# WSR 07-20-059
## PERMANENT RULES
## UTILITIES AND TRANSPORTATION COMMISSION

[Docket UE-060649, General Order 545—Filed September 27, 2007, 3:22 p.m., effective October 28, 2007]

In the matter of amending and adopting rules in chapter 480-108 WAC, relating to Electric companies—Interconnection with electric generators.

*1* **STATUTORY OR OTHER AUTHORITY:** The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 07-14-150, filed with the code reviser on July 5, 2007. The commission brings this proceeding pursuant to RCW 80.01.040 and 80.04.160.

*2* **STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

*3* **DATE OF ADOPTION:** The commission adopts this rule on the date this order is entered.

*4* **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires that the commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must include the commission's reasons for adopting the rule, a description of any differences between the version of the proposed rules published in the register and the rules as adopted (other than editing changes), along with a statement of the reasons for any differences, a summary of the comments received regarding the proposed rule changes, and the commission's responses to the comments, reflecting the commission's consideration of them.

*5* The commission includes a discussion of those matters in its rule adoption order. To avoid unnecessary duplication, the commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda, which are available on the commission's web pages at http://www.wutc.wa.gov/060649. Together, the documents provide a complete and concise explanation of the agency's actions and its reasons for taking those actions.

*6* The rules establish standards for interconnection of consumer-owned power generation facilities up to 20 megawatts (MW) capacity to the delivery systems of electric utilities subject to commission jurisdiction. These regulations include standards for applications for interconnection, processing of such applications, technical and engineering standards for interconnections, safety standards, insurance and liability provisions, and other provisions.

*7* The commission is adopting this rule to advance state policy to encourage generally the use of distributed generation and particularly renewable energy technologies.[1] In addition to this general state policy, the commission's rulemaking inquiry considered the following as pertinent policy context:

- The requirement in RCW 82.16.120 that uniform state-wide interconnection standards be in place before certain tax credits for small-scale renewable projects are available.
- Amendments to chapter 80.60 RCW enacted in 2006 to increase the generator capacity ceiling for net metering from 25 kW to 100 kW.[2]
- The requirement under the 2005 federal Energy Policy Act that state utility regulatory agencies consider adoption by August 8, 2008, of interconnection standards pursuant to the Public Utility Regulatory Policies Act (PURPA).[3]
- The federal Energy Regulatory Commission's (FERC) adoption of a rule governing interconnection of small generators to delivery facilities over which it holds jurisdiction.[4]

*8* Section 1 of SSB 5101, chapter 300, Laws of 2005, states that "the legislature intends to provide incentives for the greater use of locally created renewable energy technologies." SSB 5101 also provides that utilities, in return for a credit against the public utility excise tax, may supply an incentive payment to consumers for consumer-generated electricity from renewable energy systems. However, the incentive payments created by section 3 of SSB 5101, now codified at RCW 82.16.120(2), are only available to customers connected to the distribution system of a light and power business if "uniform standards for interconnection to the electric distribution system" are in effect for utilities serving 80% of total customer load in the state. The commission's rule adoption will encourage small-scale, customer-owned distributed generation facilities by establishing uniformity among the investor-owned utilities regarding technical and process standards for interconnection of such facilities to certain utility delivery systems.

*9* Chapter 80.60 RCW was amended in 2006 to increase the maximum capacity for customer-owned generation qualifying for net metering from 25 kW to 100 kW. Chapter 480-108 WAC establishes the interconnection requirements that apply to customer-owned, net-metered generation. Adopting this rule addresses the change in chapter 80.60 RCW by increasing the capacity of consumer-owned generation covered under chapter 480-108 WAC.

*10* The federal Energy Policy Act of 2005 included amendments to Section 111(d) of PURPA (16 U.S.C. 2621 (d)) that require the commission to consider and determine by August 8, 2008, whether to establish standards for interconnection. The commission's inquiry and adoption of this rule complies with this requirement.

*11* The FERC has adopted requirements for utility interconnection of generation facilities up to 20 MW when those facilities are to be interconnected to delivery facilities that fall within its jurisdiction. The commission is adopting rules governing interconnection of generation facilities up to 20 MW when those facilities are to be interconnected to delivery facilities within its jurisdiction and outside of FERC's jurisdiction. For generation facilities with generating capacity greater than 300 kW, the commission's rules refer to the FERC requirements in order to both "fill the gap" and maintain consistency of standards for larger generation facilities.

*12* **REFERENCE TO AFFECTED RULES:** This order amends certain sections and adds new sections to chapter 480-108 WAC, Electric companies—Interconnection with electric generators.

*13* This order amends and adopts the following sections of Washington Administrative Code:

Amend WAC 480-108-001 Purpose and scope.

Amend WAC 480-108-005 Application of rules.

Amend WAC 480-108-010 Definitions.

Part 1: Interconnection of Generation Facilities with Nameplate Capacity Rating of 300 kW or Less.

Adopt WAC 480-108-015 Scope of Part 1.

Amend WAC 480-108-020 Technical standards for interconnection.

Amend WAC 480-108-030 Application for interconnection.

Adopt WAC 480-108-035 Model interconnection agreement, review and acceptance of interconnection agreements and costs.

Amend WAC 480-108-040 General terms and conditions of interconnection.

Amend WAC 480-108-050 Certificate of completion.

Adopt WAC 480-108-055 Dispute resolution.

Amend WAC 480-108-060 Required filings—Exceptions.

Adopt WAC 480-108-065 Cumulative effects of interconnections with a nameplate capacity rating of 300 kW or less.

Part 2: Interconnection of Generation Facilities with Nameplate Capacity Rating Greater than 300 kW but no more than 20 MW.

Adopt WAC 480-108-070 Scope of Part 2.

Adopt WAC 480-108-080 Interconnection service tariffs.

Adopt WAC 480-108-090 Alternative interconnection service tariff.

Adopt WAC 480-108-100 Dispute resolution.

Adopt WAC 480-108-110 Required filings—Exceptions.

Adopt WAC 480-108-120 Cumulative effects of interconnections with a nameplate capacity rating greater than 300 kW but no more than 20 MW.

Amend WAC 480-108-999 Adoption by reference.

*14* **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a preproposal statement of inquiry (CR-101) on June 7, 2006, at WSR 06-12-104. The statement advised interested persons that the commission intended to examine whether new or modified regulations are needed to govern aspects of investor-owned electric utility operations for which new federal standards are included in the Energy Policy Act of 2005. These new federal standards address: (1) Net-metering, (2) fuel sources, (3) fossil fuel generation efficiency, (4) smart metering, and (5) interconnection. With regard to interconnection, the statement advised that the commission's inquiry could lead to proposed amendments to chapter 480-108 WAC.

*15* **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:** The commission informed persons of its inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3), the commission's lists of all registered electric and gas companies, persons on the list of persons that received notices in the commission's previous interconnection rule making in Docket UE-051106, persons interested in electric and gas issues, as well as to attorneys representing these companies. The commission posted the relevant rule-making information on its internet web site at http://www.wutc.wa.gov/060649. In its notice, the commission posed four questions regarding electrical interconnection and invited interested persons to respond and make proposals in writing by August 11, 2006. The four questions were:

(1) Should chapter 480-108 WAC be amended to include customer-owned facilities up to 100 kW? If so, would the increase to facility size necessitate any other changes to the rule?

(2) Is there another "break-point" to which it would be appropriate for practical reasons to increase the scope of chapter 480-108 WAC (e.g., 300 kW, 500 kW)? If so, would the increase in facility size necessitate any other changes to the rule?

(3) Should interconnection of facilities larger than those covered currently by chapter 480-108 WAC be governed by a standard rule? If so, would the FERC's Small Generator Interconnection Rule serve as a good model?[5] If so, how should the FERC rule be adapted to Washington circumstances?

(4) If interconnection of facilities larger than those covered currently under chapter 480-108 WAC should not be governed by a standard rule, what principles should apply to such interconnections?

The commission also welcomed any comprehensive recommendations or proposals that stakeholders or utilities might propose for state-wide standards for interconnection.

*16* Pursuant to the notice, the commission received written comments from the following companies, organizations, and interested persons: Industrial Customers of Northwest Utilities (ICNU), Puget Sound Energy (PSE), the Washington Load-Serving Utilities (Utilities)[6], Avista Utilities, Vote Solar Initiative, PacifiCorp and the U.S. Environmental Protection Agency (U.S. EPA).

*17* The utilities proposed a set of standards that they jointly developed and recommended as a framework for establishing interconnection standards for facilities up to nameplate capacity of 300 kW to be used by both commission-jurisdictional utilities and public utilities that are not jurisdictional to the commission.[7] The utilities also stated that, given the complexity of interconnecting generation in excess of 300 kW to utility distribution systems, each utility should develop standards that take into account each utility's unique circumstances. The groups' interconnection standards include a set of principles they contend should govern each utility's standards for facilities greater than 300 kW. According to the joint comments, these interconnection standards are intended to insure the safe and reliable operation of the distribution system.

*18* The commission convened a workshop on December 15, 2006, to discuss interconnection issues and the utilities' proposal and eight related questions:

(1) What criteria should be used to distinguish customers eligible to apply for interconnection to a utility's distribution

system from customers eligible to apply for interconnection to the utility's transmission system under FERC rules?

(2) Should standards governing distribution-level interconnections be limited in application to net-metered facilities and if so, why?

(3) Should standards governing distribution-level interconnections apply to interconnection of qualifying facilities (QF) under the PURPA and if not, why not?

(4) Do the engineering requirements and limitations relevant to distribution-level interconnections up to 300 kW vary among utility distribution systems? If so, what characteristics of the distribution system cause the engineering requirements and limitations to vary? How might this be addressed via rule?

(5) Do the engineering requirements and limitations relevant to distribution-level interconnections up to 2 MW vary among utility distribution systems? If so, what characteristics of the distribution system cause the engineering requirements and limitations to vary? How might this be addressed via rule?

(6) Should the requirement of an external disconnect switch contained in chapter 480-108 WAC be retained?

(7) Should utilities be allowed the option to require an interconnecting customer to bear the cost of a dedicated distribution transformer if one is deemed necessary by the utility?

(8) Given the commission's general authority to address disputes (chapter 480-107 WAC) what, if any, additional dispute resolution processes are needed to apply specifically to generator interconnection?

*19* The Cogen Coalition, Clark County PUD, Grant County PUD, International Brotherhood of Electrical Workers (IBEW) and department of community, trade and economic development attended the workshop in person and another seven persons attended by phone due to inclement weather. Persons participating on the phone included representatives of: Tacoma Power, PacifiCorp, Benton County REA, ICNU, Avista Corp., U.S. EPA, and Inland Power and Light. PSE, Benton REA and Mr. Parker Holden submitted written responses to the workshop questions.

*20* Drawing on the initial written comments received and the workshop discussion and written responses to the workshop questions, the commission circulated on January 25, 2007, a first draft rule for discussion and comment. The commission received detailed written comments and suggestions on the discussion draft on February 28, 2007, from: Avista and PSE commenting jointly, PacifiCorp, Northwest Combined Heat and Power (NWCHP) Center, United States Combined Heat & Power Association (USCHP), Allied Electric, LLC. (Allied), ICNU, U.S. EPA, and IBEW Local Union 77.

*21* Most comments on the first draft focused on procedural aspects of interconnection service with technical aspects of the rule's requirements drawing very little comment. In particular, persons representing the interests of potential combined heat and power and other interconnection customers raised a number of concerns regarding the application and review process, as well as cost assignment and dispute resolution. These interests advocated for better balance in the relationship between interconnection customers and utilities. The utilities sought more clarity in the requirements as well as specific language to prohibit "back-feeding" in distribution networks and authority to require remotely accessible metering.

*22* Considering the comments and recommendations made on the first draft, the commission circulated on April 30, 2007, a second draft rule for discussion and comment. On May 25, 2007, the commission received written comments and suggestions from: Avista and PSE filing jointly, PacifiCorp, NWCHP Center, USCHP, Allied, and ICNU.

*23* Detailed comments on the second discussion draft focused principally on further refinements and clarifications to the application, study and review, and cost assignment processes. Potential interconnection customers advocated that the costs of interconnection should be shared between the utility and the interconnection customer, if other customers on the utility's system benefit from the interconnection. In the alternative, the interconnection customers sought protection against excessive interconnection fees through the requirement that charges be cost-based and follow generally accepted engineering practice. In addition, the interconnection customers recommended that certain rule language be made more specific and that dispute resolution should include cost-assignment. Utilities sought clarification of how the rule would apply to net metering and certain distribution grid networks.

*24* **NOTICE OF PROPOSED RULE MAKING:** After considering and addressing the comments and recommendations received on the second discussion draft, the commission filed a notice of proposed rule making (CR-102) on July 5, 2007, at WSR 07-14-150, scheduling the matter for oral comment and adoption at 1:30 p.m., Wednesday, August 15, 2007, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission by August 2, 2007.

*25* **COMMENTERS (WRITTEN COMMENTS):** The commission received written comments from ICNU and the public counsel section of the Washington office of the attorney general (public counsel) both supporting adoption of the rule as proposed. PacifiCorp filed written comments generally supporting adoption of the rule as proposed while advocating clarification of three aspects of the proposed rule. Avista filed written comments prior to the hearing supporting the rule as proposed and agreeing with PacifiCorp's requested clarifications. No other parties submitted formal written comments by August 2, 2007, in response to the CR-102 proposed rules.

*26* **RULE-MAKING HEARING:** The commission considered the rule proposal for adoption, pursuant to the notice in WSR 07-14-150, at a rule-making hearing before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. Mr. Les Bahls of PacifiCorp testified in support of the proposed rule. Mr. David Van Holde, representing King County, and Mr. Chuck Collins, representing Allied, testified expressing concerns with several aspects of the proposed rules. Chairman Sidran offered any person at the hearing an opportunity to submit further written comments by August 22, 2007.

*27* The commission received additional written comments by August 22, 2007, from Allied and the Northwest Energy Coalition (NWEC). In addition, the commission received letters from Representative Jeff Morris and Representative Zack Hudgins expressing concerns regarding the effect of proposed WAC 480-108-020 (2)(e) on consumer opportunity to participate in net-metering programs and on uniformity among interconnection standards.

*28* **COMMISSION DISCUSSION AND RESPONSE TO COMMENTS:** Chapter 480-108 WAC requires electric utilities under commission jurisdiction to offer customers a new interconnection service that the utilities would not otherwise be required, or authorized, to offer. Our task is to establish rules governing this new service that advance Washington state's policies encouraging net-metering and uniformity in standards addressing interconnection of customer-owned generation, while at the same time fulfilling our longstanding statutory obligation to ensure safe and reliable electric utility service for all customers at prices that are just and reasonable. With that task in mind, we turn to the comments and recommendations received regarding the proposed rules.

*29* Application of the Proposed Rules to PURPA Qualifying Facilities: PacifiCorp and Avista ask us to clarify that proposed WAC 480-108-001(4) does not govern the interconnection of PURPA qualifying facilities. The rule as proposed states "This chapter does not govern electric company services to PURPA qualifying facilities pursuant to chapter 480-107 WAC." The intent of the rule was to state that all services to qualifying facilities addressed by chapter 480-107 WAC, including interconnection, are governed by that chapter and not by chapter 480-108 WAC. We have clarified the proposed rule text as requested.

*30* Metering for Net-Metered Systems: PacifiCorp and Avista ask [asked] us to clarify that proposed WAC 480-108-040 (7)(a) applies only to net-metered systems that qualify under chapter 80.60 RCW. WAC 480-108-040 (7)(a) is qualified by the language "as set forth in chapter 80.60 RCW." Thus, it is clear that the proposed rule encompasses only systems qualifying under chapter 80.60 RCW. We do not find that the text of the proposed rule requires modification to clarify this intent.

*31* Study of Cumulative Effects of Interconnection: PacifiCorp and Avista ask [asked] us to clarify that the requirements set out in proposed WAC 480-108-065 and 480-108-120, may be fulfilled jointly with a distribution system planning study that includes interconnections of all capacity levels. The two proposed rules require, respectively, recordkeeping and study of the effects of interconnections from zero to 300 kW of nameplate capacity and the same for interconnections greater than 300 kW up to 20 MW of nameplate capacity. Although there are separate rules governing interconnection up to 300 kW and those greater than 300 kW, the rule language does not require separate studies. In appropriate circumstances, a single study may be used to meet the requirements of both rules so long as records are sufficiently detailed to identify the number, date of interconnection, and cumulative nameplate capacity within each of these two generation categories.

*32* Codes and Standards: At WAC 480-108-020 (1)(f)(i) the proposed rule deleted the standards of the Institute of Electrical and Electronics Engineers (IEEE) from the list of codes and standards with which electric company interconnections must comply. In addition, this section adds a utility's "written electricity service requirement" to the list of such codes and standards.

*33* King County, Allied Electric, and NWEC recommend that IEEE should be included in the list of codes and standards. They contend that IEEE publishes the most important standard regarding interconnection of distributed electrical generation - IEEE Standard 1547 - which, Allied points out, is referenced elsewhere in WAC 480-108-020.

*34* We agree with the commenters that IEEE standards are important to interconnection of customer generation to utility electric systems. IEEE's Standard 1547 is referenced throughout the proposed rules where it specifically applies and IEEE Standard 1547 is adopted by reference in WAC 480-108-999(3). Deletion of IEEE from WAC 480-108-020 (1)(f)(i) appears to have been a drafting error. The text of the proposed rule, as adopted here, includes IEEE standards in the list of codes and standards with which the electric company interconnections must comply.

*35* King County expresses a concern that the codes and standards listed in WAC 480-108-020 (1)(f)(i) include those of the Western Electricity Coordinating Council (WECC) and National Electricity Reliability Corporation (NERC). The county contends that these requirements are regional as opposed to national or international in scope and may represent regional issues or interests that do not serve the goal of promoting an industry-wide consistency that will assist equipment manufacturers to meet technical requirements.

*36* Utilities must comply under federal law with reliability criteria established by the WECC and NERC as overseen by the FERC. The codes and standards of these entities are necessary and appropriate to include in WAC 480-108-020 (1)(f)(i).

*37* Allied, King County and NWEC recommend that compliance with "the electric company's written electric service requirement, if any" should be deleted from WAC 480-108-020 (1)(f)(i). They argue that a utility's service requirements could contain unique or utility-specific provisions that might override the interconnection requirements and allow a utility to avoid offering a standardized service. This result, they argue, is inimical to the objective of uniformity in the standards governing interconnection.

*38* The intent of the proposed rule is to require that electric company interconnections comply with the general provisions and requirements included in the electric company's tariff, usually in a section entitled "general rules and regulations" or similar. These rules and requirements are approved by the commission and include many aspects of service not specifically addressed by proposed chapter 480-108 WAC. Examples include such topics as restoration of service, credit terms and meter testing. Where electric company services are provided under a specific tariff pursuant to commission rules, as will be the case for interconnection of customer-owned generation, the terms and conditions of the tariff shall control in the event of any conflict with general rules and regulations.

*39* To avoid any ambiguity, we have addressed the concern raised by the commenters by clarifying the rule text to

make clear that the written service requirements referenced in this section are those approved by the commission.

*40* Prohibition on Reverse Current Flow Through Network Protectors: Proposed WAC 480-108-020 (2)(e) states:

(e) The electrical company must verify on the basis of evidence provided by the interconnection customer that the generating facility will never cause reverse current flow through the electrical company's network protectors.

*41* King County comments that this provision applies only to secondary network distribution systems. King County observes that the provision may cause some confusion because it appears in the rule without a "header" or some other introduction to make clear that it only applies to these circumstances.

*42* Allied comments that this provision is "prohibitive" because it does not reflect cases where a utility has approved a grid or spot network interconnection. Allied recommends qualifying the provision with the clause "unless approved by the electrical company through net metering or some other commission-approved power exchange contract."

*43* Representative Jeff Morris expresses a concern that this provision will prohibit net-metering customer-generators from exporting electrical power generated by a net-metering system connected to the grid. He requests that the proposed language be modified to ensure that the opportunity to net meter for small and mid-size distributed generation in Washington is not compromised.

*44* Representative Zack Hudgins expresses a concern that this provision will prohibit net-metering customer-generators from exporting electrical power generated by a net-metering system connected to the grid. Representative Hudgins expresses the opinion that this language would undermine any net metering in our state and undermine the legislation creating net metering because net metering "must reverse current flow from a small generator into the grid." He acknowledges that the language may be prompted by safety concerns and recommends that the provision be clarified.

*45* The prohibition on reverse current flow through network protectors is not a newly proposed rule, it exists in current WAC 480-108-020 (2)(e). The application of the rule is limited to distribution system configurations that include network protectors, so called "network distribution systems." These systems present unique engineering and operational challenges in terms of safety and reliability, and are few in number.

*46* Network distribution systems are electrical system designs used by distribution utilities to serve dense, usually urban, load centers with enhanced reliability. The systems accomplish enhanced reliability by serving network elements (*i.e.*, segments of customer load) from multiple primary circuits (*i.e.*, distribution substations). Service reliability is enhanced because in the event of an outage on one primary circuit, the network element can continue to be served by a second, or even a third, primary feeder. This design depends on the principle that the network element can be isolated from any of its multiple primary feeders in the event of a fault on that feeder in order to ensure that one primary fault is not fed by, and does not produce cascading faults on, the other primary feeders. The job of isolating the network elements is performed by the "network protectors." These are essentially one-way circuit breakers that open in the event of a primary circuit fault to prevent reverse current flow into the faulted feeder circuit.[8]

*47* It is well recognized by engineering and standard-setting bodies that network distribution systems present special problems and warrant special protections to ensure that interconnections do not present hazards to safety or reliability. But while they warrant special treatment, it is also true that such networks constitute a very limited proportion of utility service territories. One example is Seattle City Light's service in downtown Seattle. Use of such networks on the investor-owned utility systems is rare. PSE has only one example of network service: Southcenter Mall in Tukwila is served with a spot distribution network. PacifiCorp has no customers in Washington served by a distribution network. Avista has approximately 20 spot distribution networks serving large office buildings and shopping centers in downtown Spokane. These networks serve only about 3% of Avista's load.[9]

*48* King County's comment indicates that the proposed rule does not make clear that this provision is limited to network distribution systems. These systems require special treatment to ensure safety and reliability, but such protections will not adversely affect the broad opportunities for net metering and interconnection of customer-owned generation because the systems are rare and represent a very small proportion of electric company service territories.

*49* To avoid any confusion or ambiguity as to the necessity and application of WAC 480-108-020 (2)(e) we have clarified the text of the rule as follows to make clear that it applies only to network distribution systems and is intended only to protect safety and reliability:

The electrical company must verify on the basis of evidence provided by the interconnection customer that a generating facility interconnected to a grid network distribution system or a spot network distribution system will not impair public safety or quality of service to the electrical company's other customers as a result of reverse current flow through the electrical company's network protectors.

*50* Metering. Proposed rule WAC 480-108-040 (7)(b) states:

(b) Production metering: The electrical company may require separate metering, including metering capable of being remotely accessed, for production. This meter will record all generation produced and may be billed separately from any net metering or customer usage metering. Costs associated with production metering will be paid by the interconnection customer.

*51* King County comments that by allowing the utility to require "remotely accessed" meters the proposed rule could make small-scale renewable projects prohibitively expensive.

*52* Allied recommends that the utility should not be allowed to require remotely accessible metering and that all metering costs should be the responsibility of the utility and not the interconnection customer. Allied contends that requiring interconnection customers to pay for production metering is "discriminatory" because other customers are not required to install such metering.

*53* NWEC comments that more clarity is necessary regarding the "meter parameters" a utility may require so that future conflicts and uncertainty are avoided. The NWEC recommends that the provision allowing the utility to require production metering should be eliminated because it could increase costs and is unnecessary.

