(b)(vii)(C) or (D), or equivalent agreement state or U.S. NRC requirements; or

(2) Is an authorized user under WAC 246-240-278 or 246-240-399, or equivalent agreement state or U.S. NRC requirements and who meets the requirements in subsection (4) of this section; or

(3) Is certified by a medical specialty board whose certification process has been recognized by the U.S. NRC or an agreement state under WAC 246-240-278 or 246-240-399, and who meets the requirements in subsection (4) of this section.

(4)(a) Has successfully completed eighty hours of classroom and laboratory training, applicable to parenteral administrations, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. The training must include:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Chemistry of radioactive material for medical use; and

(v) Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-210 ((~~or~~)), 246-240-219, or equivalent agreement state or U.S. NRC requirements, in the parenteral administration, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements in WAC 246-240-210 ((~~or 246-240-460~~)) must have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(C) and/or (D). The work experience must involve:

(i) Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;

(ii) Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

(iii) Calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(v) Using procedures to contain spilled radioactive material safely, and using proper decontamination procedures; and

(vi) Administering dosages to patients or human research subjects, that include at least three cases involving the parenteral administration, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV and/or at least three cases involving the parenteral administration of any other radionuclide, for which a written directive is required; and

(5) Has obtained written certification that the individual has satisfactorily completed the requirements in subsection (2) or (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed radioactive material requiring a written directive. The written certification must be signed by a preceptor authorized user who meets the requirements in WAC 246-240-210, 246-240-219, or equivalent agreement state or U.S. NRC requirements. A preceptor authorized user, who meets the requirements in WAC 246-240-210 (~~(or 246-240-219)~~), must have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(C) and/or (D).

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-269 Calibration measurements of brachytherapy sources. (1) Before the first medical use of a brachytherapy source on or after (~~(October 24))~~ March 9, 2006, a licensee shall have:

(a) Determined the source output or activity using a dosimetry system that meets the requirements of WAC 246-240-366(1);

(b) Determined source positioning accuracy within applicators; and

(c) Used published protocols currently accepted by nationally recognized bodies to meet the requirements of (a) and (b) of this subsection.

(2) A licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine that are made in accordance with subsection (1) of this section.

(3) A licensee shall mathematically correct the outputs or activities determined in subsection (1) of this section for physical decay at intervals consistent with one percent physical decay.

(4) A licensee shall retain a record of each calibration in accordance with WAC 246-240-599.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-278 Training for use of manual brachytherapy sources. Except as provided in WAC 246-240-078, the licensee shall require an authorized user of a

manual brachytherapy source for the uses authorized under WAC 246-240-251 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, the U.S. NRC, or an agreement state. (Specialty boards whose certification process has been recognized by the commission or an agreement state will be posted on the NRC's web page at <http://www.nrc.gov>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum of three years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postgraduate Training of the American Osteopathic Association;

(b) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of high and low dose-rate brachytherapy; and

(c) Obtain written certification, signed by a preceptor authorized user who meets the requirements in WAC 246-240-278 or equivalent U.S. NRC or agreement state requirements, that the individual has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized in WAC 246-240-251; or

(2)(a) Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:

(i) Two hundred hours of classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology; and

(ii) Five hundred hours of work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-278 or equivalent agreement state or U.S. NRC requirements at a medical institution, involving:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Checking survey meters for proper operation;

(C) Preparing, implanting, and removing brachytherapy sources;

(D) Maintaining running inventories of material on hand;

(E) Using administrative controls to prevent a medical event involving the use of radioactive material;

(F) Using emergency procedures to control radioactive material; and

(b) Has completed three years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in WAC 246-240-278 or equivalent U.S. NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal Col-

lege of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by (a)(ii) of this subsection; and

(c) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in WAC 246-240-278 or equivalent agreement state or U.S. NRC requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) of this section, or (a) and (b) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under WAC 246-240-251.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-399 Training for use of remote after-loader units, teletherapy units, and gamma stereotactic radiosurgery units. Except as provided in WAC 246-240-078, the licensee shall require an authorized user of a sealed source for a use authorized under WAC 246-240-351 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, the U.S. NRC, or an agreement state. (Specialty boards whose certification process has been recognized by the ~~(commission)~~ NRC or an agreement state will be posted on the NRC's web page at <http://www.nrc.gov>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum of three years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postgraduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, high and low dose-rate brachytherapy, and external beam therapy;

(2)(a) Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:

(i) Two hundred hours of classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology; and

(ii) Five hundred hours of work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-399 or equivalent agreement state or U.S. NRC requirements at a medical institution, involving:

(A) Reviewing full calibration measurements and periodic spot-checks;

(B) Preparing treatment plans and calculating treatment doses and times;

(C) Using administrative controls to prevent a medical event involving the use of radioactive material;

(D) Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;

(E) Checking and using survey meters; and

(F) Selecting the proper dose and how it is to be administered; and

(b) Has completed three years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in WAC 246-240-399 or equivalent U.S. NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by (a)(ii) of this subsection; and

(c) Has obtained written certification that the individual has satisfactorily completed the requirements in subsection (1)(a) of this section, or (a) and (b), and (d) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written certification must be signed by a preceptor authorized user who meets the requirements in WAC 246-240-399 or equivalent U.S. NRC or agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

(d) Has received training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-240-451	Radiation safety officer.
WAC 246-240-454	Training for uptake, dilution, and excretion studies.
WAC 246-240-457	Training for imaging and localization studies.
WAC 246-240-460	Training for therapeutic use of unsealed radioactive material.
WAC 246-240-463	Training for treatment of hyperthyroidism.