*54* Requiring interconnection customers to bear the cost of production meters is not unusual. In fact, a clear majority of states that have adopted interconnection rules, and the FERC, require that the cost of production metering be borne by interconnection customers.[10] This is also the case in existing WAC 480-108-040 (7)(b). Many of the standards in other states allow the utility to require remotely accessible meters, subject to some constraints and utility proof that the added capability is necessary.

*55* Allied's contention that requiring interconnection customers to pay for production metering when other customers are not required to pay for meters is unavailing. Unlawful discrimination may exist when "similarly situated" customers are treated differently. But, interconnection customers are not similarly situated to ordinary retail customers whose meter costs are borne by the utility because interconnection customers impose different costs and different service requirements on the utility than do retail customers.[11]

*56* In response to the concern that remotely accessible metering could be unnecessarily expensive, we have modified the text in the proposed rule to clarify that a utility may only require an interconnection customer to pay for remotely accessible metering when such capability is necessary to protect safety or reliability.

*57* Cost Responsibility for Modifications to Interconnection Customer Facilities made Necessary by Utility Distribution System Modifications. Proposed WAC 480-108-040(14) states:

The interconnection customer is responsible for costs associated with future upgrades or modification to its generating facility or interconnection facilities made necessary by modifications the electrical company makes to its electric system.

*58* King County, Allied and NWEC recommend that interconnection customers should not be responsible for costs to their systems made necessary by a utility's modification of its distribution system.

*59* King County contends that this provision will preclude investment in distributed generation because it introduces uncertainty. King County recommends that the utility should pay the interconnection customer for any modifications it must make to accommodate decisions the utility makes regarding its system.

*60* NWEC states that it believes post-interconnection changes made "to the utility system" should be covered by the utility. NWEC's comment appears to be off the point. The provision in question addresses post-interconnection changes to the customer's system, not the utility's system.

*61* Allied contends that requiring the interconnection customer to bear the cost of modifying its system is "discriminatory." Allied recommends that these costs be shared by the utility and the customer, but offers no suggestion for a process to determine such sharing.

*62* A customer's right to interconnect to the utility's facilities is not unqualified. The specific and general requirements contained in existing and proposed chapter 480-108 WAC specify the conditions a customer's facilities must meet to be safe and otherwise compatible with the utility system with which the customer interconnects. Changes the utility makes to its system may change the conditions that the interconnection must meet in order to qualify for continued service. Absent a change in the qualifications a customer must meet for service, there is no reason additional cost responsibility should shift to the utility simply because the utility has found it necessary to modify its facilities after an interconnection service has begun.

*63* Allied's contention about discrimination is again misplaced, because the qualifications an interconnection customer must meet are substantially different than those required of an ordinary retail customer.

*64* The provision of the proposed rule in question is included in existing WAC 480-108-040(13). We understand that substantially the same provision is included in the interconnections standards of many municipal utilities in Washington. State policy favors uniformity in the rules and standards governing interconnections.[12] Where uniformity in standards exists, we should not depart without good reason. In this instance, we do not find good reason to depart from the uniformity existing among the interconnection standards. The provision is appropriate and should not be changed.

*65* Restriction of Interconnection on Certain Feeders, Circuits, or Networks. Proposed WAC 480-108-040(11) reads:

The electric company also may restrict or prohibit new or expanded interconnected generating capacity on any feeder, circuit or network if engineering, safety or reliability studies indicate a need for restriction or prohibition.

*66* King County and NWEC express concern that this provision may give the electric company too much flexibility to deny interconnections. King County asks who will determine what evidence supplied by the studies is sufficient to allow restriction of interconnection and who determines that standard. NWEC recommends that any decision to restrict interconnection under this provision should be subject to public review and approval of the commission.

*67* The dispute resolution provision at WAC 480-108-055 is available for any interconnection customer to dispute an electrical company's "denial or rejection" of an application for interconnection. In response to the concern raised by King County and NWEC, we clarify that the engineering, safety or reliability studies must establish, rather than indicate, a need for restrictions and we emphasize that the dispute resolution process is appropriate for resolving any conflicts regarding restrictions imposed under this section.

*68* Interconnection Service Tariffs for Facilities Between 300 kW and 20 MW: WAC 480-108-080 requires electric companies to file interconnection service tariffs "equivalent in all procedural and technical respects" with the interconnection service the company is required to offer under its FERC tariff. WAC 480-108-090 allows a utility to file an alternative to its FERC tariff if it can demonstrate the provisions of the FERC tariff "will impair service adequacy, reliability, or

safety or will otherwise be incompatible with its electric system."

*69* Allied argues that allowing utilities to file "separate interconnection procedures" does not "comprise a state standard" as intended by the PURPA amendments in the Energy Policy Act. The commission's authority is limited to investor-owned utilities. Accordingly, the commission is not empowered to establish a "state standard."

*70* We recognize that practical uniformity among utilities and states regarding interconnection standards has value for promoting development of distributed generation resources. The proposed rules promote uniformity in several ways.

*71* First, even though the rules would apply only to investor-owned utilities, they include a section addressing the category of facilities from zero to 300 kW of nameplate capacity in order to preserve as much as possible of a consensus proposal made jointly by the investor-owned and public utilities. This category is also intended to preserve the consistency that exists among the interconnection standards currently in force.

*72* Second, the 300 kW to 20 MW provisions recognize that investor-owned utilities are required to offer interconnection service to grid facilities that are under FERC jurisdiction. The proposed rules require utilities to file interconnection service tariffs equivalent "in all procedural and technical respects" with the FERC tariffs in order to maintain uniformity in UTC-jurisdictional tariffs among the investor-owned utilities and between UTC- and FERC-jurisdictional tariffs. Indeed, reference to the FERC standards will help advance uniformity both in this state and with utilities in other states.

*73* The proposed rules allow a utility to file an interconnection service tariff for 300 kW to 20 MW facilities that differs from the FERC tariff, but only if the utility proves the need for the variation. Any such variation will require commission approval.

*74* NWEC argues that the opportunity to file an alternative tariff under WAC 480-108-090 allows a utility to either "not comply or establish a different standard." According to NWEC this is "inappropriate" and has no place in an interconnection standard because it is counter to a common standard across the state.

*75* While the proposed rules establish a clear priority for the FERC standards, the alternative path is included in WAC 480-108-090 for two important reasons. First, the FERC standards may not have anticipated all circumstances affecting distribution systems, since FERC is most familiar with engineering at the transmission rather than distribution system level. Second, if some shortcoming or problem surfaces with the FERC standard, utilities need the ability to address the problem while continuing to offer interconnection service.

*76* Disconnect Switch. Proposed WAC 480-108-020 (2)(a) reads in relevant part:

The electrical company must verify that the interconnection customer has furnished and installed on its side of the meter a UL-approved safety disconnect switch that can fully disconnect the interconnection customer's generating facility from the electrical company's electric system.

*77* King County comments that requiring a disconnect switch for very small systems is costly and could discourage investment that would otherwise be made.

*78* This provision exists in current WAC 480-108-020 (2)(a). The question whether to retain the requirement of a disconnect switch was addressed at the December 15, 2006, rule-making workshop. All participating parties and those submitting written comments on the workshop questions recommended that the requirement be retained. In particular, IBEW strongly supported retaining the disconnect switch requirement to protect worker safety.

*79* The proposed rule allows the utility to waive this requirement if customer interconnection facilities perform disconnection internally. This is typically the case for the inverter-type facilities used by most small scale projects.

*80* We will make no changes to the proposed text of WAC 480-108-020 (2)(a), but we state our expectation that utilities will exercise discretion regarding this requirement, while at the same time ensuring that worker safety is not compromised. Any conflicts that arise under this requirement may be resolved under the dispute resolution processes provided in WAC 480-108-055.

*81* Ability of the electric company to deny an interconnection request as not feasible. Proposed WAC 480-108-035(4) states in relevant part:

If the studies determine that the interconnection is not feasible, the electrical company will provide notice of the denial to the interconnection customer and the reasons for the denial.

*82* Allied asserts that "all generator interconnection requests under 20 MW are "feasible."[''] Allied observes that the studies and costs will be detailed as a part of the supplemental review process and recommends that the interconnection customer should be able to choose whether to go ahead with a project.

*83* WAC 480-108-055 and 480-108-100 provide that any interconnection customer can dispute a utility's denial of an interconnection request. In this case, the studies would produce the information regarding the necessary facilities and cost and the customer could argue that the project is feasible as long as the customer is willing to pay the cost.

*84* Third-party cost estimates. Proposed WAC 480-108-035(4) states in relevant part: Supplemental review process. If the electrical company determines that additional studies are required to determine the feasibility of the interconnection, the electrical company must notify the interconnection customer within thirty business days of when the application is deemed complete and provide the interconnection customer a form of agreement that includes a description of what studies are required and a good faith estimate of the cost and time necessary to perform the studies.

*85* NWEC recommends that an interconnection customer should be allowed to consider a third-party estimate of costs for the necessary studies along with the utility's cost estimate.

*86* We agree that consideration of cost estimates from third-parties willing and qualified to do the engineering studies found necessary by the utility would be beneficial. We have modified the text of proposed WAC 480-108-035(4) to provide that an interconnection customer may respond to the

utility's good faith estimate of cost with a third-party cost estimate and proposal to accomplish the study work required by the utility. Should the utility and customer not reach agreement on study costs, the dispute resolution provisions at WAC 480-108-055 and 480-108-100 specifically include "electrical company study costs."

*87* Equipment precertification list. Proposed WAC 480-108-020(4) reads in relevant part:

Electrical companies may require interconnection customers to pay for testing and approval of the equipment proposed to be installed to ensure compliance with applicable technical specifications, in their most current approved version.

*88* Allied recommends that an "equipment precertification" list be developed by either a technical standards working group or a state-sanctioned third-party. Allied argues that such a list will minimize the need for redundant testing and facilitate interconnection by informing customers and utilities of what equipment is acceptable.

*89* We agree in principle that development of an equipment precertification list might well improve efficiency by eliminating the need for redundant studies. However, establishing a state-wide, continuing process to develop such a list to which all utilities in the state would defer is beyond the practical scope of our rule making. To avoid redundant studies and promote consistent and fair treatment of interconnection customers, we have qualified a utility's authority to require interconnection customers to pay for testing and approval of the equipment. When a utility has previously studied and approved equipment pursuant to WAC 480-108-020(4) it may not require additional or redundant studies of the same equipment without demonstrating why the additional study is necessary.

*90* We acknowledge that a precertified list of approved equipment may be a good idea and encourage the utilities to work together and with the industry to establish a list to which each utility will defer. The proposed rule gives utilities the discretion to require equipment testing. We expect utilities will exercise this discretion in as cost-effective a way as possible.

*91* **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should adopt the rules in the CR-102 notice at WSR 07-14-150, with the modifications discussed in this order.

*92* **CHANGES FROM PROPOSAL:** The commission adopts the proposal noticed at WSR 07-14-150 with minor editorial changes and the following changes to text necessary for clarification and response to comments as discussed above. In addition, in light of the time required for the additional process opportunities the commission provided stakeholders following the adoption hearing in this docket, the date by which electrical companies must file tariffs under WAC 480-108-060, 480-108-080, and 480-108-090 is set at January 31, 2008, instead of December 31, 2007, as previously stated in the proposed rules.

*93* For clarification, proposed WAC 480-108-001(4) is modified to read as follows:

(4) This chapter does not govern interconnection of, or electrical company services to, PURPA qualifying facilities pursuant to chapter 480-107 WAC.

*94* For clarification, proposed WAC 480-108-020 (1)(f)(i) is modified to read as follows:

(i) Code and standards. All interconnections must conform to all applicable codes and standards for safe and reliable operation. Among these are the National Electric Code (NEC); National Electric Safety Code (NESC); the standards of the Institute of Electrical and Electronics Engineers (IEEE); standards of the North American Electric Reliability Corporation (NERC); the standards of the Western Electricity Coordinating Council (WECC); American National Standards Institute (ANSI); Underwriters Laboratories (UL) standards; local, state and federal building codes, and ~~the~~ any electrical company's written electric service requirement~~, if any.~~ approved by the commission. Electrical companies may require verification that an interconnection customer has obtained all applicable permit(s) for the equipment installations on its property.

*95* For clarification, proposed WAC 480-108-020 (2)(e) is modified to read as follows:

(e) The electrical company must verify on the basis of evidence provided by the interconnection customer that ~~the~~ a generating facility interconnected to a grid network distribution system or a spot network distribution system will not ~~never cause~~ impair public safety or quality of service to the electrical company's other customers as a result of reverse current flow through the electrical company's network protectors.

*96* For clarification, WAC 480-108-040 (7)(b) is modified to read as follows:

(b) Production metering: The electrical company may require separate metering for production, including, if necessary for safety or reliability, metering capable of being remotely accessed. This meter will record all generation produced and may be billed separately from any net metering or customer usage metering. Costs associated with production metering will be paid by the interconnection customer.

*97* Proposed WAC 480-108-035(4) is modified to read as follows:

(4) Supplemental review process. If the electrical company determines that additional studies are required to determine the feasibility of the interconnection, the electrical company must notify the interconnection customer within thirty business days of when the application is deemed complete and provide the interconnection customer a form of agreement that includes a description of what studies are required and a good faith estimate of the cost and time necessary to perform the studies. Within thirty business days after receiving the agreement, the interconnection customer may supply an alternative cost estimate from a third-party qualified to perform the studies required by the electrical company. After the electrical company and the interconnection customer agree on the estimated cost of the required studies and the identity of parties to perform the required studies the interconnection customer must execute and return the completed agreement within thirty business days along with any deposit required by the electrical company not to exceed the lower of

one thousand dollars, or fifty percent of the estimated study cost.

*98* Proposed WAC 480-108-020(4) is modified to read as follows:

(4) In addition to the requirements in subsections (2) and (3) of this section, all noninverter-based interconnections and all inverter-based interconnections failing to meet the requirements of subsection (3) of this section may require more detailed electrical company review. The electrical company must demonstrate the need for additional testing and approval of equipment if the same equipment has been tested and approved previously for any of the electrical company's interconnection customers. Electrical companies may require interconnection customers to pay for needed testing and approval of the equipment proposed to be installed to ensure compliance with applicable technical specifications, in their most current approved version, including:

(a) IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, for systems 10 MVA or less; and

(b) ANSI Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

*99* For clarification, proposed WAC 480-108-040(11) is modified to read as follows:

The electric company also may restrict or prohibit new or expanded interconnected generating capacity on any feeder, circuit or network if engineering, safety or reliability studies ~~indicate~~ establish a need for restriction or prohibition.

*100* For clarification, proposed WAC 480-108-060(1) is modified to read as follows:

(1) By January 31, 2008, the electrical company must file for commission approval, as part of its tariff, and maintain on file for inspection at its place of business, the charges, terms and conditions for interconnections pursuant to Part 1 of this chapter. Such filing must include model forms of the following documents and contracts:

(a) Application;

(b) Interconnection agreement;

(c) Feasibility study agreement;

(d) Construction agreement; and

(e) Certificate of completion.

*101* Proposed WAC 480-108-080(1) is modified to read as follows:

(1) No later than January 31, 2008, ~~December 31, 2007,~~ each electrical company over which the commission has jurisdiction must file an interconnection service tariff for facilities with nameplate generating capacity greater than 300 kW but no more than 20 MW.

*102* Proposed WAC 480-108-090(1) is modified to read as follows:

(1) If an electrical company demonstrates that the small generator interconnection provisions will impair service adequacy, reliability or safety or will otherwise be incompatible with its electric system, the electrical company may file no later than January 31, 2008 ~~December 31, 2007~~, an alternative to the interconnection service tariff required in WAC 480-108-080.

*103* **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-108-001, 480-108-005, 480-108-010, 480-108-020, 480-108-030, 480-108-040, 480-108-050, 480-108-060, and 480-108-999 should be revised as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

*104* After reviewing the entire record, the commission determines that WAC 480-108-015, 480-108-035, 480-108-055, 480-108-065, 480-108-070, 480-108-080, 480-108-090, 480-108-100, 480-108-110, and 480-108-120 should be adopted as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

*105* By revising and adopting these rules, the commission has fulfilled its obligations under amendments made to PURPA in Section 1245(a) of the 2005 Energy Policy Act codified at 16 U.S.C 2621 (d)(15).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 10, Amended 9, Repealed 0; or Recently Enacted State Statutes: New 10, Amended 9, 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 10, Amended 9, Repealed 0.

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

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

**ORDER**

*106* THE COMMISSION ORDERS:

*107* The commission amends WAC 480-108-001, 480-108-005, 480-108-010, 480-108-020, 480-108-030, 480-108-040, 480-108-050, 480-108-060, and 480-108-999 to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

*108* The commission adopts WAC 480-108-015, 480-108-035, 480-108-055, 480-108-065, 480-108-070, 480-108-080, 480-108-090, 480-108-100, 480-108-110, and 480-108-120, as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

*109* This order and the rules set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01, 34.05 RCW and 1-21 WAC.

[1] RCW 80.28.025 establishes a state policy to encourage electric power resources from renewable sources through use of incentives.

[2] Chapter 201, Laws of 2006.

[3] 2005 Energy Policy Act §1254(a) codified at 16 U.S.C. §2621 (d)(15).

[4] Standardization of Small Generator Interconnection Agreements and Procedures, Order No. 2006, 70 F.R. 34100 (June 13, 2005), FERC Stats. & Regs. ¶ 31,180 (2005) (Order No. 2006), order on reh'g, Order No. 2006-A, 70 F.R. 71760 (Nov. 30, 2005), FERC Stats. & Regs. ¶ 31,196 (2005), order on clarif'n, Order No. 2006-B, 71 F.R. 42587 (July 27, 2006), FERC Stats. & Regs. ¶ 61,046 (2006).

[5] Standardization of Small Generator Interconnection Agreements and Procedures, Order No. 2006, 70 F.R. 34100 (June 13, 2005), FERC Stats. & Regs. ¶ 31,180 (2005) (Order No. 2006), order on reh'g, Order No. 2006-A, 70 F.R. 71760 (Nov. 30, 2005), FERC Stats. & Regs. ¶ 31,196 (2005), order on clarif'n, Order No. 2006-B, 71 F.R. 42587 (July 27, 2006), FERC Stats. & Regs. ¶ 61,046 (2006).

[6] The Load-Serving Utilities is a group consisting of Puget Sound Energy, Avista Corporation, Benton REA, Big Bend Rural Electric Cooperative, Chelan County PUD, City of Port Angeles, Clark Public Utilities, Elmhurst Mutual, Grant County PUD, Kittitas County PUD, Lewis County PUD, Seattle City Light, Snohomish County PUD, Tacoma Power, the Washington PUD Association, Western Rural Electric Cooperative Association, and the Association of Washington Cities.

[7] The commission commends the investor-owned and public utilities for working cooperatively to develop a proposed set of uniform interconnection standards. We particularly appreciate the constructive participation in our inquiry and rule-making process of the public utilities that are not within our jurisdiction.

[8] Staff memorandum in Docket UE-060649 re: Network Distribution Systems, September 5, 2007.

[9] *Id.*

[10] Survey of Interconnection Rules. United States Environmental Protection Agency filing in Docket UE-060649. July 25, 2006.

[11] *See, Cole v. Washington Utils. & Transp. Comm'n,* 79 Wn.2d 302, 310-11, 485 P.2d 71 (1971) (unlawful rate discrimination does not result if groups of customers pay different rates based upon reasonable differences in the conditions or cost of service).

[12] SSB 5101, chapter 300, Laws of 2005, codified at RCW 82.16.120(2).

DATED at Olympia, Washington, September 27, 2007.

Washington State Utilities and Transportation Commission

Mark H. Sidran, Chairman
Patrick J. Oshie, Commissioner
Philip B. Jones, Commissioner

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

**WAC 480-108-001 Purpose and scope.** (1) The purpose of this chapter is ((~~to establish rules for determining the terms and conditions governing the interconnection of electric generating facilities with a nameplate generating capacity of not more than 25 kilowatts to the electric system of an electrical company over which the commission has jurisdiction~~)) two-fold:

(a) Part 1 of this chapter establishes rules for determining the charges, terms and conditions governing the interconnection of customer-owned electric generating facilities with a nameplate generating capacity of no more than 300 kilowatts (kW) to the electric system of an electrical company over which the commission has jurisdiction.

(b) Part 2 of this chapter establishes rules requiring each electrical company to file interconnection service tariffs for interconnection of electric generating facilities with a nameplate generating capacity greater than 300 kW but no more than 20 megawatts (MW) to the electric system of an electrical company over which the commission has jurisdiction. The terms and conditions in such interconnection service tariffs must be either equivalent in all procedural and technical respects with the electrical company's interconnection service offered under its open access transmission tariff approved by the Federal Energy Regulatory Commission, or they must comply with a specified set of requirements set out in WAC 480-108-090.

(2) These rules are intended:

(a) To be consistent with the requirements of chapter 80.60 RCW, Net metering of electricity; ((~~to partially~~))

(b) To comply with Section 1254 of the Energy Policy Act of 2005, Pub. L. No. 109-58 (2005) that amended section 111(d) of the Public Utility Regulatory Policy Act (PURPA) relating to Net Metering (subsection 11) and Interconnection (subsection 15); and

(c) To promote the purposes of ((~~Substitute Senate Bill No. 5101, chapter 300, Laws of 2005~~)) RCW 82.16.120 (effective July 1, 2005).

(3) This chapter governs the terms and conditions under which ((~~the applicant's~~)) an interconnection customer's generating facility, including without limitation net-metered facilities, will interconnect with, and operate in parallel with, the electrical company's electric system. This chapter does not govern the settlement, purchase or delivery of any power generated by ((~~the applicant's~~)) an interconnection customer's net-metered or production-metered generating facility.

(4) This chapter does not govern interconnection of, or electrical company services to, PURPA qualifying facilities pursuant to chapter 480-107 WAC.

(5) This chapter does not govern standby generators designed and used only to provide power to the customer when the local electric distribution company service is interrupted and that operate in parallel with the electric distribution company for less than 0.5 seconds both to and from emergency service.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

**WAC 480-108-005 Application of rules.** (1) The rules in this chapter apply to any electrical company that is subject to ((~~the jurisdiction of the~~)) commission jurisdiction under RCW 80.04.010 and chapter 80.28 RCW. These rules also include various eligibility and other requirements applicable to ((~~the applicant and the generator~~)) existing or potential interconnection customers.

(2) This chapter governs interconnections subject to the jurisdiction of the commission and does not govern interconnections subject to the jurisdiction of the Federal Energy Regulatory Commission.

(3) The tariff provisions filed by electrical companies must conform to these rules. If the commission accepts a tariff that conflicts with these rules, the acceptance does not constitute a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-100-008.

(4) Electrical companies shall modify((~~, if necessary, any~~)) existing tariffs, ((~~including~~)) if necessary, to conform to these rules. This includes, but is not limited to, tariffs imple-

menting chapter 80.60 RCW, Net metering of electricity((~~, which are currently on file and approved by the commission to conform to these rules~~)).

(((~~(3)~~))) (5) Disputes that arise under this chapter will be addressed in accordance with chapter 480-07 WAC. Any existing or potential interconnection customer may ask the commission to review the interpretation or application of these rules by an electrical company by making an informal complaint under WAC 480-07-910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleadings—General.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

**WAC 480-108-010 Definitions.** ((~~**"Applicant"** means any person, corporation, partnership, government agency, or other entity applying to interconnect a generating facility to the electrical company's electric system pursuant to this chapter.~~))

**"Application"** means the written notice as defined in WAC 480-108-030 ((~~provided by the applicant~~)) that the interconnection customer provides to the electrical company ((~~that~~)) to initiate((~~s~~)) the interconnection process.

**"Business day"** means Monday through Friday excluding official federal and state holidays.

**"Certificate of completion"** means the form ((~~as defined~~)) described in WAC 480-108-050 that must be completed by the ((~~applicant or generator~~)) interconnection customer and the electrical inspector having jurisdiction over the installation of the facilities indicating completion of installation and inspection of the interconnection. As provided in WAC 480-108-050, the certificate of completion must be reviewed and approved, in writing, by the electrical company before the interconnection customer's generation facility may be connected and operated in parallel with the electrical company's electrical system.

**"Commission"** means the Washington utilities and transportation commission.

**"Electric system"** means all electrical wires, equipment, and other facilities owned ((~~or provided~~)) by the electrical company that are used to transmit electricity to customers.

**"Electrical company"** means any public service company, as defined by RCW 80.04.010, engaged in the generation, distribution, sale or furnishing of electricity and ((~~which is~~)) subject to the jurisdiction of the commission.

**"Generating facility"** means a source of electricity owned by the ((~~applicant or generator~~)) interconnection customer that is located on the ((~~applicant's~~)) interconnection customer's side of the point of common coupling, and all ((~~facilities~~)) ancillary and appurtenant ((~~thereto~~)) facilities, including interconnection facilities, which the ((~~applicant~~)) interconnection customer requests to interconnect to the electrical company's electric system.

((~~**"Generator"** means the entity that owns and/or operates the generating facility interconnected to the electrical company's electric system.~~))**"Grid network distribution system"** means electrical service from a distribution system consisting of two or more primary circuits from one or more substations or transmission supply points arranged such that they collectively feed secondary circuits serving more than one location and more than one electrical company customer.

**"Interconnection customer"** means the person, corporation, partnership, government agency, or other entity that owns and operates a generating facility interconnected or requested to be interconnected to the electrical company's electric system. The interconnection customer may assign to another party responsibility for compliance with the requirements of this rule only with the express written permission of the electrical company.

**"Initial operation"** means the first time the generating facility is in parallel operation with the electric system.

**"In-service date"** means the date on which the generating facility and any related facilities are complete and ready for service, even if the generating facility is not placed in service on or by that date.

**"Interconnection"** means the physical connection of a generating facility to the electric system so that parallel operation may occur.

**"Interconnection facilities"** means the electrical wires, switches and other equipment owned by the electrical company or the interconnection customer and used to interconnect a generating facility to the electric system. Interconnection facilities are located between the generating facility and the point of common coupling. Interconnection facilities do not include system upgrades.

**"Model interconnection agreement"** means a written agreement including standardized terms and conditions that govern the interconnection of generating facilities pursuant to this chapter. The model interconnection agreement may be modified to accommodate terms and conditions specific to individual interconnections, subject to the conditions set forth in these rules.

**"Net metering"** means measuring the difference between the electricity supplied by an electrical company and the electricity generated by a generating facility that is fed back to the electrical company over the applicable billing period.

((~~**"Network distribution system (grid or spot)"** means electrical service from a distribution system consisting of two or more primary circuits from one or more substations or transmission supply points arranged such that they collectively feed secondary circuits serving one (a spot network) or more (a grid network) electrical company customers.~~))

**"Network protectors"** means devices installed on a spot network distribution system designed to detect and interrupt reverse current-flow (flow out of the network) as quickly as possible, typically within three to six cycles.

**"Parallel operation"** or **"operate in parallel"** means the synchronous operation of a generating facility while interconnected with an electrical company's electric system.

**"Point of common coupling"** or **"PCC"** means the point where the generating facility's local electric power system connects to the electrical company's electric system, such as the electric power revenue meter or at the location of the equipment designated to interrupt, separate or disconnect the connection between the generating facility and electrical

company. The point of common coupling is the point of measurement for the application of IEEE 1547, clause 4.

**"PURPA qualifying facility"** means a generating facility that meets the criteria specified by the Federal Energy Regulatory Commission (FERC) in 18 CFR Part 292 Subpart B and that sells power to an electrical company under chapter 480-107 WAC.

**"Spot network distribution system"** means electrical service from a distribution system consisting of two or more primary circuits from one or more substations or transmission supply points arranged such that they collectively feed a secondary circuit serving a single location (e.g., a large facility or campus) containing one or more electrical company customers.

**"System upgrades"** means the additions, modifications and upgrades to the electrical company's electrical system at or beyond the point of common coupling necessary to facilitate the interconnection of the generating facility. System upgrades do not include interconnection facilities.

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

## PART 1: INTERCONNECTION OF GENERATION FACILITIES WITH NAMEPLATE CAPACITY RATING OF 300 KW OR LESS

NEW SECTION

**WAC 480-108-015 Scope of Part 1.** The provisions in Part 1 of this chapter apply to interconnections, and to applications to interconnect, customer-owned generating facilities with a nameplate capacity rating of 300 kW or less to an electrical company's electrical system under this chapter.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

**WAC 480-108-020 Technical standards for interconnection.** ((~~The technical standards listed in this section shall apply to all generating facilities to be interconnected to the electrical company under this chapter.~~))

(1) General interconnection requirements.

(a) ((~~Any~~)) The interconnection of a generating facility ((~~desiring to interconnect~~)) with the electrical company's electric system, the modification of a generating facility that is currently interconnected to the electrical company's electric system, or ((~~modify~~)) the modification of an existing interconnection must meet all minimum technical specifications applicable, in their most current approved version, as set forth in ((~~this chapter~~)) WAC 480-108-999.

(b) ((~~The specifications and requirements in this section are intended to mitigate possible adverse impacts caused by the generating facility on electrical company equipment and personnel and on other customers of the electrical company. They are not intended to address protection of the generating facility itself, generating facility personnel, or its internal load. It is the responsibility of the generating facility to comply with the requirements of all appropriate standards, codes, statutes and authorities to protect its own facilities, personnel, and loads~~)) Interconnection of a generation facility with a nameplate capacity rating of 300 kW or less must comply with all applicable requirements in Table 1.

**Table 1. 300 kW Capacity or Less.**

| | Single-Phase | | Three-Phase | |
|---|---|---|---|---|
| **Feature** | **< 50 kW Inverter based** | **< 50 kW Noninverter based** | **< 300 kW Inverter based** | **< 300 kW Noninverter based** |
| IEEE 1547 compliant | X | X | X | X |
| UL 1741 listed | X | | X | |
| Interrupting devices (capable of interrupting maximum available fault current) | X (8) | X | X (8) | X |
| Interconnection disconnect device (manual, lockable, visible, accessible) | X (1) | X | X | X |
| System protection | | X (3)(4)(6) | | X (3)(4)(5)(6) |
| Over-voltage trip | X (8) | X | X (8) | X |
| Under-voltage trip | X (8) | X | X (8) | X |
| Over/under frequency trip | X (8) | X | X (8) | X |
| Automatic synchronizing check | | X | | X |
| Ground over-voltage or over-current trip for utility system faults | | | | X (2) |
| Power factor | | X (7) | | X (7) |

Notes:
X - Required feature (blank = not required).
(1) - Electrical company may choose to waive this requirement.
(2) - May be required by electrical company; selection based on grounding system.
(3) - No single point of failure shall lead to loss of protection.
(4) - All protective devices shall fully meet the requirements of American National Standards Institute C37.90.
(5) - Electrical company will specify the transformer connection.
(6) - It is the customer's responsibility to ensure that its system is effectively grounded as defined by IEEE Std. 142 at the point of common coupling.
(7) - Variance may be allowed based upon specific requirements per electrical company review. Charges may be incurred for losses.
(8) - UL 1741 listed equipment provides required protection.

(c) Any single or aggregated generating facility with a capacity greater than 50 kW requires a three-phase interconnection.

(d) The specification and requirements in this section are intended to mitigate possible adverse impacts caused by the generating facility on electrical company equipment and personnel and on other customers of the electrical company. The specifications and requirements in this section are not intended to address protection of the generating facility or its internal load, or generating facility personnel. The interconnection customer is responsible for complying with the requirements of all appropriate standards, codes, statutes, and authorities to protect its own facilities, personnel, and loads.

(((~~(c)~~))) (e) The specifications and requirements in this section ((~~shall~~)) apply generally to the ((~~nonelectrical company-owned electric generation equipment to which this standard and~~)) interconnection to an electrical company's electric system of customer-owned and operated electric equipment and any other facilities or equipment not owned by the electrical company to which interconnection agreement(s) apply throughout the period encompassing the ((~~generator's~~)) interconnection customer's installation, testing and commissioning, operation, maintenance, decommissioning and removal of ((~~said~~)) equipment. The electrical company may verify compliance at any time, with reasonable notice.

(((~~(d)~~))) (f) The ((~~generator shall~~)) electrical company may refuse to establish or maintain interconnection with any interconnection customer that fails to comply with the requirements in (((~~(d)~~))) (f)(i), (ii) and (iii) of this subsection. However, at its sole discretion, the electrical company may approve alternatives that satisfy the intent of, and/or may excuse compliance with, any specific elements of these requirements except local, state and federal building codes.

(i) Code and standards. ((~~Applicant shall~~)) All interconnections must conform to all applicable codes and standards for safe and reliable operation. Among these are the National Electric Code (NEC)((~~,~~)); National Electric Safety Code (NESC)((~~,~~)); the standards of the Institute of Electrical and Electronics Engineers (IEEE); the ((~~Institute of Electrical and Electronics Engineers (IEEE), American National Standards Institute (ANSI), and~~)) standards of the North American Electric Reliability Corporation (NERC); the standards of the Western Electricity Coordinating Council (WECC); American National Standards Institute (ANSI); Underwriters Laboratories (UL) standards((~~, and~~)); local, state and federal building codes, and any electrical company's written electric service requirement approved by the commission. ((~~The generator shall be responsible to obtain~~)) Electrical companies may require verification that an interconnection customer has obtained all applicable permit(s) for the equipment installations on its property.

(ii) Safety. All safety and operating procedures for ((~~joint use equipment shall be in compliance~~)) interconnection facilities must comply with the Occupational Safety and Health Administration (OSHA) Standard at 29 CFR 1910.-269, the NEC, Washington Administrative Code (WAC) rules, the Washington Industrial Safety and Health Administration (WISHA) Standard, and equipment manufacturer's safety and operating manuals.

(iii) Power quality. Installations ((~~will~~)) must be in compliance with all applicable standards including, without limitation, IEEE Standard 519((~~-1992~~)) Harmonic Limits, and IEEE Standard 141 Flicker as measured at the PCC.

(2) Specific interconnection requirements.

(a) ((~~Applicant shall furnish~~)) The electrical company must verify that the interconnection customer has furnished and ((~~install~~)) installed on ((~~applicant's~~)) its side of the meter, a UL-approved safety disconnect switch ((~~which shall be capable of~~)) that can fully ((~~disconnecting~~)) disconnect the ((~~applicant's~~)) interconnection customer's generating facility from the electrical company's electric system. The disconnect switch ((~~shall~~)) must be located adjacent to electrical company meters and shall be of the visible break type in a metal enclosure ((~~which~~)) that can be secured by a padlock. The disconnect switch ((~~shall~~)) must be accessible to electrical company personnel at all times.

(b) The requirement in (a) of this subsection may be waived by the electrical company if the interconnection customer:

(i) ((~~Applicant~~)) Provides interconnection ((~~equipment~~)) facilities that ((~~applicant~~)) the interconnection customer can demonstrate, to the satisfaction of electrical company, perform((~~s~~)) physical disconnection of the generating equipment supply internally; and

(ii) ((~~Applicant~~)) Agrees that its service may be disconnected entirely if generating equipment must be physically disconnected for any reason.

Such waiver granted by the electrical company to the interconnection customer must be explicit and in writing.

(c) The electrical company ((~~shall have~~)) has the right to disconnect the generating facility at the disconnect switch ((~~under the following circumstances~~)):

(i) When necessary to maintain safe electrical operating conditions;

(ii) If the generating facility does not meet required standards; or

(iii) If the generating facility at any time adversely affects or endangers any person, the property of any person, the electrical company's operation of its electric system or the quality of electrical company's service to other customers.

(d) Nominal voltage and phase configuration of ((~~applicant's~~)) interconnection customer's generating facility must be compatible ((~~to~~)) with the electrical company's system within generally accepted engineering standards including without limitation IEEE Standards 141 and 519 at the point of common coupling.

(e) ((~~Applicant must provide evidence that its generation~~)) The electrical company must verify on the basis of evidence provided by the interconnection customer that a generating facility interconnected to a grid network distribution system or a spot network distribution system will ((~~never result in~~)) not impair public safety or quality of service to the electrical company's other customers as a result of reverse current flow through the electrical company's network protectors.

(f) All instances of interconnection to ((~~secondary~~)) spot network distribution ((~~networks shall~~)) systems require review, studies as necessary, and written ((~~preapproval~~)) approval by the electrical company.

(g) All instances of interconnection to ((~~distribution secondary~~)) grid network((~~s is not allowed~~)) distribution systems require review, studies as necessary, and written approval by the electrical company.

(h) Closed transition transfer switches are not allowed in ((~~secondary~~)) network distribution systems.

(3) Specifications applicable to all inverter-based interconnections. In addition to the requirements contained in subsections (1) and (2) of this section, the interconnection of any inverter-based generating facility ((~~desiring to interconnect~~)) with the electrical company's electric system, or ((~~modify~~)) the modification of an existing interconnection with an inverter-based generating facility must meet the following additional technical specifications, in their most current approved version((~~, as set forth below.~~)):

(a) IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems((~~.~~));

(b) UL Standard 1741, Inverters, Converters, and Controllers for Use in Independent Power Systems. Equipment must be UL listed((~~.~~)); and

(c) IEEE Standard 929, IEEE Recommended Practice for Utility Interface of Photovoltaic (PV) Systems.

(4) ((~~Requirements applicable to~~)) In addition to the requirements in subsections (2) and (3) of this section, all noninverter-based interconnections((~~. Noninverter-based interconnection requests~~)) and all inverter-based interconnections failing to meet the requirements of subsection (3) of this section may require more detailed electrical company review((~~, testing, and approval, at applicant cost,~~)). The electrical company must demonstrate the need for additional testing and approval of equipment if the same equipment has been tested and approved previously for any of the electrical company's interconnection customers. Electrical companies may require interconnection customers to pay for needed testing and approval of the equipment proposed to be installed to ensure compliance with applicable technical specifications, in their most current approved version, including:

(a) IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems((~~.~~)), for systems 10 MVA or less; and

(b) ANSI Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

(((~~(c) Applicants proposing such interconnection~~)) (5) The electric company may ((~~also be required~~)) require interconnection customers proposing noninverter-based interconnection to submit a power factor mitigation plan for electrical company review and approval.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

**WAC 480-108-030 Application for interconnection.** (1) ((~~When an applicant requests interconnection from an electrical company, the applicant shall be responsible for conforming to the rules and regulations that are in effect and on file with the commission. The electric utility will designate a point of contact and publish a telephone number or web site address for this unique purpose. The applicant seeking to interconnect a generating facility under these rules must fill out and submit a signed application form to the electrical company. Information must be accurate, complete, and approved by the electrical company prior to installing the generating facility. The electrical company shall file a form of application with the commission.~~)) The electrical company must file a standard form of application with the commission, which the interconnection customer seeking to interconnect a generating facility under Part 1 of this chapter must fill out and submit to the electrical company along with the application fee established according to subsection (4) of this section.

(2) The electrical company will designate a point of contact and publish a telephone number and/or web site address for the unique purpose of assisting potential interconnection customers. The electrical company must comply with reasonable requests for information including relevant system studies, interconnection studies, and other materials useful for an interconnection customer to understand the circumstances of an interconnection at a particular point on the electrical company's electric system, to the extent provision of such information does not violate confidentiality provisions of prior electrical company agreements.

(3) Prior to submitting its interconnection request, a potential interconnection customer may ask the electrical company whether and how the proposed interconnection is subject to this chapter. The electrical company must respond within fifteen business days.

(((~~(2)~~)) (4) Application fees. The electrical company ((~~may require~~)) must establish a nonrefundable interconnection application fee ((~~of no more than one hundred dollars~~)) set according to facility size to be paid by the interconnection customer to the electrical company when the interconnection customer submits its application. The fee, intended to cover the costs of processing the application, will be no greater than:

(a) One hundred dollars for facilities 0 to 25 kW; and

(b) Five hundred dollars for facilities 26 to 300 kW.

(((~~(3) Application prioritization. All generation interconnection requests pursuant to this chapter will be prioritized by the electrical company in the same manner as any new load requests. Preference will not be given to either request type. The electrical company will process the application and provide interconnection in a time frame consistent with the average of other service connections.~~

~~(4)~~)) (5) Interconnection application. The electrical company must stamp all interconnection requests to document the date and time received. The original date and time stamp affixed to the interconnection request will serve as the beginning point for purposes of any timetables in the application and review process.

(6) Application evaluation. ((~~All generation interconnection requests pursuant to this chapter will be reviewed by the utility for compliance with the rules of this chapter. If the utility in its sole discretion finds that the application does not comply with this chapter, the utility may reject the application. If the utility rejects the application, it shall provide the applicant with written notification stating its reasons for rejecting the application.~~)) Upon receipt of an interconnection application, the electrical company must notify the interconnection customer within ten business days whether the interconnection request is complete. If the application is not complete, the electrical company must provide a written list detailing all additional information necessary to complete the application. The interconnection customer must supply the necessary information or request an extension of time within ten business days. If the interconnection customer does not provide within ten business days the listed information necessary to complete the application or request an extension of time, the electrical company may reject the application.

NEW SECTION

**WAC 480-108-035 Model interconnection agreement, review and acceptance of interconnection agreements and costs.** (1) Each electrical company must file a model form of interconnection agreement for approval by the commission.

(2) Simplified review process. Once an application is accepted by the electrical company as complete, the electrical company will review the application to determine if the interconnection request complies with the technical standards established in WAC 480-108-020 and to determine whether any additional engineering, safety, reliability or other studies are required. The electrical company must notify the interconnection customer of the result of these determinations within thirty business days of when the application is deemed complete.

(3) If the electrical company notifies the interconnection customer that the request complies with the technical requirements established in WAC 480-108-020 and no additional studies are required to determine the feasibility of the interconnection, the electrical company must offer the interconnection customer an executable interconnection agreement within five business days of such notification. The electrical company also will provide any additional interim agreements, such as construction agreements, that may be necessary and a good faith estimate of the cost and time necessary to complete the interconnection. The interconnection customer must execute and return the completed agreement(s) within thirty business days following receipt. The interconnection customer must simultaneously pay any deposit required by the electrical company not to exceed fifty percent of the estimated costs to complete the interconnection.

(4) Supplemental review process. If the electrical company determines that additional studies are required to determine the feasibility of the interconnection, the electrical company must notify the interconnection customer within thirty business days of when the application is deemed complete and provide the interconnection customer a form of agreement that includes a description of what studies are required and a good faith estimate of the cost and time necessary to perform the studies. Within thirty business days after receiving the agreement, the interconnection customer may supply an alternative cost estimate from a third-party qualified to perform the studies required by the electrical company. After the electrical company and the interconnection customer agree on the estimated cost of the required studies and the identity of parties to perform the required studies the interconnection customer must execute and return the completed agreement within thirty business days along with any deposit required by the electrical company not to exceed the lower of one thousand dollars, or fifty percent of the estimated study cost.

(5) The electrical company will provide the interconnection customer with the results of the studies conducted under subsection (4) of this section. If the studies determine that the interconnection is not feasible, the electrical company will provide notice of denial to the interconnection customer and the reasons for the denial.

(6) If the studies conducted under subsection (4) of this section determine that the interconnection is feasible, the electrical company will notify the interconnection customer and provide an executable interconnection agreement to the interconnection customer within five business days of such notification. The electrical company also will provide any additional interim agreements, such as construction agreements, that may be necessary and a good faith estimate of the cost and time necessary to complete the interconnection. The interconnection customer must execute and return the completed agreement(s) within thirty business days following receipt. The interconnection customer must simultaneously pay any deposit required by the electrical company not to exceed fifty percent of the estimated costs to complete the interconnection.

(7) An interconnection customer's failure to execute and return completed agreements and required deposits within the time frames specified in subsections (3), (4) and (6) of this section may result in termination of the application process by the electrical company under terms and conditions stated in such agreements.

(8) The interconnection customer shall be responsible for all reasonable costs incurred by the electrical company to study the proposed interconnection and to design, construct, operate and maintain any required interconnection facilities or system upgrades all as required under the charges, terms and conditions stated in the study agreement(s) and interconnection agreement required above.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

**WAC 480-108-040 General terms and conditions of interconnection.** The general terms and conditions listed in this section shall apply to all interconnections of customer-owned generating facilities ((~~interconnecting to the electrical company under this chapter~~)) with nameplate capacity less than or equal to 300 kW to an electrical company's electric system under Part 1 of this chapter.

(1) Any electrical generating facility with a maximum ((~~electrical generating~~)) nameplate capacity rating of ((~~25~~)) 300 kW or less must comply with these rules to be eligible to interconnect and operate in parallel with the electrical company's electric system. The rules under this chapter ((~~shall~~)) apply to all ((~~interconnecting~~)) interconnection customer-owned generating facilities that are intended to operate in parallel with an electrical company's electric system irrespective of whether the ((~~applicant~~)) interconnection customer intends to generate energy to serve all or a part of the ((~~applicant's~~)) interconnection customer's load; or to sell the output to the electrical company or any third party purchaser.

(2) ((~~In order~~)) To ensure system safety and reliability of interconnected operations, all interconnected generating facilities ((~~shall~~)) must be constructed and operated ((~~by generator~~)) in accordance with this chapter and all other applicable federal, state, and local laws and regulations.

(3) Prior to initial operation, all ((~~generators~~)) interconnection customers must submit a completed certificate of completion to the electrical company, execute an appropriate interconnection agreement and any other agreement(s) required for the disposition of the generating facility's electric power output as described in WAC 480-108-040(((~~14~~))) (15). The interconnection agreement between the electrical company and ((~~generator~~)) the interconnection customer outlines the interconnection standards, cost allocation and billing agreements, and on-going maintenance and operation requirements.

(4) ((~~Applicant or generator~~)) The interconnection customer shall promptly furnish the electrical company with copies of such plans, specifications, records, and other information relating to the generating facility or the ownership, operation, use, electrical company access to, or maintenance of the generating facility, as may be reasonably requested by the electrical company from time to time.

(5) For the purposes of public and working personnel safety, ((~~any nonapproved generation interconnections discovered will be~~)) the electrical company may immediately ((~~disconnected~~)) disconnect from the electrical company system any nonapproved generation interconnections.

(6) To ensure reliable service to all electrical company customers and to minimize possible problems for other customers, the electrical company will review the need for a dedicated-to-single-customer distribution transformer. ((~~Interconnecting generating facilities under 25 kW may require a separate transformer.~~)) If the electrical company requires a dedicated distribution transformer, the ((~~applicant or generator shall~~)) interconnection customer must pay ((~~for~~)) all reasonable costs of the new transformer and related facilities in accordance with subsection (13) of this section.

(7) Metering.

(a) Net metering for solar, wind, hydropower ((~~and~~)) fuel cells and facilities that simultaneously produce electricity and useful thermal energy as set forth in chapter 80.60 RCW((~~:~~)). The electrical company ((~~shall~~)) will install, own and maintain a kilowatt-hour meter, or meters as the installation may determine, capable of registering the bi-directional flow of electricity at the point of common coupling at a level of accuracy that meets all applicable standards, regulations and statutes. The meter(s) may measure such parameters as time of delivery, power factor, voltage and such other parameters as the electrical company ((~~shall specify~~)) specifies. The ((~~applicant shall~~)) interconnection customer must provide space for metering equipment. ((~~It will be the applicant's responsibility to~~)) The interconnection customer must provide the current transformer enclosure (if required), meter socket(s) and junction box after the ((~~applicant~~)) interconnection customer has submitted drawings and equipment specifications for electrical company approval. The electrical company may approve other generating sources for net metering but is not required to do so.