WAC 246-240-466	Training for treatment of thyroid carcinoma.
WAC 246-240-469	Training for use of brachytherapy sources.
WAC 246-240-472	Training for ophthalmic use of strontium-90.
WAC 246-240-475	Training for use of sealed sources for diagnosis.
WAC 246-240-478	Training for use of therapeutic medical devices.
WAC 246-240-481	Training for authorized medical physicist.
WAC 246-240-484	Training for an authorized nuclear pharmacist.
WAC 246-240-487	Training for experienced nuclear pharmacists.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.
Date Adopted: July 5, 2007.

Craig McLaughlin
Executive Director

NEW SECTION

WAC 246-203-121 Disposal of dead animals. (1) **Definitions.** For the purpose of this regulation the following definitions apply:

(a) "Burial" means completely covering with soil in a manner and location not requiring a permit for a landfill under chapter 70.95 RCW, Solid waste management—Reduction and recycling.

(b) "Composting" means a process of controlled aerobic decomposition in compliance with chapter 70.95 RCW, Solid waste management—Reduction and recycling.

(c) "Dead animal" means the carcass or tissue from an animal, large or small, except part of an animal used for food or other beneficial purpose in accordance with federal, state, and local laws and regulations. "Dead animal" does not mean a fish or other primarily aquatic animal.

(d) "Incineration" means controlled and monitored combustion for the purposes of volume reduction and pathogen destruction in an enclosed device approved by the department of ecology or the local air pollution control authority under chapter 70.94 RCW, Washington Clean Air Act, and chapter 70.95 RCW, Solid waste management—Reduction and recycling.

(e) "Landfilling" means a process of disposal at a permitted facility where solid waste is permanently placed in or on land in compliance with rules adopted by the department of ecology under chapter 70.95 RCW, Solid waste management—Reduction and recycling.

(f) "Livestock" means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, game birds, or other species according to RCW 16.36.005.

(g) "Natural decomposition" means natural decay on the surface of the ground without cover material.

(h) "Rendering" means heat processing according to requirements under chapter 16.68 RCW, Disposal of dead animals.

(2) **Disposal methods.**

(a) Within seventy-two hours after death or discovery, the owner of a dead animal or, if the owner of the animal cannot be identified, the owner of the property on which the animal is found must properly dispose of the dead animal. A dead animal must be covered or otherwise removed from public view immediately upon discovery by the person responsible for disposing of the dead animal.

(b) The person responsible for disposal of a dead animal must dispose of it in a manner so as not to become a public or common nuisance or cause pollution of surface or ground water.

(c) The person responsible for disposal of a dead animal must dispose of it by burial, landfilling, incineration, com-

WSR 07-14-149

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed July 5, 2007, 9:39 a.m., effective August 5, 2007]

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

Purpose: Repeals WAC 246-203-120 Disposal of garbage, trash, rubbish, offal, dead animals, and manure, and adopts new WAC 246-203-121 Disposal of dead animals. This rule revision makes the rule more consistent with ecology's solid waste rules and clarifies the relationship of the board's rule with RCW 16.36.092 Duty to bury carcass of diseased livestock, and the department of agriculture's new chapter 16-25 WAC, Disposal of dead livestock. It specifies additional alternative disposal methods to those that were in WAC 246-203-120.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-203-120.

Statutory Authority for Adoption: RCW 43.20.050(2).

Adopted under notice filed as WSR 07-10-119 on May 2, 2007.

A final cost-benefit analysis is available by contacting Ned Therien, P.O. Box 47990, Olympia, WA 98504-7990, phone (360) 236-4103, fax (360) 236-4088, e-mail ned.therien@doh.wa.gov.

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

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

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

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

posting, rendering, or another method approved by the local health officer (such as natural decomposition) that is not otherwise prohibited by federal, state, or local law or regulation.

(d) A person disposing of a dead animal by burial must place it so that every part is covered by at least three feet of soil; at a location not less than one hundred feet from any well, spring, stream or other surface waters; not in a low-lying area subject to seasonal flooding or within a one hundred-year flood plain; and not in a manner likely to contaminate ground water.

(e) A person disposing of a dead animal must not bury or compost it within the sanitary control area of a public drinking water supply source as designated under chapter 246-290 WAC, Public water supplies, or chapter 246-291 WAC, Group B public water systems.

(f) The local health officer may specify the method of disposal for a dead animal if:

(i) The animal died with a communicable disease transmissible to humans; or

(ii) The local health officer considers a public health emergency to exist.

(g) The provisions of RCW 16.36.092 and chapter 16-25 WAC supersede the provisions of this regulation for the disposal of a livestock animal that has died because of disease or unknown cause.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-203-120	Disposal of garbage, trash, rubbish, offal, dead animals, and manure.
-----------------	---