(b) Production metering: The electrical company may require separate metering, including, if necessary for safety or reliability, metering capable of being remotely accessed, for production. This meter will record all generation produced and may be billed separately from any net metering or customer usage metering. ((~~All~~)) Costs associated with ((~~the installation of~~)) production metering will be paid by the ((~~applicant~~)) interconnection customer.

(8) Common labeling furnished or approved by the electrical company and in accordance with NEC requirements must be posted on the meter base, disconnects, and transformers informing working personnel that generation is operating at or is located on the premises.

(9) As currently set forth for qualifying generation under chapter 80.60 RCW (net metering), ((~~for solar, wind, hydro or fuel cells,~~)) no additional insurance will be necessary for interconnections that qualify for net metering. For ((~~other generating facilities permitted under these standards but not contained within~~)) generation other than qualifying generation under chapter 80.60 RCW, additional insurance, limitations of liability and indemnification may be required by the electrical company.

(10) ((~~Prior to any future modification or expansion of the generating facility, the generator will obtain~~)) The electrical company must review and ((~~approval~~)) approve any future modification or expansion of an interconnected generating facility. The electrical company ((~~reserves the right to require the generator, at the generator's expense, to provide corrections or additions to existing electrical devices in the event of modification of government or industry regulations and standards~~)) may require the interconnection customer to provide and pay for corrections or additions to existing interconnection facilities if government or industry regulations and standards are modified. The electric company must notify the interconnection customer in writing of any such requirement. The electrical company may terminate interconnection service if the interconnection customer does not within thirty business days of the date of the notice arrange

with the electrical company a mutually agreed schedule to comply with such requirements.

(11) For the overall safety and protection of the electrical company system, chapter 80.60 RCW ((~~currently~~)) limits interconnection of generation for net metering to ((~~0.1%~~)) .25 percent of the electrical company's peak demand during 1996 and, beginning in 2014, to .50 percent of the electrical company's peak demand during 1996. Additionally, interconnection of generating facilities for net metering to individual distribution feeders ((~~will be~~)) is limited to 10((~~%~~)) percent of the feeder's peak capacity. ((~~However,~~)) The electrical company also may((~~, in its sole discretion, allow additional generation interconnection beyond these stated limits~~)) restrict or prohibit new or expanded interconnected generation capacity on any feeder, circuit or network if engineering, safety or reliability studies establish a need for restriction or prohibition.

(12) ((~~It~~)) The interconnection customer is ((~~the responsibility of the generator to protect~~)) responsible for protecting its facilities, loads and equipment and ((~~comply~~)) complying with the requirements of all appropriate standards, codes, statutes and authorities.

(13) Charges by the electrical company to the ((~~applicant or generator~~)) interconnection customer in addition to the application fee, if any, ((~~will~~)) must be ((~~compensatory and applied as appropriate~~)) cost-based and consistent with generally accepted engineering practices. Such ((~~costs~~)) charges may include, but are not limited to, the cost of engineering studies; the cost of transformers, production meters, and electrical company testing((~~,~~)); the cost of qualification, and approval of non-UL 1741 listed equipment; the cost of interconnection facilities, and the cost of any required system upgrades. Unless an electrical company demonstrates by reference to its integrated resource plan prepared pursuant to WAC 480-100-238, its conservation targets pursuant to RCW 19.285.040, its studies performed under WAC 480-108-065, or other evidence that an interconnection will provide quantifiable benefits to the electrical company's other customers, electrical company charges to the interconnection customer will include all costs made necessary by the requested interconnection service. If an electrical company demonstrates that an interconnection will produce quantifiable benefits for the electrical company's other customers, it may incur a portion of these costs for commission consideration for recovery in its general rates commensurate with such benefits. If after consideration of any costs approved by the commission for recovery in general rates the remaining costs are less than any amounts paid by the interconnection customer, the electrical company must refund the excess amount to the interconnection customer. ((~~The generator shall be responsible for any costs associated with any future upgrade or modification to its interconnected system required by modifications in the electrical company's electric system.~~))

(14) ((~~This section does not govern the settlement, purchase or delivery of any power generated by applicant's generating facility. The purchase or delivery of power, including net metering of electricity pursuant to chapter 80.60 RCW, and other services that the applicant may require will be covered by separate agreement or pursuant to the terms, conditions and rates as may be from time to time approved by the commission. Any such agreement shall be complete prior to initial operation and filed with the commission.~~)) The interconnection customer is responsible for costs associated with future upgrades or modification to its generating facility or interconnection facilities made necessary by modifications the electrical company makes to its electric system.

(15) ((~~Generator may disconnect the generating facility at any time; provided, that the generator provide reasonable advance notice to the electrical company.~~)) This section does not govern the settlement, purchase or delivery of any power generated by the interconnection customer's generating facility. The purchase or delivery of power, including net metering of electricity pursuant to chapter 80.60 RCW, power purchases and sales to PURPA qualifying facilities pursuant to chapter 480-107 WAC, and other services that the interconnection customer may require will be covered by separate agreement or pursuant to the terms, conditions and rates as may be from time to time approved by the commission. Any such agreement shall be completed prior to initial operation and filed with the commission.

(16) ((~~Generator shall notify the electrical company prior to the sale or transfer of the generating facility, the interconnection facilities or the premises upon which the facilities are located. The applicant or generator shall not assign its rights or obligations under any agreement entered into pursuant to these rules without the prior written consent of electrical company, which consent shall not be unreasonably withheld.~~)) The interconnection customer may disconnect the generating facility at any time after providing reasonable advance notice to the electrical company.

(17) The electrical company must require an interconnection customer to provide notice of the sale or transfer of the interconnection customer's generating facility, interconnection facilities or the premises upon which the interconnection facilities are located. To continue interconnection service to a new owner, the electrical company must require the new owner to execute a new interconnection agreement.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

**WAC 480-108-050 Certificate of completion.** ((~~All generating facilities~~)) Interconnection customers must obtain an electrical permit and pass electrical inspection for all generating and interconnection facilities before they can be connected or operated in parallel with the electrical company's electric system. ((~~Generator shall provide to electrical company written certification~~)) The electrical company must receive written certification from the interconnection customer that the generating facility has been installed and inspected in compliance with the local building and/or electrical codes. The electrical company must review and approve in writing the certificate of completion, before the interconnection customer's generating facility may be operated in parallel with the electrical company's electric system. The electrical company shall not unreasonably withhold such approval, but shall have the right to inspect and test the interconnection facilities in accordance with IEEE 1547.1 prior to parallel operation.

NEW SECTION

**WAC 480-108-055 Dispute resolution.** An interconnection customer may ask the commission to review an electrical company's study costs, interconnection facility costs, system upgrade costs, deposit requirements, assignment of costs to the interconnection customer or an electrical company's processing, termination, denial or rejection of an application by making an informal complaint under WAC 480-07-910, or by filing a formal complaint under WAC 480-07-370.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

**WAC 480-108-060 Required filings—Exceptions.** (1) By January 31, 2008, the electrical company ((~~shall~~)) must file for commission approval, as part of its tariff, and maintain on file for inspection at its place of business, the charges, terms and conditions for interconnections pursuant to Part 1 of this chapter. Such filing ((~~shall~~)) must include model forms of the following documents and contracts:

(a) Application((~~-~~));

(b) ((~~Model~~)) Interconnection agreement((~~-~~));

(c) Feasibility study agreement;

(d) Construction agreement; and

(e) Certificate of completion.

(2) The commission may grant such exceptions to these rules as may be appropriate in individual cases.

NEW SECTION

**WAC 480-108-065 Cumulative effects of interconnections with a nameplate capacity rating of 300 kW or less.** Electrical companies will evaluate on an ongoing basis, but not less than once every five years, the cumulative effect, including benefits to its other customers, of interconnections made under Part 1 of this chapter on its electric system and will retain appropriate records of its evaluations.

## PART 2: INTERCONNECTION OF GENERATION FACILITIES WITH NAMEPLATE CAPACITY RATING GREATER THAN 300 KW BUT NO MORE THAN 20 MW

NEW SECTION

**WAC 480-108-070 Scope of Part 2.** Part 2 of this chapter applies to interconnections of, and applications to interconnect customer-owned generating facilities with a nameplate capacity rating of greater than 300 kW but no more than 20 MW to an electrical company's electric system under this chapter.

NEW SECTION

**WAC 480-108-080 Interconnection service tariffs.** (1) No later than January 31, 2008, each electrical company over which the commission has jurisdiction must file an interconnection service tariff for facilities with nameplate generating capacity greater than 300 kW but no more than 20 MW.

(2) Interconnection service tariffs must offer service equivalent in all procedural and technical respects to the interconnection service the electrical company offers under the small generator interconnection provisions of its open access transmission tariff as approved by the Federal Energy Regulatory Commission (FERC).

(3) For purposes of Part 2 of this chapter, "small generator interconnection provisions" means the procedural and technical requirements established by the FERC in Standardization of Small Generator Interconnection Agreements and Procedures, Order No. 2006, 70 FR 34100 (June 13, 2005), FERC Stats. & Regs. ¶ 31,180 (2005) (Order No. 2006), order on reh'g, Order No. 2006-A, 70 FR 71760 (Nov. 30, 2005), FERC Stats. & Regs. ¶ 31,196 (2005), order on clarif'n, Order No. 2006-B, 71 FR 42587 (July 27, 2006), FERC Stats. & Regs. ¶ 61,046 (2006). "Small generator interconnection provisions" does not include the 10 kW inverter process required under the above-listed FERC regulations.

(4) Interconnection service includes only the terms and conditions that govern physical interconnection to the electrical company's delivery system and does not include sale or transmission of power by the interconnecting customer or retail service to the interconnecting customer.

NEW SECTION

**WAC 480-108-090 Alternative interconnection service tariff.** (1) If an electrical company demonstrates that the small generator interconnection provisions will impair service adequacy, reliability or safety or will otherwise be incompatible with its electric system, the electrical company may file no later than January 31, 2008, an alternative to the interconnection service tariff required in WAC 480-108-080.

(2) An interconnection service tariff filed under this section must meet the following requirements.

(a) All interconnection customers with generating facilities with nameplate capacity greater than 300 kW but no more than 20 MW must be treated equally without undue discrimination or preference.

(b) Electrical companies must ensure that interconnection service will not impair safe, adequate and reliable electric service to its retail electric customers.

(c) Technical requirements for all interconnections must comply with IEEE, NESC, NEC, North American Electric Reliability Corporation, Western Electric Coordinating Council and other applicable safety and reliability standards.

(d) Charges by the electrical company to the interconnection customer in addition to the application fee, if any, must be cost-based and consistent with generally accepted engineering practices. Unless an electrical company demonstrates by reference to its integrated resource plan prepared pursuant to WAC 480-100-238, its conservation targets pursuant to RCW 19.285.040, the studies it performs under WAC 480-108-120, or other evidence that an interconnection will provide quantifiable benefits to the electrical company's other customers, an interconnecting customer must pay all costs made necessary by the requested interconnection ser-

vice. Such costs include, but are not limited to, the cost of engineering studies, upgrades to utility facilities made necessary by the interconnection, metering and insurance. If an electrical company demonstrates that an interconnection will produce quantifiable benefits for the electrical company's other customers, it may incur a portion of these costs for commission consideration for recovery in its general rates commensurate with such benefits. If after consideration of any costs approved by the commission for recovery in general rates the remaining costs are less than any amounts paid by the interconnection customer, the electrical company must refund the excess to the interconnection customer.

(e) Interconnection customers must be responsible for all operation, maintenance and code compliance for facilities and equipment on the customer's side of the point of common coupling.

(f) Interconnection service tariffs must describe:

(i) The process, timelines and cost of feasibility and facility impact studies the electrical company may require before allowing interconnection.

(ii) The prioritization or other processes by which the electrical company will manage multiple requests for interconnection service.

(g) Interconnection service tariffs must state:

(i) Specific time frames for electrical companies to respond to interconnection applications.

(ii) Specific time frames for interconnection customers to respond to study and interconnection agreements offered by the electrical company. Time frames must be adequate for the electrical company and the interconnection customer to have adequate opportunity to examine engineering studies and project design options.

(h) The electrical company must make knowledgeable personnel available to answer questions regarding applicability of the interconnection service tariff and otherwise provide assistance to a customer seeking interconnection service. The electrical company must comply with reasonable requests for information including relevant system studies, interconnection studies, and other materials useful for an interconnection customer to understand the circumstances of an interconnection at a particular point on the electrical company's electric system, to the extent provision of such information does not violate confidentiality provisions of prior electrical company agreements.

NEW SECTION

**WAC 480-108-100 Dispute resolution.** An interconnection customer may ask the commission to review an electrical company's study costs, interconnection facility costs, system upgrade costs, deposit requirements, assignment of costs to the interconnection customer or an electrical company's processing, termination, denial or rejection of an interconnection application by making an informal complaint under WAC 480-07-910, or by filing a formal complaint under WAC 480-07-370.

NEW SECTION

**WAC 480-108-110 Required filings—Exceptions.** (1) The electrical company must file for commission approval, as part of its tariff, and maintain on file for inspection at its place of business, the charges, terms and conditions for interconnections pursuant to Part 2 of this chapter. Such filing must include model forms of the following documents and contracts:

(a) Application;

(b) Feasibility Study Agreement;

(c) System Impact Study Agreement;

(d) Facilities Study Agreement;

(e) Construction Agreement;

(f) Interconnection Agreement; and

(g) Certificate of Completion.

(2) The commission may grant such exceptions to these rules as may be appropriate in individual cases.

NEW SECTION

**WAC 480-108-120 Cumulative effects of interconnections with a nameplate capacity rating greater than 300 kW but no more than 20 MW.** Electrical companies will evaluate on an ongoing basis, but not less than once every five years, the cumulative effect, including benefits to its other customers, of interconnections made under Part 2 of this chapter on its electric system and will retain appropriate records of its evaluations.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

**WAC 480-108-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library or as otherwise indicated. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) The National Electrical Code is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC 480-108-020.

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA at 1 Batterymarch Park, Quincy, Massachusetts, 02169 or at internet address http://www.nfpa.org.

(2) National Electric Safety Code (NESC).

(a) The commission adopts the version published in 2002.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of the National Electric Safety Code are available from the Institute of Electrical and Electronics Engineers at http://standards.ieee.org/nesc.

(3) Institute of Electrical and Electronics Engineers (IEEE) Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems.

(a) The commission adopts the version published in 2003.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 1547 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(4) Institute of Electrical and Electronics Engineers (IEEE) Standard 929, Recommended Practice for Utility Interface of Photovoltaic (PV) Systems.

(a) The commission adopts the version published in 2000.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 929 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(5) American National Standards Institute (ANSI) Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard C37.90 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(6) Institute of Electrical and Electronics Engineers (IEEE) Standard 519, Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems.

(a) The commission adopts the version published in 1992.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 519 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(7) Institute of Electrical and Electronics Engineers (IEEE) Standard 141, Recommended Practice for Electric Power Distribution for Industrial Plants.

(a) The commission adopts the version published in 1994 and reaffirmed in 1999.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 141 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(8) Institute of Electrical and Electronics Engineers (IEEE) Standard 142, Recommended Practice for Grounding of Industrial and Commercial Power Systems.

(a) The commission adopts the version published in 1991.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 142 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(9) Underwriters Laboratories (UL), including UL Standard 1741, Inverters, Converters, and Controllers for Use in Independent Power Systems.

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC 480-108-020.

(c) UL Standard 1741 is available from Underwriters Laboratory at http://www.ul.com.

((~~(8)~~)) (10) Occupational Safety and Health Administration (OSHA) Standard at 29 CFR 1910.269.

(a) The commission adopts the version published in 1994.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of Title 29 Code of Federal Regulations are available from the U.S. Government Online Bookstore, http://bookstore.gpo.gov/, and from various third-party vendors.

((~~(9)~~)) (11) Washington Industrial Safety and Health Administration (WISHA) Standard, chapter 296-155 WAC.

(a) The commission adopts the version in effect on March 1, 2006.

(b) This publication is referenced in WAC 480-108-020.

(c) The WISHA Standard is available from the Washington Department of Labor and Industries at P.O. Box 44000, Olympia, WA 98504-4000, or at internet address http://www.lni.wa.gov.

## WSR 07-21-005

### PERMANENT RULES

### DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed October 4, 2007, 2:33 p.m., effective November 4, 2007]

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

Purpose: To make state rules consistent with federal regulations by requiring medicaid recipients eligible for medicare benefits to apply for and enroll in Medicare Part A, Part B and Part D when the state can pay medicare cost sharing as described in chapter 388-517 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 388-503-0505.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.530; 42 U.S.C., Section 1396a.

Adopted under notice filed as WSR 07-17-084 on August 15, 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: October 1, 2007.

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-07-141, filed 3/22/04, effective 4/22/04)

**WAC 388-503-0505 General eligibility requirements for medical programs.** (1) Persons applying for benefits under the medical coverage programs established under chapter 74.09 RCW must meet the eligibility criteria established by the department in chapters 388-400 through 388-555 WAC.

(2) Persons applying for medical coverage are considered first for federally funded or federally matched programs. State-funded programs are considered after federally funded programs are not available to the client except for brief periods when the state-funded programs offer a broad scope of care which meet a specific client need.

(3) Unless otherwise specified in program specific WAC, the eligibility criteria for each medical program is as follows:

(a) Verification of age and identity (chapters 388-404, 388-406, and 388-490 WAC); and

(b) Residence in Washington state (chapter 388-468 WAC); and

(c) Citizenship or immigration status in the United States (chapter 388-424 WAC); and

(d) Possession of a valid Social Security Account Number (chapter 388-476 WAC); and

(e) Assignment of medical support rights to the state of Washington (WAC 388-505-0540); and

(f) Cooperation in securing medical support (chapter 388-422 WAC); and

(g) Application for Medicare and enrollment into Medicare's prescription drug program if:

(i) It is likely that the individual is entitled to Medicare; and

(ii) The state has authority to pay Medicare cost sharing as described in chapter 388-517 WAC.

(h) Countable resources within program limits (chapters 388-470 and 388-478 WAC); and

((~~(h)~~)) (i) Countable income within program limits (chapters 388-450 and 388-478 WAC).

(4) In addition to the general eligibility requirements in subsection (3) of this section, each program has specific eligibility requirements as described in applicable WAC.

(5) Persons living in a public institution, including a correctional facility, are not eligible for the department's medical coverage programs. For a person under age twenty or over age sixty-five who is a patient in an institution for mental disease see WAC 388-513-1315(13) for exception.

(6) Persons terminated from SSI or TANF cash grants and those who lose eligibility for categorically needy (CN) medical coverage have their CN coverage continued while their eligibility for other medical programs is redetermined. This continuation of medical coverage is described in chapter 388-434 WAC.

## WSR 07-21-013
### PERMANENT RULES
## DEPARTMENT OF ECOLOGY

[Order 07-05—Filed October 5, 2007, 3:58 p.m., effective November 5, 2007]

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

Purpose: The rule adoption includes the following amendments to chapter 173-900 WAC:

- Electronic product recycling plan content and submission requirements;
- Performance standards for electronic product processors used directly by plan operators, collectors and transporters;
- Recycling service level standards;
- Reporting processes and requirements for plan operators, local governments, local communities, processors, collectors and transporters;
- Registration requirements and process for processors;
- Collector standards;
- Process for establishing return share and equivalent share of responsibility for manufacturers;
- A sampling methodology to be used by all plan operators to provide ecology data to establish return shares;
- Requirements for the materials management and finance authority;
- Warnings, penalties, and violations, associated with these requirements; and
- Housekeeping changes to previously adopted sections of chapter 173-900 WAC including the repeal of WAC 173-900-040 and 173-900-050.
- Other requirements necessary to implement chapter 70.95N RCW.

The rule proposal includes the following amendments to chapter 173-303 WAC:

- Amendments to include an exemption for cathode ray tubes (CRTs) in televisions and monitors from chapter 173-303 WAC if the requirements are met.

Citation of Existing Rules Affected by this Order: Repealing WAC 173-900-040 and 173-900-050; and amending WAC 173-900-020, 173-900-030, 173-900-200, 173-900-210, 173-900-300, 173-900-600, 173-900-610, 173-900-620, 173-900-630, 173-303-040, and 173-303-071.

Statutory Authority for Adoption: Chapter 70.95N RCW, Electronic produce recycling; chapter 70.105 RCW, Hazardous waste management; and chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act.

Adopted under notice filed as WSR 07-15-037 on July 12, 2007.

Changes Other than Editing from Proposed to Adopted Version: Changes other than editorial to chapter 173-900 WAC:

- Performance standards for processors:

Ecology was required to establish performance standards for electronic product processors directly used by plans. Changes between the draft and final rules language include clarifying language and a correction to comply with the law

that the authority or authorized parties operating plans are responsible to assure compliance with the standards. Ecology is required to enforce on plan operators that use processors that are not in compliance with the standards rather that [than] enforcing directly on processors.

Also within the standards, references to "reuse" as a waste management priority were removed in that there is no basis in chapters 70.95N or 70.95 RCW, Solid waste management recovery and recycling, to "reuse" as a waste management priority.

- Collectors and Reuse:

It was clarified that collectors can only sell for reuse whole functioning units or components. Only processors can sell parts for reuse. The definition of reuse in the law is "any operation by which an electronic product or a component of a covered electronic product changes ownership and is used for the same purpose for which it was originally purchased." References to "refurbishment" have been eliminated because the concept does not exist in the law.

Changes made to chapter 173-303 WAC:

- Changes made were only to clarify references within the rule and to capitalize titles.

A final cost-benefit analysis is available by contacting Jay Shepard, Department of Ecology, Solid Waste and Financial Assistance Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7040, fax (360) 407-6102, e-mail WA-recycles-electronics@ecy.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 70, Amended 11, Repealed 2.

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 70, Amended 11, 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 70, Amended 11, Repealed 2.

Date Adopted: October 5, 2007.

Jay J. Manning
Director

## PART I
## GENERAL REQUIREMENTS

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-020 Applicability.** This chapter applies to:

(1) Any manufacturer, as defined in this chapter.

(2) The authority or authorized party for a covered electronic product (CEP) recycling plan.

(3) Any person who collects ((~~or transports~~)) covered electronic products (CEPs) in Washington state for a CEP recycling plan approved under this chapter.

(((~~3~~))) (4) Any person who transports covered electronic products (CEPs) in Washington state for a CEP recycling plan approved under this chapter.

(5) Any person who directly processes covered electronic products (CEPs) for a CEP recycling plan approved under this chapter.

(6) Any retailer that offers for sale or sells electronic products and covered electronic products (CEPs) in or into Washington state.

(7) Any local government in Washington state.

(8) Any nonprofit charitable organization that collects covered electronic products (CEPs) in Washington state.

(9) Any household, charity, school district, small business, or small government (covered entities) in Washington state that wants to recycle unwanted covered electronic products (CEPs).

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-030 Definitions. "Authority"** means the Washington materials management and financing authority.

**"Authorized party"** means a manufacturer who submits an individual independent plan or the entity authorized to submit an independent plan for more than one manufacturer.

**"Board"** means the board of directors of the Washington materials management and financing authority.

**"Brand"** means a name used to identify an electronic product in the consumer marketplace which attributes the electronic product to the owner of the name as the manufacturer.

**"Brand label"** typically includes but is not limited to name, logos, trademarks, and other visual elements including fonts, color schemes, shapes, symbols, and icons, which, when set in a special typeface or arranged in a particular way, differentiate electronic products by their manufacturers and brand owners.

**"Cathode ray tube"** or **"CRT"** means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

**"Certified"** means certified by signature on a form or other "hard copy," or by electronic signature or certification by a means implemented and approved by ecology, to be sent by mail or faxed or otherwise submitted to ecology.

**"Charity"** means an organization that qualifies for a taxation exemption under section 501 (c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501 (c)(3)).

**"Collection services"** include drop-off collection sites or alternative collection services such as residential at-home pick-up services, curb-side collection, or premium services such as those provided when performing system up-grades at small businesses.

**"Collector"** means an entity that is licensed to do business in Washington state and that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets ((~~minimum standards that may be developed by ecology~~)) the registration and collector performance standard requirements in Part IV, WAC 173-900-400 through 173-900-490.

**"Component"** includes but is not limited to televisions, computers, laptops, portable computers, monitors, keyboards, mice, and external hard drives.

**"Computer"** means a machine, used by one user at a time, designed for manipulating data according to a list of instructions known as a program, and are generally known as desktops, laptops, and portable computers. **"Computer"** does not include any of the following:

(a) A machine capable of supporting two or more work stations simultaneously for computing;

(b) Computer servers marketed to professional users; or

(c) Retail store terminals or cash registers, used at customer checkout in the retail industry.

**"Contract for services"** means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation, processing and recycling services, in whole or in part, that will be provided to the citizens of Washington state within service areas as described in the approved standard plan.

**"Covered electronic product"** or **"CEP"** includes any one of the following four types of products that has been used in Washington state by any covered entity, regardless of original point of purchase:

(a) Any monitor having a viewable area greater than four inches when measured diagonally;

(b) A desktop computer;

(c) A laptop or a portable computer; or

(d) Any video display device having a viewable area greater than four inches when measured diagonally.

**"Covered electronic product"** does not include:

(a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft;

(b) Monitoring and control instruments or systems;

(c) Medical devices;

(d) Products including materials intended for use as ingredients in those products as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or the Virus-Serum-Toxin Act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts;

(e) Equipment used in the delivery of patient care in a health care setting;

(f) A computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; automatic teller machines, vending machines or similar business transaction machines; or

(g) Hand-held portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

**"Covered entity"** means any household, charity, school district, small business, or small government located in Washington state.

**"Curbside service"** means a collection service providing regularly scheduled pickup of covered electronic products from households or other covered entities in quantities generated from households.

**"Desktop"** is a computer designed for nonportable use.

**"Direct processor"** means a processor contracted with a CEP recycling plan to provide processing services for the plan.

**"Ecology"** means the department of ecology.

**"Electronic product"** includes any monitor having a viewable area greater than four inches when measured diagonally; a desktop computer; a laptop or portable computer; or any video display device having a viewable area greater than four inches when measured diagonally.

**"Equivalent share"** means the weight in pounds of covered electronic products identified for an individual manufacturer as described in ((~~this chapter~~)) Part IX, WAC 173-900-930, 173-900-940, and 173-900-950.

**"Existing manufacturers"** are those entities whose covered electronic products are offered for sale or sold in or into Washington state, through any sales method, as of ((~~the effective date of this chapter~~)) December 8, 2006.

**"Household"** means a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures.

**"Implement"** or **"plan implementation"** means that collection, transportation, processing, and recycling services and other plan requirements are fully operational as described in the approved CEP recycling plan.

**"Independent plan"** means a plan for the collection, transportation, processing and recycling of unwanted covered electronic products that is developed, implemented, and financed by an individual manufacturer or by an authorized party.

**"Laptop"** is a computer.

**"Manufacturer"** means the person who:

(a) Has legal ownership of the brand, brand-name or cobrand of covered electronic products sold in or into Washington state;

(b) ((~~Imports, or sells at retail, electronic products and meets (a) of this subsection; or~~

~~(c)~~)) Imports an electronic product branded by a manufacturer that meets (a) of this subsection and that manufacturer has no physical presence in the United States of America((~~,~~)); or

(((~~(d) A retailer may elect to register, in lieu of the importer, as the manufacturer when the manufacturer does not have a physical presence in the United States.~~)) (c) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (b) of this subsection, and elects to register in lieu of the importer.

**"Manufacturers ((~~who have never sold CEPs~~)) whose CEPs are not directly sold in or into Washington state"** are those entities who have never sold or offered for sale covered electronic products in or into Washington state and whose CEP brand names ((~~of covered electronic products are represented in the Washington state return share~~)) are identi-

fied on the return share list or their CEPs are returned for recycling by a covered entity.

**"Manufacturers who previously manufactured"** are those entities that previously manufactured covered electronic products but no longer do so and whose brand names of CEPs are ((~~represented in the Washington state return share~~)) identified on the return share list or their CEPs are returned for recycling by a covered entity.

**"Market share"** means a percent of covered electronic products sold in Washington state representing the manufacturer's share of all covered electronic products sold in Washington state assigned to a registered manufacturer based on the calculations in WAC 173-900-280.

**"Material"** means processed CEPs, components, and parts.

**"Materials of concern"** are any of the following:

(a) Any devices, including fluorescent tubes, containing mercury or PCBs;

(b) Batteries;

(c) CRTs and leaded glass; and

(d) Whole circuit boards.

**"Monitor"** is a video display device without a tuner that can display pictures and sound and is used with a computer.

**"New entrant"** means:

(a) A manufacturer of televisions that have been sold in Washington state for less than ten consecutive years; or

(b) A manufacturer of desktop computers, laptop and portable computers, or computer monitors that have been sold in Washington state for less than five consecutive years;

(c) However, a manufacturer of both televisions and computers or a manufacturer of both televisions and computer monitors that is deemed a new entrant under either only (a) or (b) of this subsection is ((~~not~~)) considered an existing manufacturer and not a new entrant for purposes of this chapter.

**"New manufacturers to Washington state"** are those entities whose covered electronic products are offered for sale or sold in or into Washington state for the first time after ((~~the effective date of this chapter~~)) December 8, 2006. These manufacturers become existing manufacturers for all program years after participation the first year.

**"Nonprofit organization"** means an organization that qualifies for a taxation exemption under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501(c)(3)).

**"Offering for sale"** means providing electronic products for purchase, in or into Washington state, regardless of sales method.

**"Orphan product"** means a covered electronic product that lacks a manufacturer's brand or for which the manufacturer is no longer in business and has no successor in interest, or is a brand for which ecology cannot identify an owner.

**"Part"** means whole pieces out of CEPs, or components such as but not limited to processors, chips, or cathode ray tubes.

**"Person"** means any individual, business, manufacturer, transporter, collector, processor, retailer, charity, nonprofit organization, or government agency.

**"Plan"** means a CEP recycling plan.

**"Plan's equivalent share"** means the weight in pounds of covered electronic products for which a plan is responsible. A plan's equivalent share is equal to the sum of the equivalent shares of each manufacturer participating in that plan.

**"Plan's return share"** means the sum of the return shares of each manufacturer participating in that plan.

**"Portable computer"** is a computer.

**"Preferred status"** means that a direct processor is conforming with the performance standards for electronic product recycling as described in ecology's publication "*Environmentally Sound Management and Performance Standards for Direct Processors*."

**"Premium service"** means services such as at-location system upgrade services provided to covered entities and at-home pickup services offered to households or any handling requirements imposed by the covered entity in excess of those required in this chapter.

**"Premium service"** does not include curbside service.

**"Processing facility"** means a facility where the processing of CEPs for a plan is conducted by a direct processor.

**"Providing processing services"** means disassembling, dismantling, or shredding electronic products to recover materials contained in the CEPs received from registered collectors or transporters and preparing those materials for reclaiming or reuse in accordance with processing standards established by this chapter.

**"Processor"** means an entity:

(a) Engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and ((~~prepare~~)) preparing those materials for reclaiming or reuse in new products in accordance with processing standards established by this chapter ((~~and ecology. A processor may also~~)); and

(b) That may salvage ((~~parts~~)) CEPs, components, and parts to be used in new products.

**"Product type"** means one of the following categories: Computer monitors; desktop computers; laptop and portable computers; and televisions.

**"Program"** means the collection, transportation, processing and recycling activities conducted to implement an independent plan or the standard plan. Programs can vary for different areas of the state.

**"Program year"** means each full calendar year after the program has been initiated.

**"Recycling"** means transforming or remanufacturing unwanted electronic products, components, and by-products into usable or marketable materials for use other than landfill disposal or incineration. **"Recycling"** does not include energy recovery or energy generation by means of combusting unwanted electronic products, components, and by-products with or without other waste. Smelting of electronic materials to recover metals for reuse in conformance with all applicable laws and regulations is not considered disposal or energy recovery.

**"Residual"** means leftover materials from processing CEPs, components, parts and materials. Residuals cannot be used for their original function or cannot be recycled and are sent by a processor to a disposal facility.

**"Retailer"** means a person who offers covered electronic products for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is either reused products or a wholesale transaction with a distributor or a retailer.

**"Return share"** means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by ecology.

**"Reuse"** means any operation by which an electronic product or a component of a covered electronic product changes ownership and is used, as is, for the same purpose for which it was originally purchased.

**"Sell"** or **"sold"** means an electronic product is purchased regardless of sales method.

**"Small business"** means a business employing less than fifty people.

**"Small government"** means a city in Washington state with a population less than fifty thousand, a county in Washington state with a population less than one hundred twenty-five thousand, and special purpose districts in Washington state.

**"Standard plan"** means the plan for the collection, transportation, processing and recycling of unwanted covered electronic products developed, implemented, and financed by the authority on behalf of manufacturers participating in the authority.

**"Television"** is an enclosed video display device with a tuner able to receive and output frequency waves or digital signals to display pictures and sounds.

**"Transporter"** means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

**"Unwanted electronic product"** means a covered electronic product that has been discarded or is intended to be discarded by its owner.

**"White box manufacturer"** means a person who manufactured unbranded covered electronic products offered for sale in Washington state within ten consecutive years prior to a program year for televisions or within five consecutive years prior to a program year for desktop computers, laptop or portable computers, or computer monitors.

**"Video display devices"** include units capable of presenting images electronically on a screen, with a viewable area greater than four inches when measured diagonally, viewed by the user and may include cathode ray tubes, flat panel computer monitors, plasma displays, liquid crystal displays, rear and front enclosed projection devices, and other similar displays that exist or may be developed. Televisions and monitors are video display devices.

## PART II
## MANUFACTURER REQUIREMENTS

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-200 Manufacturers ((~~registration~~)) who must register and participate in a CEP recycling plan.** ((~~**Registration:**~~

~~(1) A manufacturer is registered under this chapter when:~~

~~(a) Ecology has determined the manufacturer's registration form is complete and accurate; and~~

~~(b) The manufacturer has paid their required administrative fee.~~

~~(2) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.~~

~~(3) **The following manufacturers must register with ecology:**~~

| ~~**Type of Manufacturer**~~ | | ~~**Initial Registration Due Date**~~ |
|---|---|---|
| ~~**Existing manufacturers**~~ | ~~Those entities whose CEPs are offered for sale or sold in or into Washington state, as of the effective date of this chapter.~~ | ~~On or before January 1, 2007.~~ |
| ~~**New manufacturers to Washington state**~~ | ~~Those entities whose CEPs are offered for sale or sold in or into Washington state for the first time after the effective date of this chapter.~~ | ~~Prior to the offering for sale of their CEPs for sale in/into WA.~~ |
| ~~**Manufacturers who have never sold CEPs**~~ | ~~Those entities who have never sold or offered for sale covered electronic products in or into Washington state and whose brand names of covered electronic products are represented in the Washington state return share.~~ | ~~Within sixty days of ecology sending notice that their brand names were found in the return share.~~ |

| Type of Manufacturer | | Initial Registration Due Date |
|---|---|---|
| **Manufacturers who previously manufactured** | Those entities that previously manufactured CEPs but no longer do so and whose brand names of CEPs are represented in the Washington state return share. | Within sixty days of ecology sending notice that their brand names were found in the return share. |

(4) **Manufacturer registration form:** The manufacturer must use the manufacturer registration form provided by ecology which must include all of the following:

(a) The name, contact, and billing information of the manufacturer;

(b) The manufacturer's brand names of CEPs, including:

(i) All brand names sold in Washington state in the past, including "years sold";

(ii) All brand names currently being sold in Washington state, including the year the manufacturer started using the brand name; and

(iii) All brand names the manufacturer manufactures but does not have legal ownership of the brand;

(c) When a word or phrase is used as the label the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products;

(d) When a logo, mark, or image is used as a label, the manufacturer must include a graphic representation of the logo or image and a general description of the different ways in which it may appear on the manufacturer's electronic products;

(e) The method or methods of sale used in or into Washington state;

(f) Recycling plan participation information; and

(g) Signature of the responsible individual. The registration form must be signed by the individual responsible for implementing the manufacturer's requirements under this chapter. The signature means the manufacturer has provided accurate and complete information on the form and reviewed their responsibilities under the electronic product recycling program.

(5) **Submitting the registration form:** The manufacturer must either submit the:

(a) Form via e-mail or internet service; or

(b) Original of the registration form to one of the following addresses:

For U.S. Postal Service:
Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600
Or
For Courier:
Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(6) **Administrative fee:**

(a) All manufacturers must pay an annual administrative fee to ecology (see WAC 173-900-210 Administrative fee).

(b) Starting in 2007, ecology will send out billing statements by November 1 of each year to all registered manufacturers. The billing statement will include the amount of the administrative fee owed by the manufacturer.

(c) New manufacturers must send ecology the required administrative fee so that ecology receives the fee within sixty days of the date on the billing statement.

(7) **Submitting the administrative fee:**

(a) The manufacturer must send ecology the appropriate administrative fee so that ecology receives it no later than January 1 of each calendar year.

(b) The manufacturer must send payment to the following address:

Department of Ecology
Electronic Product Recycling Program
P.O. Box 5128
Lacey, WA 98509-5128

(8) **Registration review and status:** Within five business days of receiving a manufacturer registration form and the required administrative fee, ecology will post the manufacturer's name on a list called "Manufacturer Registration List for the Electronic Product Recycling Program" on ecology's web site. This list will contain the names of manufacturers, their brand names and their registration status. Each manufacturer on the list will be assigned to one of the following registration status categories:

(a) **Pending** means ecology has received the appropriate manufacturer's administrative fee and is reviewing the manufacturer's registration form. The manufacturer's CEPs are allowed to be sold or offered for sale in or into Washington state while in "pending" status.

(i) If the form is complete and accurate, ecology will change the manufacturer's status from "pending" to "in compliance."

(ii) If the form is not complete and accurate, ecology will send notice, via certified mail, to the manufacturer identifying what corrections and additional information is needed, and requesting a revised form. The manufacturer will have thirty days from receipt of the notice to submit to ecology a revised registration form. If the form is corrected and the required additional information is submitted, ecology will change the manufacturer's status from "pending" to "in compliance."

(iii) If the form is not corrected, or the required additional information is not submitted, within thirty days, ecology will change the manufacturer's status from "pending" to "in violation."

(b) **Registered** or "in compliance" means ecology has reviewed the manufacturer registration form and determined the form is complete and accurate and the manufacturer has paid the required administrative fee. The manufacturer's CEPs are allowed to be sold or offered for sale in or into Washington state.

~~(c) **In violation** means the manufacturer is in violation of this chapter.~~

~~(9) **Annual registration:** Manufacturers must submit their annual registration renewal form and required administrative fee to ecology no later than January 1 of each calendar year.~~

~~(10) **Registration updates:** A manufacturer must submit any changes to the information provided in the registration form to ecology within fourteen days of such change.~~

~~(11) **Registration violation:** As of January 1, 2007, it is a manufacturer violation if either a manufacturer or retailer offers for sale or sells the manufacturer's CEPs in or into Washington state and the manufacturer is not registered as required above. When a manufacturer registration violation occurs:~~

~~(a) Ecology will assign the manufacturer to the "in violation" category on the "Manufacturer Registration List for the Electronic Product Recycling Program";~~

~~(b) The manufacturer's CEPs cannot be sold or offered for sale in Washington state; and~~

~~(c) The manufacturer is subject to penalties under WAC 173-900-600.~~

~~(12) **Corrective actions:**~~

~~(a) If a manufacturer is in "in violation" status, ecology will not return them to "pending" status while the manufacturer corrects the violations.~~

~~(b) If ecology changes a manufacturer to "in violation" as a result of a violation, then in order to once again be listed as "in compliance" on the "Manufacturer Registration List for the Electronic Product Recycling Program," the manufacturer must:~~

~~(i) Submit their registration form and ecology must determine the form is complete and accurate;~~

~~(ii) Pay their appropriate administrative fee;~~

~~(iii) Correct any other violations; and~~

~~(iv) Pay or settle any penalties due to ecology (WAC 173-900-600).~~

~~(13) **Notification to retailers:** A manufacturer may notify retailers, in writing, if the manufacturer's CEPs cannot be offered for sale or sold in or into Washington state. A copy of this notice must be supplied to ecology to avoid the registration violation.~~)) (1) The following manufacturers must register with ecology and participate in a CEP recycling plan:

**Table 200**
**Type of Manufacturer**

| Type of Manufacturer | | Initial Registration Due Date | Must be Listed as a Plan Participant By: |
|---|---|---|---|
| **Existing manufacturers** | Those entities whose CEPs are offered for sale or sold in or into Washington state, as of December 8, 2006. | On or before January 1, 2007. | No later than February 1, 2008. |
| **New manufacturers to Washington state** | Those entities whose CEPs are offered for sale or sold in or into Washington state for the first time after December 8, 2006. | Prior to the offering for sale of their CEPs in or into WA. | Within thirty days of ecology approving registration. |
| **Manufacturers whose CEPs are not directly sold in or into Washington state** | If a CEP brand is identified in the Washington state return share list or is returned for recycling by a covered entity, a manufacturer must register even if that manufacturer has never sold or offered for sale the identified brands directly in or into Washington state. | Within sixty days of receiving notice from ecology that the manufacturer must register. | Within thirty days of ecology approving registration. |
| **Manufacturers who previously manufactured** | Those entities that previously manufactured CEPs but no longer do so and whose brand names of CEPs are identified in the Washington state return share list or their CEPs are returned for recycling by a covered entity. | Within sixty days of receiving notice from ecology that the manufacturer must register. | Within thirty days of ecology approving registration. |

(2) A manufacturer is registered under this chapter when:

(a) Ecology has determined the manufacturer's registration form is complete and accurate; and

(b) The manufacturer has paid the required administrative fee (see WAC 173-900-280).

(3) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.

(4) A manufacturer must participate in either the standard plan or, if approved, an independent plan.

(5) In the event that the plan fails to meet the manufacturers' obligations under this chapter, each manufacturer participating in the plan retains responsibility and liability, including financial liability, for the collection, transportation, processing, and recycling of the manufacturer's equivalent share of CEPs as described in this chapter.

NEW SECTION

**WAC 173-900-205 Manufacturer's brands of CEPs that can be offered for sale or sold in or into Washington state.** (1) In order for a manufacturer's brands of CEPs to be offered for sale or sold in or into Washington state, the manufacturer's name and brand names must be listed on the "manufacturer registration list" as "in compliance" or "pending" status.

(2) To be in "in compliance" status a manufacturer must:

(a) **As of January 1, 2007:**

(i) Register annually with ecology;

(ii) Update registration information if it changes;

(iii) Label the manufacturer's CEPs with the manufacturer's brand name(s) included in the manufacturer's registration information.

(b) **As of February 1, 2008:**

(i) Register annually with ecology;

(ii) Update registration information if it changes;

(iii) Label the CEPs with the manufacturer's brand name(s) included in the manufacturer's registration information; and

(iv) Participate in a CEP recycling plan approved, or submitted for approval, by ecology.

**Table 205**
**Manufacturer Status**

| Manufacturer Status | Can the manufacturer's brands of CEPs be offered for sale or sold in or into Washington state? | Explanation |
|---|---|---|
| Pending | Yes | "Pending" means ecology has received the manufacturer's registration form and administrative fee and ecology is reviewing the form. |
| In compliance | Yes | "In compliance" means ecology has approved the manufacturer's registration, the manufacturer is participating in a plan, and is complying with the requirements in this chapter. |

**Table 205**
**Manufacturer Status**

| Manufacturer Status | Can the manufacturer's brands of CEPs be offered for sale or sold in or into Washington state? | Explanation |
|---|---|---|
| In violation | No | "In violation" means the manufacturer is in violation of the requirements in this chapter. |
| Manufacturer's **brand name** is not on the "manufacturer registration list" | No | If a manufacturer's brand name is not on the "manufacturer registration list," that brand must not be offered for sale or sold in or into Washington state. |
| **Manufacturer's name** is not on the "manufacturer registration list" | No | If a manufacturer's name is not on the "manufacturer registration list," none of the manufacturer's brands of CEPs can be offered for sale or sold in or into Washington. |

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-210 ((~~Administrative fee.~~)) Required brand labeling for manufacturers.** (1) ((~~**Legislative mandate.** The administrative fee covers ecology's administrative costs related to implementing the electronic product recycling program authorized under chapter 70.95N RCW. It does not include the fees for ecology's review of the standard plan or independent plans.~~

(2) ~~**Data.**~~

~~(a) Ecology will use data collected to extrapolate Washington market shares, and to calculate manufacturer unit sales. Ecology will use market share and/or CEP unit sales to assign each manufacturer to an administrative fee tier. Ecology may use any of, or a combination of, the following data:~~

~~(i) Generally available market research data;~~

~~(ii) CEP unit data supplied by manufacturers about brands they manufacture or sell; or~~

(iii) CEP unit data supplied by retailers about brands they sell.

(b) Ecology may put the data directly into the data base. Ecology will aggregate the data in sets of at least three companies for confidentiality when published.

(3) **Distribution:**

(a) Ecology will establish a fee schedule to distribute administrative fees on a sliding scale, based on tiers, that are representative of annual sales of CEPs in Washington state.

(b) Fees will be distributed to each tier in order to spread costs based on the estimated unit sales given the number of manufacturers and the amount of revenue that needs to be generated to cover ecology's administrative costs.

(c) Tier 7 will have no fee amount associated with it, but the manufacturers assigned to this tier must still complete the registration form (see WAC 173-900-200).

| Tiers | Manufacturer's Market Share |
|---|---|
| Tier 1 | 5% or greater |
| Tier 2 | 1% to < 5% |
| Tier 3 | 0.1% to < 1% |
| Tier 4 | 0.03% to < 0.1% |
| Tier 5 | 0.01% to < 0.03% |
| Tier 6 | 0% but < 0.01% |
| Tier 7 | Manufacturers who previously manufactured |

(4) **Calculating the administrative fee:** Ecology will calculate the tiers based on the combined unit sales of CEPs sold under manufacturer brands as a percentage of the total sales of electronic products sold in or into Washington state.

(a) **Administrative fee tier calculations for program year 2007:** For administrative fees due January 1, 2007, ecology will base fees on the amount appropriated in the budget for the electronic product recycling program by the legislature. Year one includes start-up costs and funds the first eighteen months of operations. This amount is four hundred seventy-five thousand dollars.

(b) **Administrative fee tier calculations for program year 2008 and future years:**

(i) For administrative fees due January 1, 2008, and thereafter, ecology will base the fee on the expenditure authority for the electronic product recycling program which for program year 2008 is two hundred twenty-one thousand five hundred dollars.

(ii) The total administrative fee amount will be adjusted biannually by the FGF as calculated under chapter 43.135 RCW ($Fee_{FGF}$).

(5) **Tier placement:**

(a) **Existing manufacturers:** Ecology will place existing manufacturers in the appropriate tier based on data obtained or received by ecology. If ecology has no data, ecology will place the manufacturer in Tier 4.

(b) **New manufacturers to Washington state:** Ecology will assign these manufacturers to Tier 6 for their initial program year. Ecology will assign these manufacturers to Tier 4 for the second and future program years unless ecology has CEP unit data.

(c) **Manufacturers who have never sold CEPs:** Ecology will assign these manufacturers to Tier 6.

(d) **Manufacturers who previously manufactured:** Ecology will assign these manufacturers to Tier 7.

(6) **Publication of tier assignment:**

(a) **Tiers for fees due January 1, 2007:** Ecology will publish the final tier schedule on ecology's web site by November 15, 2006, for fees due January 1, 2007. The tiers will be based on data available to ecology and received from manufacturers and retailers prior to November 9, 2006. When providing data to ecology, manufacturers must meet the requirements of subsection (7)(a) of this section prior to November 9, 2006.

(b) **Tiers for fees due January 1, 2008, and future years:** For administrative fees for 2008, and future years, ecology will publish a preliminary tier schedule for review and a final tier schedule.

(i) **Preliminary tier schedule:** Ecology will publish the preliminary tier schedule on ecology's web site by September 1 of each calendar year.

(A) This preliminary tier schedule will include the tiers and a list of manufacturers assigned to each tier.

(B) Ecology will also publish the estimated total percentage share of the market attributable to each tier and a list of the brand names for each manufacturer, which form the basis for the estimates used in the tier assignment.

(C) Manufacturers will have until October 1 to submit a request for tier reassignment if they believe they are assigned to the wrong tier. (See subsection (7)(b) of this section.)

(ii) **Final tier schedule:** Ecology will publish the agency's final decision on the final tier schedule on ecology's web site by November 1 of each calendar year. This final tier schedule will reflect ecology's evaluation of all available data including but not limited to tier reassignment requests.

(7) **Tier reassignment requests:**

(a) **Requests for tier reassignment submitted for fees due January 1, 2007.** Manufacturers may request to be assigned to a different tier for fees due January 1, 2007.

(i) To submit a request for tier reassignment the manufacturer must, on or before November 9, 2006, do one of the following:

(A) Submit or update their on-line manufacturer registration form. The manufacturer must provide the number of units of CEPs, sold in the prior year, in or into Washington state;

(B) Send a written letter to ecology including the number of units of CEPs sold in the prior year in or into Washington state; or

(C) Submit a complete tier request form available on ecology's web site.

(ii) If CEP unit sales data is provided, ecology will exempt this data from public disclosure in accordance with RCW 42.56.270(13).

(iii) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing certified by a certified public accountant. Ecology may request this if ecology finds the data gives a different market share than the national data collected and/or the information changes the tier assignment distribution.

(b) **Requests for tier reassignment for fees due after January 1, 2007.** If submitting a tier reassignment request:

~~(i) **Existing manufacturers** must submit the request on or before October 1 prior to the next billing cycle and must follow the steps in (c) of this subsection.~~

~~(ii) **New manufacturers** may not submit a tier reassignment request for their first program year. Requests for tier reassignment for future program years must follow the process for existing manufacturers.~~

~~(iii) **Manufacturers who have never sold CEPs** may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.~~

~~(iv) **Manufacturers who previously manufactured** may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.~~

~~(c) **Submitting the request:** To request tier reassignment, the manufacturer must do one of the following:~~

~~(i) Submit or update their on-line manufacturer registration form. The manufacturer must provide the number of units of CEPs, sold in the prior calendar year, in or into Washington state; or~~

~~(ii) Send a written letter to ecology including the number of units of CEPs, sold in the prior calendar year, in or into Washington state.~~

~~(iii) If CEP unit sales data is provided, ecology will exempt this data from public disclosure in accordance with RCW 42.56.270(13).~~

~~(iv) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing certified by a certified public accountant. Ecology may request this if ecology finds the data gives a different market share than the national data collected and/or the information changes the tier assignment distribution.~~)) Beginning January 1, 2007, no person may sell or offer for sale an electronic product to any person in or into Washington state unless the electronic product is labeled with the manufacturer's brand.

(2) The label must be permanently affixed and readily visible.

(3) In-state retailers in possession of unlabeled, or white box, electronic products on January 1, 2007, may exhaust their stock through sales to the public.

NEW SECTION

**WAC 173-900-215 Initial CEP manufacturer registration.**

**Step 1: Complete the manufacturer registration form.**

(1) CEP manufacturers must use the on-line or paper manufacturer registration form provided by ecology.

(2) A manufacturer must provide all of the following information to ecology:

(a) The name, contact, and billing information of the manufacturer;

(b) The manufacturer's brand names of CEPs, including:

(i) All brand names sold in Washington state in the past, including the years each brand was sold;

(ii) All brand names currently being sold in Washington state, including the year the manufacturer started using the brand name;

(c) All brand names of electronic products for which the registrant assembles but does not have legal ownership of the brand name placed on the product;

(d) When a word or phrase is used as the label, the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products;

(e) When a logo, mark, or image is used as a label, the manufacturer must include a graphic representation of the logo, mark, or image and a general description of the logo, mark, or image as it appears on the manufacturer's electronic products;

(f) The method or methods of sale used in or into Washington state; and

(g) CEP recycling plan participation information.

**Step 2: Submit the manufacturer registration form.**

(3) The individual responsible for implementing the manufacturer's requirements under this chapter must sign the form. The signature means the manufacturer has provided accurate and complete information on the form and reviewed their responsibilities under the electronic product recycling program.

(4) The manufacturer must submit the form using one of the three options below:

(a) The on-line registration form;

(b) The original paper version through the U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

(c) The original paper version through a courier:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

**Step 3: Pay the administrative fee.**

(5) The following manufacturers must pay an annual administrative fee to ecology (see WAC 173-900-280 and ecology's web site for administrative fee schedule):

(a) Existing manufacturers;

(b) New manufacturers.

(6) Starting in 2007, ecology will send out billing statements by November 1 of each year to all registered manufacturers. The billing statement will include the amount of the administrative fee owed by the manufacturer.

(7) **New manufacturers** must send ecology the required administrative fee so that ecology receives the fee within sixty days of the date on the billing statement.

(8) **Existing manufacturers** must send ecology the appropriate administrative fee so that ecology receives it no later than January 1 of each calendar year.

(9) The manufacturer must send payment to one of the following addresses:

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling Program
P.O. Box 5128
Lacey, WA 98509-5128

For Courier to:

Department of Ecology
Attn: Fiscal Cashiering
300 Desmond Drive
Lacey, WA 98503

NEW SECTION

**WAC 173-900-220 How manufacturers know if they are registered.**

**Step 1: Ecology review of the manufacturer registration form.**

(1) Within five business days of ecology receiving a manufacturer registration form and the required administrative fee (see WAC 173-900-280), ecology will:

(a) Place the manufacturer in "pending" status on the "manufacturer registration list"; and

(b) Place the manufacturer's "currently owned and manufactured" brand names included on the form on the "manufacturer registration list."

(2) The manufacturer's brands of CEPs included on the "manufacturer registration list" can be sold or offered for sale in or into Washington state.

(3) Ecology will review the form to determine if the form is complete and accurate.

(4) If the form is not complete and accurate, or the manufacturer has not paid the required administrative fee, ecology will contact the manufacturer to request one or both of the following:

(a) A revised form that contains the complete and missing information;

(b) The unpaid administrative fee.

(5) The manufacturer must submit the administrative fee and all requested information within thirty days from the day ecology contacted the manufacturer.

**Step 2: Approval or denial of manufacturer registration.**

(6) **Approval.**

(a) Approval means that ecology has received the manufacturer's administrative fee and has determined the registration form is complete and accurate.

(b) If ecology approves the manufacturer's registration:

(i) Ecology will change the manufacturer's status from "pending" to "in compliance" on the "manufacturer registration list"; and

(ii) The manufacturer's registered brands of CEPs can continue to be offered for sale or sold in or into Washington state.

(7) **Denial.**

(a) Denial means that ecology either did not receive the administrative fee or ecology has determined the form is not complete and accurate and the manufacturer has not submitted the revised information as requested.

(b) If ecology denies a manufacturer's registration:

(i) Ecology will either change the manufacturer's status from "pending" to "in violation" on the "manufacturer registration list" or remove the manufacturer's name from the list;

(ii) Ecology will notify the manufacturer of the denial; and

(iii) The manufacturer's brands of CEPs are not allowed to be offered for sale or sold in or into Washington state.

(c) For initial manufacturer registration, if ecology denies a registration, the manufacturer may resubmit an initial registration form.

NEW SECTION

**WAC 173-900-230 Annual manufacturer registration.** (1) After initial registration, to remain registered, manufacturers must submit a registration form and required administrative fee to ecology each year.

(2) Annual registration is due no later than January 1 of each calendar year for the next program year.

(3) The manufacturer must submit the annual registration form using one of the options below:

(a) Submit the manufacturer's on-line registration form;

(b) Submitting a paper version through:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(4) Ecology will review manufacturer registration forms submitted for annual registration under the process described in WAC 173-900-220.

(5) For annual registrations, if ecology denies the manufacturer's registration form, the manufacturer will be removed from the "manufacturer registration list."

NEW SECTION

**WAC 173-900-240 Updates to manufacturer registration.** (1) If there are any changes to the information on the manufacturer's registration approved by ecology, a registered manufacturer must submit an updated form within fourteen days of when any change occurs.

(2) The manufacturer must submit updates using one of the options below:

(a) Updating the manufacturer's registration information using the on-line form;

(b) Submitting a paper version of the form with updated information through:

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(3) Ecology will review manufacturer's updated registration forms under the process described in WAC 173-900-220.

NEW SECTION

**WAC 173-900-250 Ecology determination of manufacturer compliance.** (1) Beginning January 1, 2007, ecology may inspect any retailer's CEP inventory offered for sale in or into Washington state to determine if the requirements in this chapter are met. If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violations, and penalties procedures in Part II, WAC 173-900-255, 173-900-260, and 173-900-270 (for manufacturers) and Part VII, WAC 173-900-730, 173-900-740, and 173-900-750 (for retailers) of this chapter.

(2) Beginning January 1, 2007, ecology may check any retailer's CEP inventory offered for sale in or into Washington state to determine if brand labeling requirements in WAC 173-900-210 have been met. If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violations, and penalties procedures in Part II, WAC 173-900-255, 173-900-260, and 173-900-270 (for manufacturers) and Part VII, WAC 173-900-730, 173-900-740, and 173-900-750 (for retailers) of this chapter.

NEW SECTION

**WAC 173-900-255 Manufacturer violations.** (1) A manufacturer is in violation of this chapter when there is a:

(a) Registration violation;

(b) Labeling violation;

(c) Plan violation; or

(d) Return share violation.

**Manufacturer registration violations:**

(2) A manufacturer is in "registration violation" of this chapter if any of the following occurs:

(a) The manufacturer does not submit an updated registration form within fourteen days of changes in the registration information.

(b) A manufacturer offers for sale or sells its brand of CEPs in or into Washington state and:

(i) The manufacturer's brand is not listed as in "in compliance" or "pending" status on the "manufacturer registration list"; or

(ii) The manufacturer's brand name is not listed as part of the manufacturer's registration.

(c) A retailer offers for sale or sells a manufacturer's brand of CEP in or into Washington state and on the date the products were ordered from the manufacturer or their agent:

(i) The manufacturer's brand was not listed as in "in compliance" or "pending" status on the "manufacturer registration list";

(ii) The brand name of the CEP was not listed as in "in compliance" or "pending" status on the "manufacturer registration list."

(3) A manufacturer may notify retailers, in writing, if the manufacturer's brand of CEPs cannot be offered for sale or sold in or into Washington state. The manufacturer must provide ecology a copy of this notice to avoid a registration violation.

(4) Each unregistered CEP unit offered for sale or sold is a separate violation by the manufacturer.

**Manufacturer labeling violation:**

(5) A manufacturer is in "labeling violation" of this chapter if any of the following occurs:

(a) The manufacturer offers for sale or sells a manufacturer's electronic product in or into Washington state that does not have a permanently affixed or readily visible label with the manufacturer's brand name.

(b) A retailer offers for sale or sells the manufacturer's electronic product in or into Washington state that the manufacturer has not labeled with the manufacturer's brand name.

(6) Each of the manufacturer's unlabeled units offered for sale or sold is a separate violation by the manufacturer.

**Manufacturer plan violation:**

(7) Starting February 1, 2008, a manufacturer is in "plan violation" of this chapter if any of the following occurs, the manufacturer:

(a) Has not met the manufacturer's financial obligations to its plan; or

(b) Is not participating in a plan or complying with the manufacturer's responsibilities as described in their ecology approved plan; or

(c) Is participating in a plan that is not fully implemented and the authority or authorized party has not taken action approved by ecology to correct violations.

**Return share violation:**

(8) It is a "return share violation" when the manufacturer's brands of CEPs are identified on ecology's return share list posted on the agency web site and:

(a) Within sixty days of receiving notice from ecology, the manufacturer has not registered with ecology; or

(b) Within thirty days of registering is not participating in a plan.

NEW SECTION

**WAC 173-900-260 Warnings and penalties for manufacturer violations.**

**Table 260**
**Manufacturer Warning and Penalties**

| Type of Violation | Written Warning | First Penalty | Second and Subsequent Penalties |
|---|---|---|---|
| Registration Violation | Warning Letter | Up to $1,000 | Up to $2,000 |
| Labeling Violation | Warning Letter | Up to $1,000 | Up to $2,000 |
| Plan Violation | Warning Letter | Up to $10,000 | Up to $10,000 |
| Return Share Violation | Warning Letter | Up to $10,000 plus the percentage of their return share of the costs of operating the standard plan. | Up to $10,000 plus the percentage of their return share of the costs of operating the standard plan. |

**Warning letter:**

(1) When ecology issues a written warning letter via certified mail, for any violation, the warning will include a copy of the requirements to let the manufacturer know what the manufacturer must do to be in compliance status.

**Penalties:**

(2) **First penalties:** If the manufacturer does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 260 above and do one of the following:

(a) Change the manufacturer's status to "in violation";

(b) Add the manufacturer to the "manufacturer registration list" and put them in "in violation."

(3) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 260 no more often than every thirty days for the same violation.

(4) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

**Appeals:**

(5) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

NEW SECTION

**WAC 173-900-270 Corrective actions for manufacturer violations.** (1) If a manufacturer is in "in violation" status, ecology will not return them to "in compliance" status until the manufacturer corrects the violation.

**Corrective actions for manufacturer registration violations:**

(2) To correct a registration violation the manufacturer must:

(a) Provide evidence that the violation has been corrected; and

(b) Pay or settle any penalties to ecology.

**Corrective actions for manufacturer labeling violations:**

(3) To correct a labeling violation the manufacturer must:

(a) Meet the requirements in WAC 173-900-210;

(b) Correct any other violations; and

(c) Pay or settle any penalties due to ecology.

**Corrective actions for plan violations:**

(4) To correct a plan violation the manufacturer must:

(a) Join and participate in an approved plan or a plan currently under review for approval;

(b) Correct any other violations; and

(c) Pay or settle any penalties due to ecology.

**Corrective actions for return share violations:**

(5) To correct a return share violation the manufacturer must:

(a) Join and participate in an approved plan or a plan currently under review for approval;

(b) Correct any other violations; and

(c) Pay or settle any penalties due to ecology.

NEW SECTION

**WAC 173-900-280 Administrative fee.** (1) **Legislative mandate.** The administrative fee covers ecology's administrative costs related to implementing the electronic product recycling program authorized under chapter 70.95N RCW. It does not include the fees for ecology's review of the standard plan or independent plans.

(2) **Data.**

(a) Ecology will use data collected to extrapolate Washington market shares, and to calculate manufacturer unit sales. Ecology will use market share and/or CEP unit sales to assign each manufacturer to an administrative fee tier. Ecology may use any of, or a combination of, the following data:

(i) Generally available market research data;

(ii) CEP unit sales data supplied by manufacturers for brands they manufacture or sell; or

(iii) CEP unit sales data supplied by retailers for brands they sell.

(b) Ecology may put the data directly into the data base. Ecology will aggregate the data in sets of at least three companies for confidentiality when published.

(3) **Distribution:**

(a) Ecology will establish a fee schedule to distribute administrative fees on a sliding scale, based on tiers, that are representative of annual sales of CEPs in Washington state.

(b) Fees will be distributed to each tier in order to spread costs based on the estimated unit sales given the number of manufacturers and the amount of revenue that needs to be generated to cover ecology's administrative costs.

(c) Tier 7 will have no fee amount associated with it, but the manufacturers assigned to this tier must still complete the registration form (see WAC 173-900-215) and join a plan.

**Table 280**
**Market Share Tiers**

| Tiers | Manufacturer's Market Share |
|---|---|
| Tier 1 | 5% or greater |
| Tier 2 | 1% to < 5% |
| Tier 3 | 0.1% to < 1% |
| Tier 4 | 0.03% to < 0.1% |
| Tier 5 | 0.01% to < 0.03% |
| Tier 6 | < 0.01% |
| Tier 7 | Manufacturers who previously manufactured<br>Manufacturers whose CEPs are not directly sold in or into Washington state |

(4) **Calculating the administrative fee:** Ecology will calculate the tiers based on the combined unit sales of CEPs sold under manufacturer brands as a percentage of the total sales of electronic products sold in or into Washington state.

(a) **Administrative fee tier calculations for program year 2007:** For administrative fees due January 1, 2007, ecology will base fees on the amount appropriated in the budget for the electronic product recycling program by the legislature. Year one includes start-up costs and it funds the first eighteen months of operations. This amount is four hundred seventy-five thousand dollars.

(b) **Administrative fee tier calculations for program year 2008 and future years:**

(i) For administrative fees due January 1, 2008, and thereafter, ecology will base the fee on the expenditure authority for the electronic product recycling program which for program year 2008 is two hundred twenty-one thousand five hundred dollars.

(ii) The total administrative fee amount will be adjusted biannually by the fiscal growth factor (FGF) as calculated under chapter 43.135 RCW ($Fee_{FGF}$).

(5) **Tier placement:**

(a) **Existing manufacturers:** Ecology will place existing manufacturers in the appropriate tier based on data obtained or received as described in subsection (2) of this section. If ecology has no data, ecology will place the manufacturer in Tier 4.

(b) **New manufacturers to Washington state:** Ecology will assign these manufacturers to Tier 6 for their initial program year. After the initial program year, ecology will treat these manufacturers as an existing manufacturer (see (a) of this subsection).

(c) **Manufacturers whose CEPs are not directly sold in or into Washington state:** Ecology will assign these manufacturers to Tier 7.

(d) **Manufacturers who previously manufactured:** Ecology will assign these manufacturers to Tier 7.

(6) **Publication of tier assignment:**

(a) **Tiers for fees due January 1, 2007:** Ecology will publish the final tier schedule on ecology's web site by November 15, 2006, for fees due January 1, 2007. The tiers will be based on data available to ecology and received from manufacturers and retailers prior to November 9, 2006. When providing data to ecology, manufacturers must meet the requirements of subsection (7)(a) of this section prior to November 9, 2006.

(b) **Tiers for fees due January 1, 2008, and future years:** For administrative fees for 2008, and future years, ecology will publish a preliminary tier schedule for review and a final tier schedule.

(i) **Preliminary tier schedule:** Ecology will publish the preliminary tier schedule on ecology's web site by September 1 of each calendar year.

(A) This preliminary tier schedule will include the tiers and a list of manufacturers assigned to each tier.

(B) Ecology will also publish the estimated total percentage share of the market attributable to each tier and a list of the brand names for each manufacturer, which form the basis for the estimates used in the tier assignment.

(C) Manufacturers will have until October 1 to submit a request for tier reassignment if they believe they are assigned to the wrong tier. (See subsection (7)(b) of this section.)

(ii) **Final tier schedule:** Ecology will publish the agency's final tier schedule on ecology's web site by November 1 of each calendar year. This final tier schedule will reflect ecology's evaluation of all available data including but not limited to tier reassignment requests.

(7) **Tier reassignment requests:**

(a) **Requests for tier reassignment submitted for fees due January 1, 2007.** Manufacturers may request to be assigned to a different tier for fees due January 1, 2007.

(i) To submit a request for tier reassignment the manufacturer must, on or before November 9, 2006, do one of the following:

(A) Submit or update their on-line manufacturer registration form. The manufacturer must provide the number of units of CEPs, sold in the prior year, in or into Washington state;

(B) Send a written letter to ecology including the number of units of CEPs sold in the prior year in or into Washington state; or

(C) Submit a complete tier request form available on ecology's web site.

(ii) If CEP unit sales data is provided, ecology will exempt this data from public disclosure in accordance with RCW 42.56.270(13).

(iii) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing certified by a certified public accountant. Ecology may request this if ecology finds the data gives a different market share than the national data collected and/or the information changes the tier assignment distribution.

(b) **Requests for tier reassignment for fees due after January 1, 2007.** If submitting a tier reassignment request:

(i) **Existing manufacturers** must submit the request on or before October 1 prior to the next billing cycle and must follow the steps in (c) of this subsection.

(ii) **New manufacturers** to Washington state may not submit a tier reassignment request for their first program

year. Requests for tier reassignment for future program years must follow the process for existing manufacturers.

(iii) **Manufacturers whose CEPs are not directly sold in or into Washington state** may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.

(iv) **Manufacturers who previously manufactured** may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.

(c) **Submitting tier reassignment requests:** To request tier reassignment, the manufacturer must do one of the following:

(i) Submit or update their on-line manufacturer registration form. The manufacturer must provide the number of units of CEPs, sold in the prior calendar year, in or into Washington state; or

(ii) Send a letter to ecology including the number of units of CEPs sold in the prior calendar year in or into Washington state.

(iii) If CEP unit sales data is provided, ecology will exempt this data from public disclosure in accordance with RCW 42.56.270(13).

(iv) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing including a basis for the alternative unit sales number and may request this information is certified by a certified public accountant. Ecology may request this if the CEP unit sales data results in a different market share than the national data collected and/or the information changes the tier assignment distribution.

NEW SECTION

**WAC 173-900-290 Successor duties.** Any person acquiring a manufacturer, or brand, or who has acquired a manufacturer, or brand, shall have all responsibility for the acquired company's CEPs, including CEPs manufactured prior to July 1, 2006, unless that responsibility remains with another entity per the purchase agreement and the acquiring manufacturer provides ecology with a letter from the other entity accepting responsibility for the CEPs. Cobranding manufacturers may negotiate with retailers for responsibility for those products and must notify ecology of the results of their negotiations.

## PART III
## ((~~TRANSPORTERS AND COLLECTORS~~)) THE AUTHORITY, AUTHORIZED PARTIES, AND COVERED ELECTRONIC PRODUCT (CEP) RECYCLING PLANS

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-300 ((~~Transporter and/or collector registration.~~)) Covered electronic product (CEP) recycling plans.** (((~~(1) As of September 1, 2007, all transporters and collectors must be registered with ecology in order to transport or collect CEPs.~~

~~(2) To confirm the registration status of a transporter and/or collector, a person must check the "Transporter/Collector Registration List for the Electronic Product Recycling Program" displayed on ecology's web site.~~

~~(3) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.~~

~~(4) **Transporter and/or collector registration:** Each transporter and/or collector must submit an annual registration form to ecology.~~

~~(a) **Existing transporters and/or collectors:** Transporters and/or collectors who transport or collect CEPs in Washington state on the effective date of this chapter and who plan to continue doing so, must register with ecology no later than September 1, 2007.~~

~~(b) **New transporter and/or collector registration:** Transporters and/or collectors who begin to transport or collect CEPs in Washington state after September 1, 2007, may submit their registration form to ecology at any time prior to beginning to transport or collect CEPs.~~

~~(5) **Transporter and/or collector annual registration:** Transporters and/or collectors must submit their annual renewal registration form to ecology between June 1 and September 1 of each calendar year.~~

~~(6) **Registration updates:** A transporter and/or collector must submit any changes to the information provided in the registration form to ecology within fourteen days of such change.~~

~~(7) **Transporter and/or collector registration form:** Each transporter and/or collector must use the registration form provided by ecology and must include all of the following:~~

~~(a) Contact and location information;~~
~~(b) Business license information;~~
~~(c) Permit information;~~
~~(d) Description of services provided;~~
~~(e) Geographic areas where services are provided; and~~
~~(f) Signature of responsible individual.~~

~~The registration form must be signed by the individual responsible for implementing the requirements under this chapter for the transporter and/or collector. Signing the form means the company has provided accurate and complete information on the form.~~

~~(8) **Submitting the transporter and/or collector registration form:** The transporter and/or collector must either submit the:~~

~~(a) Form via e-mail or internet service; or~~

~~(b) Original of the registration form to one of the following addresses:~~

~~For U.S. Postal Service:~~
~~Department of Ecology~~
~~Electronic Product Recycling~~
~~Solid Waste and Financial Assistance Program~~
~~P.O. Box 47600~~
~~Olympia, WA 98504-7600~~
~~Or~~
~~For Courier:~~
~~Department of Ecology~~
~~Electronic Product Recycling~~

~~Solid Waste and Financial Assistance Program~~
~~300 Desmond Drive~~
~~Lacey, WA 98503~~

~~(9) **Registration review and status:** After receiving a registration form, ecology will post the transporter's and/or collector's name on a list called "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site. This list will contain the names of transporters and collectors and their registration status. Each transporter/collector on the list will be assigned to a registration status category:~~

~~(a) **Pending** means ecology is reviewing the transporter's and/or collector's registration form. The transporter and/or collector is allowed to transport or collect CEPs in Washington state while in "pending" status.~~

~~(i) If ecology determines the registration form is complete and accurate, ecology will change the transporter's/collector's status from "pending" to "in compliance."~~

~~(ii) If ecology determines the form is not complete or accurate or additional information is needed, ecology will send notice, via certified mail, to the transporter and/or collector identifying what corrections and additional information is needed, and request a revised form. The transporter and/or collector will have thirty days from receipt of the notice to submit to ecology a revised registration form.~~

~~(iii) If the corrections are not made, or additional information is not provided within thirty days, ecology will change the transporter and/or collector's status from "pending" to "in violation."~~

~~(b) **Registered** or "in compliance" means ecology determined the registration form was complete and accurate. The transporter and/or collector is allowed to transport or collect CEPs in Washington state while in "in compliance" status.~~

~~(c) **In violation** means the transporter and/or collector is in violation of this chapter (see WAC 173-900-630 and 173-900-620). The transporter and/or collector must not transport or collect CEPs in Washington state while in the "in violation" category.~~

~~(10) **Registration violation:** If a transporter and/or collector does not submit their registration form as required above:~~

~~(a) Ecology will assign the transporter and/or collector to the "in violation" category on the "Transporter/Collector Registration List for the Electronic Product Recycling Program";~~

~~(b) A transporter must not transport CEPs in Washington state;~~

~~(c) A collector must not collect CEPs in Washington state;~~

~~(d) The transporter is subject to penalties under WAC 173-900-630; and~~

~~(e) The collector is subject to penalties under WAC 173-900-620.~~

~~(11) **Corrective action:** In order for ecology to change a transporter and/or collector from the "in violation" status to "in compliance" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" the transporter and/or collector must:~~

~~(a) Submit their registration form and ecology must determine the form is complete and accurate; and~~

~~(b) Pay or settle any penalties to ecology.~~)) (1) CEP recycling plans (plans) must provide a program for the collection, transportation, processing, and recycling of CEPs from covered entities in Washington state.

(2) All plans intending to begin implementation on or before January 1, 2009, must be submitted to ecology no later than February 1, 2008.

(3) The authority or authorized party of a plan must:

(a) Provide collectors with information that can be shared with covered entities about how and where CEPs received into the program are recycled.

(b) Ensure that any CEP that is reused after being received by the processor is not included in any weight counts or used to satisfy an equivalent share.

(4) Collection, transportation, processing, and recycling systems and services for a plan:

(a) To implement the program described in the CEP recycling plan the authority or authorized party must only use the services of registered collectors, transporters, and processors that are in "in compliance" status.

(b) Processing services: The authority shall accept and use any processor that:

(i) Meets the requirements of this chapter; and

(ii) Meets any requirements described in the authority's operating plan or through contractual arrangements.

(c) Collection services: The authority of the standard plan must accept CEPs from registered collectors who meet the requirements of this chapter. The authority must compensate registered collectors for the reasonable costs associated with collection of CEPs. If a collector offers premium or curbside services, the compensation paid by the standard plan does not have to cover additional costs associated with those services.

(d) A plan must provide for the processing of large quantities of CEPs at no charge to small businesses, small governments, charities, and school districts.

NEW SECTION

**WAC 173-900-305 The standard plan.** A manufacturer must participate in the standard plan administered by the authority unless the manufacturer has approval to participate in an ecology approved independent plan.

(1) The authority is responsible for collecting, transporting, processing, and recycling the sum of the equivalent shares of all manufacturers participating in the standard plan.

(2) The "authority" is the Washington materials management and financing authority and is authorized to submit the standard plan for the participating manufacturers.

NEW SECTION

**WAC 173-900-310 An independent plan.** (1) A single manufacturer or a group of manufacturers may submit an independent plan to ecology for approval if:

(a) The manufacturers participating in the proposed plan represent at least five percent return share of CEPs; and

(b) No manufacturer participating in the proposed plan is a new entrant or a white box manufacturer.

(2) If an independent plan does not represent five percent return share for two consecutive program years, ecology will dissolve the independent plan (see WAC 173-900-360).

(3) **Individual independent plan:** A single manufacturer submitting an independent plan to ecology is responsible for collecting, transporting, processing, and recycling its equivalent share of CEPs.

(4) **Collective independent plan:** Manufacturers collectively submitting an independent plan are responsible for collecting, transporting, processing, and recycling the sum of the equivalent shares of all manufacturers participating in the collective independent plan.

(5) Individual or collective groups of manufacturers submitting an independent plan must designate an "authorized party" that is responsible for submitting the independent plan to ecology. A letter of certification from each of the manufacturers designating the authorized party must be submitted to ecology together with their independent plan.

(6) Prior to beginning implementation of an independent plan, the authorized party for that plan must receive plan approval from ecology.

NEW SECTION

**WAC 173-900-320 CEP recycling plan content.** (1) All plans must contain all of the following sections and required information:

(a) Binding agreement;

(b) Standard plan participant assessment of charges or apportionment of costs (standard plan only);

(c) Letter of certification (independent plan only);

(d) Use of Washington businesses;

(e) Collection services;

(f) Collectors;

(g) Transporters;

(h) Direct processors;

(i) Direct processor audit reports;

(j) Design for recycling;

(k) Direct processor contract face sheet;

(l) Recordkeeping;

(m) Implementation timeline;

(n) Public outreach and marketing requirements; and

(o) Fair compensation.

(2) **A binding agreement:** Each plan must include a written statement binding the authority or authorized party to the use of the plan.

(a) The binding agreement must be signed by:

(i) The person(s) designated by the board of the standard plan to sign such agreements on behalf of the authority; or

(ii) The person(s) designated by the authorized party for independent plans to sign such agreements on behalf of the authorized party.

(b) The binding agreement must include:

(i) Contact information for the authority or authorized party, including name, address, and phone number;

(ii) A list of all manufacturers participating in the plan, manufacturer electronic product registration (EPR) numbers issued by ecology, and their contact information of the responsible official, including their location address, mailing address (if different), phone number and e-mail address;

(iii) A statement that the plan members will comply with the terms and conditions of their ecology approved plan; and

(iv) A statement that in the event the plan fails to meet the manufacturers' obligations under this chapter, the manufacturers retain responsibility and liability, including financial liability, for the collection, transportation, processing, and recycling of their equivalent share of CEPs as described in this chapter.

(3) **Standard plan participant assessment of charges or apportionment of costs:** For the standard plan only, the plan must include the proposal for assessing charges and apportioning costs for manufacturers participating in the standard plan. This must include a description of what information or data the authority used to determine the charge or cost. This section of the plan may be submitted separate from the rest of the plan (see WAC 173-900-325).

(4) **Letter of certification:** For independent plans only, the plan must include a sworn letter from each of the manufacturers participating in the independent plan designating the authorized party.

(5) **Use of Washington state businesses:** A description of how the authority or authorized party has sought the use of businesses within the state, including retailers, charities, processors, and collection and transportation services.

(6) **Collection services:** A description of how the plan will meet the collection service requirements in WAC 173-900-355. At a minimum the authority or authorized party for each plan must work with the local government entities responsible for preparing local solid waste management plans.

(7) **Collectors:** Information about collectors providing collection services in subsection (6) of this section must include:

(a) Collector names and collector electronic product registration (EPR) numbers issued by ecology;

(b) Collection sites: Location and contact number for collection sites;

(c) Days and hours of operation for each site; and

(d) Types of CEPs collected.

(8) **Transporters:** Information about transporters providing transportation services for CEPs and components for the plan including:

(a) Transporter names and transporter electronic product registration (EPR) numbers issued by ecology;

(b) Counties and cities where the transporter provides service for the plan; and

(c) Types of CEPs transported.

(9) **Direct processors:** Information about direct processors of CEPs participating in the plan including:

(a) Direct processor names;

(b) Physical location of processing facilities;

(c) Contact information and mailing addresses for the processing facilities;

(d) Types of CEPs processed at each facility;

(e) A description of the processes and methods that each processor will use to recycle CEPs; and

(f) A written statement from the direct processor ensuring that the direct processor will comply with the performance standards for direct processors in WAC 173-900-650.

(10) **Direct processor compliance audit reports:** For each direct processor used by the plan include a compliance audit report that meets the requirements in WAC 173-900-365.

(11) **Design for recycling:** A description of how the plan participants will communicate and work with processors used by the plan to promote and encourage the design of electronic products that are less toxic and contain components that are more recyclable.

(12) **Direct processor contract face sheet:**

(a) Copies of the contract face sheet and signature sheet for each direct processor used by the plan; and

(b) If not included on the face sheet and signature sheet, the date of the start of the contract and the date of the conclusion of the contract.

(13) **Recordkeeping:** Procedures for how the authority or authorized party will collect and maintain records to meet and demonstrate compliance with the requirements of this chapter. Recordkeeping must include a description of the accounting and reporting systems that will be employed to track progress toward the plan's equivalent share.

(14) **Implementation timeline:** A timeline describing start-up, implementation, and progress toward milestones with anticipated results.

(15) **Public outreach and marketing requirements:** A description of how the plan will meet the public outreach requirements in WAC 173-900-980.

(16) **Fair compensation:** Substantiate that fair compensation is paid to collectors, transporters and direct processors for all services provided to a plan and that payments to service providers will be made within thirty days net from date of shipment or other time frame defined in contractual arrangements.

NEW SECTION

**WAC 173-900-325 CEP recycling plan submittal, approval, and implementation.**

**Step 1: Format of the CEP recycling plan.**

(1) All plans must use the "CEP recycling plan template" provided by ecology.

(2) The authority or authorized party must submit paper copies of their plan in a three-ring binder so that individual pages can be submitted and replaced when updates or revisions are required.

**Step 2: Submit the CEP recycling plan.**

(3) The authority or authorized party must submit one paper copy and one usable electronic copy of their plan to ecology.

(4) All plans intending to begin implementation on or before January 1, 2009, must be submitted to ecology no later than February 1, 2008.

(a) The one paper copy must be submitted by mail to one of the following addresses:

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

For Courier:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(b) The electronic copy may be submitted by e-mail or other electronic format usable by ecology that allows electronic editing and commenting by ecology.

(5) The following section of a plan may be submitted to ecology for review and approval separate from the rest of the plan:

• Standard plan participant assessment of charges or apportionment of costs.

When submitting a section separate from the rest of the plan, the authority must follow the process described in this section.

**Step 3: Approval process.**

(6) Within ninety days after receipt of a complete plan, ecology will determine whether the plan complies with this chapter. Ecology will determine if the plan is:

(a) **Approved.** If approved, ecology will send a letter of approval to the authority or authorized party via certified mail. The approval letter will include an expiration date for the plan.

(b) **Disapproved.** If disapproved, ecology will send a letter of disapproval to the authority or authorized party via certified mail. The disapproval letter will provide ecology's reasons for not approving the plan.

(i) The authority or authorized party must submit a new or revised plan within sixty days after receipt of the disapproval letter.

(ii) Ecology then has an additional ninety days to review the new or revised plan.

(c) Ecology will approve plans for no more than five years. If an independent plan does not represent five percent return share for two consecutive program years, ecology will dissolve the independent plan (see WAC 173-900-360).

(7) **Approval criteria:** Ecology will consider the following when reviewing a plan for approval:

(a) The plan submittal dates were met;

(b) The plan meets the requirements in this chapter;

(c) The plan contains all of the information required in this chapter and provides descriptive information sufficient to allow ecology to determine that the implementation of the plan will be in compliance with this chapter;

(d) When reviewing a plan for service level, ecology may contact the local government or community identified in the plan; and

(e) The plan, when implemented, would meet or exceed required collection service levels (see WAC 173-900-355).

(8) Ecology may ask for additional information or clarification during the review of a plan.

(9) Ecology will post all plans on the agency web site.

(10) Proprietary information submitted to ecology under this chapter is exempt from public disclosure under RCW 42.56.270.

NEW SECTION

**WAC 173-900-330 Implementation of the CEP recycling plan.** (1) The authority or authorized party of each plan approved for program year 2009 must implement the plan no later than January 1, 2009.

(2) All manufacturers registered as of January 1, 2009, must be participating in a fully operational, ecology approved, plan as of January 1, 2009.

(3) The authority or authorized party must notify ecology if any of the manufacturers listed as a participant in the plan are not meeting the requirements described in the ecology approved plan (see WAC 173-900-350).

(4) If the authority or authorized party of a plan, through implementation of the plan, fails to provide service in each county in Washington state or meet other plan requirements, the authority or authorized party must submit an updated plan to ecology within sixty days of failing to provide service.

NEW SECTION

**WAC 173-900-335 Updates and revisions to CEP recycling plans.** (1) The authority or authorized party must update or revise the plan in the following situations:

(a) For five-year renewal;

(b) The plan has failed to provide services; and

(c) Plan updates or revisions are required.

(2) **Five-year renewal:** The authority or authorized party must:

(a) Review and update their plan every five years;

(b) Submit the plan to ecology at least one hundred twenty days prior to the expiration date on the plan approval letter.

(3) **Failure to provide service:**

(a) Failure to provide service means implementation of the plan fails to do any of the following:

(i) Provide service in each county in the state;

(ii) Provide service in each city or town with a population of ten thousand or greater; or

(iii) Meet other plan requirements.

(b) If the authority or authorized party of a plan, through implementation of the plan fails to provide services, the authority or authorized party must submit an updated plan to ecology within sixty days of failing to provide service.

(i) The updated plan must address how the program will be adjusted to meet the program geographic coverage and collection service requirements established in WAC 173-900-355.

(ii) When determining if the authority or authorized party fails to provide service, ecology will consider the collection services requirements in WAC 173-900-355 and the local government and community satisfaction reports if submitted under Part VIII, WAC 173-900-810.

(4) **Revisions or updates to the plan:** The authority or authorized party must submit a plan revision, including nonsignificant and significant plan revisions, to ecology within sixty days of any changes to the plan or receiving notice from ecology that an update is required.

(a) When submitting a plan revision, the authority or authorized party may submit only the sections or chapters related to the revision.

(b) **Nonsignificant revisions submitted but ecology approval is not required:** Nonsignificant revisions to CEP recycling plans are identified in Table 335 below. Ecology does not need to approve the nonsignificant revision prior to implementation.

(c) **Significant revisions submitted and ecology approval is required:** Significant revisions to CEP recycling plans are identified in Table 335 below. Ecology must approve the significant revisions prior to implementation.

**Table 335**
**CEP Recycling Plan Revisions**

| Plan Content | Nonsignificant Revisions<br>Submitted but no approval required to implement | Significant Revisions<br>Submitted and approval is required to implement |
|---|---|---|
| **Binding agreement** | Changes to manufacturers participating in the plan or changes to contact information for manufacturers already included in the plan. | No revisions requiring approval. |
| **Standard plan participant assessment of charges or apportionment of costs** | No nonsignificant revisions. | Any changes to the assessment of charges or apportionment of costs. |
| **Letter of certification** | Changes to the contact information included for manufacturers already participating in the plan. | Addition or withdrawal of manufacturers participating in an independent plan. |
| **Use of Washington businesses** | Any changes to the use of Washington state businesses. | No changes requiring approval. |
| **Collection services** | Addition of collection site(s) or services without eliminating or changing existing services. | Changes to the level of services provided by the plan other than additional services. |

| Plan Content | Nonsignificant Revisions<br>Submitted but no approval required to implement | Significant Revisions<br>Submitted and approval is required to implement |
|---|---|---|
| **Collectors** | Any addition or change to registered collectors used by the plan. | No changes requiring approval. |
| **Transporters** | Adding, changing or removing registered transporters used by the plan. | No revisions requiring approval. |
| **Direct processors** | Any additions or changes to direct processors already used by an approved plan. | Use of a direct processor not already registered under this chapter. |
| **Direct processor compliance audit report** | Submission of copies of audit reports for any direct processor the plan uses after the plan was last approved or the plan's annual report was last submitted. | No revisions requiring approval. |
| **Design for recycling** | Any changes to the description of design for recycling included in the plan. | No revisions requiring approval. |
| **Direct processor contract face sheet** | Submission of copies of the contract face sheet as required in WAC 173-900-320(12) for any direct processor the plan uses after the plan was last approved or the plan's annual report was last submitted. | No revisions requiring approval. |
| **Recordkeeping** | Any changes to recordkeeping. | No revisions requiring approval. |
| **Implementation timeline** | No nonsignificant revisions. | Any changes to the implementation timeline. |
| **Public outreach and marketing requirements** | Additional public outreach and marketing efforts. | Any changes to the public outreach plan, other than additional public outreach and marketing. |
| **Fair compensation** | Any changes to fair compensation. | No changes requiring approval. |

(5) **Approval process:** Within sixty days after receipt of a plan revision or update requiring approval, ecology will determine whether the plan complies with this chapter. Ecology will determine if the revision or update is:

(a) **Approved.** If approved, ecology will send a letter of approval to the authority or authorized party via certified mail. The approval letter will include an expiration date for the plan.

(b) **Disapproved.** If disapproved, ecology will send a letter of disapproval to the authority or authorized party via certified mail. The disapproval letter will provide ecology's reasons for not approving the plan.

(i) The authority or authorized party must submit a plan revision or plan update within sixty days after receipt of the letter of disapproval.

(ii) Ecology then has an additional sixty days to review the revised revision or plan update.

(6) **Approval criteria:** Ecology will consider the following when reviewing a plan revision or update for approval:

(a) The updated plan submittal dates were met;

(b) The updated plan meets the requirements in this chapter;

(c) The updated plan contains all of the information required in WAC 173-900-320 and provides descriptive information sufficient to allow ecology to determine that the implementation of the plan will be in compliance with this chapter;

(d) The updated plan, when implemented, would meet or exceed required service levels; and

(e) Additional information or clarification needed by ecology during the review of a revised or updated plan to determine if the plan is compliant with these rules and chapter 70.95N RCW.

(7) Ecology will post all updated plans on the agency web site.

(8) Proprietary information submitted to ecology under this chapter is exempt from public disclosure under RCW 42.56.270.

NEW SECTION

**WAC 173-900-340 CEP recycling plan review fee.** (1) Ecology shall review and approve plans. The authority or authorized party will pay ecology's plan review and approval costs.

(2) Plan review and approval includes ecology's costs for:

(a) Review;

(b) Approval; and

(c) Update and plan revision review and approval.

(3) Ecology shall base the plan review fee on actual costs as follows:

Plan Review Fee = Direct Costs + Indirect Costs

Where:

(a) **Direct costs** include ecology staff hourly time and other costs related to accomplishing the activities identified in subsection (2) of this section for each plan. Direct staff costs are the costs of hours worked, including salaries and benefits required by law to be paid to, or on behalf of, employees. Other direct costs are costs incurred as a direct result of ecology staff working on the plan including, for example, costs of: Travel related to plan review, printing and publishing of documents about the plan, and other work, contracted or otherwise, associated with plan review and approval, as necessary.

(b) **Indirect costs** are those general management and support costs of ecology. Ecology applies them using the agency's approved federal indirect cost rate.

(4) **Plan review fee invoicing and payment.** Invoices are generally sent about the last week of the month, for the previous month's activity. Payment is expected within thirty days after the date that ecology has issued the invoice. Ecology will grant final approval of plans and post approved plans on ecology's web site, when all outstanding invoices have been paid by the authority or authorized party for the activities delineated in subsection (2) of this section.

NEW SECTION

**WAC 173-900-345 Changing CEP recycling plan participation.** (1) After January 1, 2008, no manufacturer may change CEP recycling plans for program year 2009.

(2) For program year 2010 and thereafter, registered CEP manufacturers may change participation in plans if the manufacturer meets the requirements in this section.

The following is the process for changing plan participation:

(3) The plan the manufacturer is joining must, by August 1 prior to the program year for which the change will take effect, submit:

(a) For an existing plan, an update or revision under WAC 173-900-335; or

(b) For a new independent plan, a plan that meets the requirements of WAC 173-900-310.

(4) Ecology will review the plan under the process described in WAC 173-900-325 or 173-900-335, as appropriate. If approved, ecology will send notice, via certified mail, to:

(a) The manufacturer requesting the change; and

(b) The authorized party(ies) and the authority affected by the change.

(5) If ecology does not approve the submitted plan or plan update by January 1 of the program year for which the change was submitted, the change cannot be implemented that program year. Ecology may still review the plan or plan update for approval for the following program year.

(6) Within fourteen days of receiving plan approval notice from ecology, the manufacturer must submit an updated registration form to ecology (see Part II, WAC 173-900-240).

(7) Within sixty days of receiving the notice, the plan the manufacturer left must submit a plan revision to ecology that meets the requirements in WAC 173-900-335.

(8) If an independent plan does not represent five percent return share after the manufacturer leaves the plan, the independent plan has until the end of the following program year to increase participation to represent the five percent return share. If the independent plan does not represent five percent return share at that time, the remaining members will then become members of the standard plan (see WAC 173-900-360).

NEW SECTION

**WAC 173-900-350 CEP recycling plan compliance.** (1) **Financial obligations of manufacturers:**

(a) If a manufacturer has not met its financial obligations as determined by the authority, the authority must notify ecology within sixty days that the manufacturer is no longer participating in the standard plan.

(b) Manufacturers who do not meet their financial obligations in their plan are in plan violation. Ecology will follow the violations, warning and penalty procedures in Part III, WAC 173-900-255 and 173-900-260.

(2) **Noncompliance with plan responsibilities:**

(a) It is the responsibility of the authority or the authorized party to notify ecology within sixty days if a manufacturer, who is participating in their plan, is not complying with the manufacturer's responsibilities as described in the ecology approved plan.

(b) Manufacturers who do not comply with the responsibilities identified and agreed to in their plan are in plan violation. Ecology will follow the violations, warning and penalty procedures in Part III, WAC 173-900-255 and 173-900-260.

(3) **Notifications to ecology:**

(a) The notification to ecology about manufacturers in the plan must include:

(i) Name of manufacturer and EPR number issued by ecology;

(ii) Description of noncompliance; and

(iii) Date of notice submittal.

(b) The notification to ecology about direct processors in the plan must include:

(i) Name of direct processor and facility address;

(ii) Description of noncompliance; and

(iii) Date of notice submittal.

NEW SECTION

**WAC 173-900-355 Collection services.** (1) Each plan must include a description of the method(s) for the reasonably convenient collection of all CEPs in rural and urban areas throughout the state at no cost to the covered entities according to the requirements in this section.

(2) **County:** The plan must provide collection services of CEPs in each county of the state.

(3) **Urban, city or towns with a population greater than ten thousand:** The plan must provide at least:

(a) One collection site; or

(b) Alternative collection service; or

(c) A combination of sites and alternative service(s).

Together, these sites and/or alternative services must provide at least one collection opportunity for all CEPs for every city or town in the state with a population of greater than ten thousand. A county's collection site may be the same as a collection site for a city or town in the county.

(4) **Rural areas:** For rural areas without commercial centers, or areas with widely dispersed population, a plan may provide collection at:

(a) The nearest commercial centers or solid waste sites;

(b) Collection events;

(c) Mail-back systems; or

(d) A combination of these options.

(5) **Collectors:** The plan must use only registered collectors that are listed as being in "in compliance" status on the "collector registration list."

(6) **Standard plan:** The standard plan must accept CEPs from any collector that is listed on the "collector registration list" as in "in compliance" status.

(7) **Limiting CEPs collected:** A plan may limit the number of CEPs that will be accepted.

(a) CEPs may be limited by:

(i) Number of a product type accepted per a covered entity per day; or

(ii) Number of product type accepted per delivery at a collection site; or

(iii) Number of a product type accepted by an alternative collection service.

(b) All covered entities may use a collection site as long as the covered entities adhere to any restrictions established in the approved plans.

(8) **Large quantities:** If a plan provides specific collection services or has restrictions for large quantities of CEPs, the plan must include a definition of "large quantity."

(9) **Providing joint services:** A plan may provide collection sites and services jointly with another plan or plans.

(10) **Collection sites:**

(a) Collection sites must be:

(i) Staffed during operating hours;

(ii) Open to the public at a frequency adequate to meet the needs of the area being served; and

(iii) Open regularly scheduled hours and on an ongoing basis.

(b) Collection sites may include:

(i) Electronics recyclers and repair shops;

(ii) Recyclers of other commodities;

(iii) Reuse organizations;

(iv) Charities;

(v) Retailers;

(vi) Government recycling sites; or

(vii) Other suitable locations.

(11) **Alternatives to collection sites:**

(a) A plan may provide alternative collection services to covered entities if those alternative collection services provide:

(i) Equal or better convenience than a collection site; and

(ii) Equal or increased collection of unwanted CEPs than would be achieved through a collection site.

(b) If a plan provides alternative services at a cost, the plan must also provide free collection service to covered entities in that county and for cities or towns with a population greater than ten thousand.

(c) These alternatives must be included in the plan as required under Part III, WAC 173-900-320.

(d) To use an alternative collection service instead of a collection site, a plan must provide ecology documentation that demonstrates the alternative service meets (a)(i) and (ii) of this subsection.

(e) Alternative services may include curbside collection services and premium services:

(i) Curbside collection services may be used to collect CEPs from households and other covered entities in small quantities. Those providing curbside collection services may charge an additional fee to the covered entity using the service. The fee will cover the costs not paid by the standard or independent plans.

(ii) Premium services are services that are in addition to simple collection and are provided on-site.

(A) Examples are:

• At-location system upgrade or replacement services provided to covered entities; or

• At-home pickup services offered to households.

(B) Those providing premium services may charge an additional fee to the covered entity to cover the costs not paid by the standard or independent plans.

(12) **Alternatives for collecting large quantities of CEPs:**

(a) A plan may provide alternative collection services to small businesses, small governments, charities, and school districts that may have large quantities of CEPs that cannot be handled at collection sites or through curbside services.

(b) The plan must include a description of alternative collection services for large quantities of CEPs.

(13) **Approval criteria for collection services:** Ecology will determine approval of a plan's collection services based on the following criteria. Collection services are:

(a) Reasonably convenient;

(b) Available to all citizens of Washington state;

(c) Provided in both rural and urban areas;

(d) Provided in every county of the state; and

(e) Provided for each city or town with a population of greater than ten thousand.

NEW SECTION

**WAC 173-900-360 Dissolving an independent plan.** (1) If an independent plan does not represent five percent

return share for two consecutive program years, ecology will dissolve the independent plan.

(2) After August 1 but prior to the start of the next program year, ecology will dissolve any independent plan that does not meet the independent plan criteria in WAC 173-900-310.

(a) Ecology will send notice, via certified mail, informing all participants in the plan that they must join the standard plan and update their manufacturer registration form (see Part II, WAC 173-900-240).

(b) If a manufacturer does not submit their updated registration form within fourteen days of receiving the notice, it is a registration violation (see WAC 173-900-255) and ecology will follow the warning and penalty procedures in Part II, WAC 173-900-255, 173-900-260, and 173-900-270 of this chapter.

(3) If ecology determines that this change may significantly alter the program described in the standard plan, the authority must submit an updated plan to ecology (see WAC 173-900-335).

NEW SECTION

**WAC 173-900-365 Annual compliance audit reports for direct processors.** (1) For each direct processor used by the plan, the authority or authorized party must provide an annual compliance audit report to ecology. These reports must demonstrate and certify that the direct processors meet either the minimum performance standards in WAC 173-900-650 or are in conformance with ecology's "*Environmentally Sound Management and Performance Standards for Direct Processors*."

(2) The authority or authorized party must submit the compliance audit report with their plan submittal (WAC 173-900-320), plan updates or revisions when there are additions or changes to direct processors used by the plan (WAC 173-900-335), and as part of the annual report (WAC 173-900-800).

**Minimum performance standards.**

(3) For demonstration of compliance with the minimum standards in WAC 173-900-650, the compliance audit must be conducted by an auditor not employed by the processor.

(4) Each annual compliance audit report submitted to ecology to demonstrate compliance with the minimum standards must include:

(a) A list of all the minimum performance standards;

(b) Documentation that the direct processor meets each of the performance standards, including a list of all applicable national, state, and local laws, rules, and ordinances, related to processing activities;

(c) Documentation of noncompliance with a performance standard: A direct processor may not comply with a specific minimum performance standard in WAC 173-900-650 when the national, state, or local laws or rules where the processor is located and a performance standard conflict. When a conflict exists, the audit report must include:

(i) Identification of which performance standard(s) is in conflict.

(ii) Document the conflict and the processor's compliance with the corresponding national, state, or local laws or rules that apply at that location;

(d) Documentation of the auditor's qualifications as described in subsection (5) of this section for the auditor signing the report;

(e) Certification from the auditor certifying whether or not the processor meets the standards in this section;

(f) Signature of the auditor certifying the accuracy of the report.

(5) This annual compliance audit must be completed by an auditor who through professional training, work experience and certification has appropriate knowledge to evaluate the environmental compliance of the processing facility.

**Voluntary preferred performance standards.**

(6) For demonstration of voluntary conformity with the "*Environmentally Sound Management and Performance Standards for Direct Processors*," the annual compliance audit report must meet the requirements in the environmentally sound management and performance standards document. The audit report required for the voluntary program for preferred performance standards may substitute for the audit report required in this section.

(7) Ecology will not list a direct processor in "preferred status" if:

(a) Ecology does not receive an audit report as required in "*Environmentally Sound Management and Performance Standards for Direct Processors*"; or

(b) The direct processor is not meeting all of the voluntary preferred performance standards.

(8) If a direct processor loses preferred status, and still is providing services to a CEP recycling plan, the direct processor must still be in compliance with the minimum performance standards in WAC 173-900-650. If the direct processor is not meeting the minimum standards, ecology will follow the warning, penalty, and violation procedures in WAC 173-900-370, 173-900-380, and 173-900-390.

**Proprietary information.**

(9) Proprietary information submitted to ecology under this chapter is exempt from public disclosure under RCW 42.56.270.

NEW SECTION

**WAC 173-900-370 Authority or authorized party violations.** (1) The authority or authorized party is in violation of this chapter when there is:

(a) A plan violation; or

(b) An annual report violation; or

(c) A performance standards violation.

(2) **Plan violation:** As of January 1, 2009, it is a plan violation if the authority or authorized party:

(a) Does not implement the plan so that the plan meets the requirements in this chapter (see Part III of this chapter);

(b) Uses a collector, transporter, that is not in "in compliance" status; or

(c) Uses a direct processor for processing services that is not registered or has not updated their registration as required under this chapter.

(d) Does not implement return share sampling as required in WAC 173-900-900.

(3) **Annual report violation.**

As of March 1, 2010, it is an authority or authorized party violation if the plan's annual report is not submitted to ecology and approved under WAC 173-900-800.

(4) **Performance standards violation.**

As of January 1, 2009, it is an authority or authorized party "performance standards" violation if the plan uses a direct processor that does not meet the minimum performance standards in WAC 173-900-650.

NEW SECTION

**WAC 173-900-380 Authority and authorized party violation notice and penalties.**

**Table 380**
**Authority and Authorized Party Penalties**

| Type of Violation | Written Notice | First Penalty | Second and Subsequent Penalties |
|---|---|---|---|
| Plan Violation | Penalty Notice | Up to $5,000 | Up to $10,000 |
| Annual Report Violation | Warning Letter | Up to $1,000 | Up to $2,000 |
| Performance Standards Violation | Warning Letter | Up to $1,000 | Up to $2,000 |

**Penalty notice for plan violations.**

(1) When ecology issues a penalty notice for a "plan violation," ecology will send the penalty notice to the authority or authorized party by certified mail, with a copy to each manufacturer listed as a plan participant. The penalty notice will include:

(a) A first penalty assessment as defined in Table 380;

(b) The requirements that need to be corrected; and

(c) A statement that the authority or authorized party must correct the violation within thirty days of receipt of the notice or the plan may no longer be approved.

(2) If after thirty days, the authority or authorized party fails to make the required corrections and implement the plan or submit a plan update as described in WAC 173-900-335, ecology:

(a) Must then assess a second penalty as defined in Table 380; and

(b) May inform the authority or authorized party that the plan is no longer approved; and

(c) Send a "manufacturer plan violation" warning letter to each manufacturer in the plan (see WAC 173-900-255).

(3) If the authority or authorized party does not correct the violation, ecology must assess subsequent penalties no more often than every thirty days.

**Warning letter for annual report violations.**

(4) When ecology issues a warning letter for an "annual report violation," ecology will send the letter to the authority or authorized party by certified mail, with a copy to each manufacturer listed in the plan. The warning letter will include:

(a) The requirements that need to be corrected; and

(b) A statement that the authority or authorized party must correct the violation within thirty days of receipt of the warning letter.

(5) If after thirty days, the authority or authorized party fails to make the required corrections, ecology must:

(a) Then assess a first penalty as defined in Table 380; and

(b) Send a "manufacturer plan violation" warning letter to each manufacturer in the plan (see WAC 173-900-255).

(6) If the authority or authorized party does not correct the violation, ecology must assess subsequent penalties no more often than every thirty days.

**Warning letter for performance standards violations.**

(7) When ecology issues a warning letter for a "performance standards violation," ecology will send the letter to the authority or authorized party by certified mail, with a copy to each manufacturer listed in the plan. The warning letter will include:

(a) The violations that need to be corrected; and

(b) A statement that the authority or authorized party must correct the violation within thirty days of receipt of the warning letter.

(8) If after thirty days, the authority or authorized party fails to make the required corrections, ecology must:

(a) Then assess a first penalty as defined in Table 380; and

(b) Send a "manufacturer plan violation" warning letter to each manufacturer in the plan (see WAC 173-900-255).

(9) If the authority or authorized party does not correct the violation, ecology must assess subsequent penalties no more often than every thirty days.

(10) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

**Appeals.**

(11) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

NEW SECTION

**WAC 173-900-390 Corrective actions for authority or authorized party.**

**Corrective actions for plan violations.**

(1) The authority or authorized party must:

(a) Meet the plan requirements in Part III of this chapter;

(b) Ensure that all direct processors used by the plan are registered and have updated their registration as required in this chapter;

(c) Correct any other violations; and

(d) Pay or settle any penalties due to ecology.

**Corrective actions for annual report violations.**

(2) The authority or authorized party must:

(a) Submit their annual report to ecology or correct any deficiencies in the report and submit to ecology;

(b) Correct any other violations; and

(c) Pay or settle any penalties due to ecology.

**Corrective actions for performance standards violations.**

(3) The authority or authorized party must:

(a) Update information in the plan about direct processors by either:

(i) Discontinuing use of the direct processor and submitting a plan update. The plan update must remove the direct processor from the plan and explain how the plan will replace the processing services previously provided by that direct processor; or

(ii) Submitting a plan update including a new audit report for the direct processor documenting how the direct processor now meets all of the minimum performance standards in WAC 173-900-650.

(b) Correct any other violations; and

(c) Pay or settle any penalties due to ecology.

## PART IV
## ((~~WARNING, VIOLATIONS, AND PENALTIES~~)) COLLECTORS FOR CEP RECYCLING PLANS

NEW SECTION

**WAC 173-900-400 What collectors need to know to collect CEPs for a CEP recycling plan.** (1) To collect CEPs for a plan under this chapter the collector must:

(a) Submit an initial registration;

(b) Update the registration information if it changes;

(c) Renew registration annually;

(d) Meet the collector performance standards; and

(e) Be in "in compliance" status on the "collector registration list" on ecology's web site.

**Table 400**
**Collector Status**

| Collector's Status | Can a collector collect CEPs for a plan? | Definition |
|---|---|---|
| In compliance | Yes | **"In compliance"** means the collector is registered and meets the collector performance standards in this chapter. |

**Table 400**
**Collector Status**

| Collector's Status | Can a collector collect CEPs for a plan? | Definition |
|---|---|---|
| In violation | No | **"In violation"** means the collector is in violation of the requirements in this chapter. |
| Collector's name is not on the "collector registration list" | No | Collectors who collect CEPs or other electronic products and do not want to participate in this program do not need to register to continue doing business.<br>If a collector is not registered, the collector must not receive payment for CEPs from a plan. |

(2) **Collection services:**

(a) Plans are not required to compensate collectors for any products other than CEPs submitted for recycling by covered entities (households, charities, school districts, small businesses, and/or small governments located in Washington state).

(b) Plans are not required to compensate collectors for CEPs collected prior to January 1, 2009.

(3) Registration under this chapter is only for purposes of administering the electronic product recycling program and does not constitute endorsement by ecology of a particular registrant.

(4) The authority of the standard plan must accept CEPs from registered collectors in "in compliance" status.

(5) The authority must compensate registered collectors, in "in compliance" status for the reasonable costs associated with collection of CEPs submitted by a collector to the plan.

(6) The standard plan will not pay for additional costs associated with premium or curbside services, unless a prior written agreement has been made between the authority and the service provider.

NEW SECTION

**WAC 173-900-410 Initial registration as a CEP collector.**

**Step 1: Complete the collector registration form.**

(1) Each collector must complete the on-line or paper registration form provided by ecology and must include all of the following:

(a) Name of individual responsible for implementing the collector requirements;

(b) Contact and location information;

(c) Business license information;

(d) Permit information, when applicable;

(e) Description of services provided; and

(f) Geographic areas where services are provided.

**Step 2: Submit the collector registration form.**

(2) The individual responsible for implementing the collector requirements must sign the form. Signing the form means the collector has provided accurate and complete information on the form and will comply with the collector performance standards in WAC 173-900-450.

(3) The collector must submit the form using one of the following options:

(a) On-line registration;

(b) Submitting the original paper version through:

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

NEW SECTION

**WAC 173-900-420 How collectors know if their registration is approved.**

**Step 1: Ecology review of collector registration forms.**

(1) After receiving a form, ecology will review the form to determine if the form is complete and accurate.

(2) If the form is not complete and accurate, ecology will contact the collector to:

(a) Tell the collector what information is missing or inaccurate; and

(b) Request a revised form.

(3) The collector must submit a revised form within thirty days from the day ecology contacted the collector.

**Step 2: Approval or denial of collector registration forms.**

(4) **Approval.**

(a) Approval means that ecology has determined the form is complete and accurate.

(b) If ecology approves the collector's registration, ecology will post the collector's name on the "collector registration list" and place the collector in "in compliance" status. The collector is allowed to collect CEPs for a plan.

(5) **Denial.**

(a) Denial means that ecology has determined the form is not complete and accurate and the collector did not revise information as requested.

(b) If ecology denies a collector's registration, ecology will remove the collector's name from the "collector registration list" if listed, and will notify the collector of the denial.

(c) The collector must not collect CEPs for a plan.

(d) For initial collector registration, if ecology denies a registration, the collector may resubmit an initial registration form.

NEW SECTION

**WAC 173-900-430 Annual renewal of collector registration.** (1) A collector must submit its annual registration renewal form to ecology between June 1 and September 1 of each calendar year for the next program year.

(2) If a collector does not submit an annual registration renewal form, ecology will remove the collector from the "collector registration list."

(3) The collector must submit their annual registration form using one of the options below:

(a) Submit the on-line registration form;

(b) Submit a paper version of a form through:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(4) Ecology will review collector registration forms submitted for annual registration under the process described in WAC 173-900-420.

(5) For annual registrations, if ecology denies the collector's registration form, ecology will remove the collector from the "collector registration list." In order to resume collecting CEPs for a plan, the collector must resubmit an initial registration (WAC 173-900-410) and receive registration approval from ecology.

NEW SECTION

**WAC 173-900-440 Updates to collector registration.** (1) A registered collector must submit an updated registration form to ecology within fourteen days of any change to the information provided in its registration form.

(2) The collector must submit updates to its registration form by using one of the options below:

(a) Updating the collector's registration information using the on-line form;

(b) Submitting a paper version of the form with updated information through:

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(3) Ecology will review collector updated registration forms under the process described in WAC 173-900-420.

NEW SECTION

**WAC 173-900-450 Performance standards for collectors.** (1) CEPs collected for a plan must be collected from covered entities free of charge except for the following services:

(a) Premium services as described in an approved plan to cover the costs not paid by the standard or independent plans;

(b) Curbside collection services to cover the costs not paid by the standard or independent plans; or

(c) Collection of large quantities of CEPs from small businesses, small governments, charities, and school districts as defined in WAC 173-900-355(7).

(2) A registered collector must not process CEPs, or components, for purposes of recycling or disposal, unless they also meet the direct processor performance standards and are a registered direct processor under this chapter.

(3) In addition to the requirements in this chapter, all registered collectors must comply with all applicable environmental laws, rules, and local ordinances.

(4) When providing collection services for a plan, the registered collector must:

(a) Staff the site during operating hours.

(b) Notify the authority and/or authorized party of any changes in hours and days of operation and types of CEPs accepted if the collection services provided are identified in an ecology approved plan.

(c) Cooperate with CEP sampling efforts conducted by CEP recycling programs approved under this chapter.

(d) Provide enclosed storage areas with impervious floors so that the CEPs and components collected are protected from the weather.

(e) Collectors must post, in a readily visible location, information that can be shared with covered entities about how and where CEPs received into the program are recycled. Recycling information is provided by the plan(s) for which the collector is providing services.

(f) If a registered collector also gleans CEPs or components for reuse, they must notify the covered entity.

(5) A registered collector must allow access to ecology or their authorized third party representative for purposes of conducting sampling to determine return share.

(6) A registered collector must allow access to ecology for inspections to determine compliance with the requirements in this chapter.

(7) No entity shall claim to be collecting CEPs for a plan unless the entity is registered as a collector and submits all collected CEPs to a plan. Except fully functional CEPs and components may be gleaned for reuse. Collectors shall not include gleaned CEPs and components for reuse in the weight totals for plan compensation.

(8) A registered collector must notify the authority and authorized parties for all plans that the collector submits CEPs if the collector's days/hours of operations change or the collector changes the CEPs collected.

NEW SECTION

**WAC 173-900-460 Ecology determination of collector compliance.** (1) Beginning January 1, 2009, ecology may inspect any collector used by a plan for compliance with this chapter.

(2) If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violation, and penalties procedures in Part IV, WAC 173-900-470, 173-900-480, and 173-900-490.

NEW SECTION

**WAC 173-900-470 Collector violations.** Collector violations are described in Table 470.

**Table 470**
**Collector Violations**

| Starting | If | Then | and Ecology Will |
|---|---|---|---|
| September 1, 2007 | A collector has collected CEPs for a plan and is not registered under this chapter. | It is a **collector registration violation.** | Follow the warning, violation, and penalties procedures in Part IV, WAC 173-900-480 and 173-900-490. |
| Effective date of this chapter | A collector does not update its registration information within fourteen days of a change. | It is a **collector registration violation.** | Follow the warning, violation, and penalties procedures in Part IV, WAC 173-900-480 and 173-900-490. |

| Starting | If | Then | and Ecology Will |
|---|---|---|---|
| January 1, 2009 | A collector collecting CEPs for a plan is out of compliance with the collector standards in WAC 173-900-450. | It is a **collector standards violation.** | Follow the warning, violation, and penalties procedures in Part IV, WAC 173-900-480 and 173-900-490. |

NEW SECTION

**WAC 173-900-480 Warnings and penalties for collector violations.**

**Table 480**
**Collector Warning and Penalties**

| Type of Violation | Written Warning | First Penalty | Second and Subsequent Penalties |
|---|---|---|---|
| Collector Registration Violation | Warning Letter | Up to $1,000 | Up to $2,000 |
| Collector Standards Violation | Warning Letter | Up to $1,000 | Up to $2,000 |

**Warning letter:**

(1) When ecology issues a written warning letter via certified mail to a collector, for any collector violation the warning will include a copy of the requirements to let the collector know what must be done to be in compliance.

(2) Ecology will send a copy of the warning letter to the authority and authorized party of each plan.

**Penalties:**

(3) **First penalties:** If the collector does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 480 above and ecology will:

(a) Either change the collector's status to "in violation" or add the collector to the "collector registration list" and put them in "in violation" status; and

(b) Send a penalty notice for a "plan violation" to the authority and authorized party of each plan that uses the collector (see WAC 173-900-380).

(4) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 480 no more often than every thirty days for the same violation.

(5) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

**Appeals:**

(6) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

NEW SECTION

**WAC 173-900-490 Corrective action for collector violations.** For ecology to change a collector from the "in violation" status to "in compliance" status on the "collector registration list," the collector must:

(1) Provide evidence that the violation has been corrected; and

(2) Pay or settle any penalties to ecology.

## PART V
## TRANSPORTERS FOR CEP RECYCLING PLANS

NEW SECTION

**WAC 173-900-500 What transporters need to know to collect CEPs for a CEP recycling plan.** (1) To transport CEPs for a plan under this chapter a transporter must:

(a) Submit an initial registration;

(b) Update the registration information if it changes;

(c) Renew registration annually;

(d) Meet the transporter performance standards in WAC 173-900-550; and

(e) Be in "in compliance" status on the "transporter registration list" on ecology's web site.

**Table 500**
**Transporter Status**

| Transporter's Status | Can a transporter transport CEPs for a plan? | Definition |
|---|---|---|
| In compliance | Yes | **"In compliance"** means the transporter is registered and meets the transporter performance standards in this chapter. |
| In violation | No | **"In violation"** means the transporter is in violation of the requirements in this chapter. |
| Transporter's name is not on the "transporter registration list" | No | Transporters who transport CEPs or other electronic products and do not want to participate in this program do not need to register to continue doing business. |

**Table 500**
**Transporter Status**

| Transporter's Status | Can a transporter transport CEPs for a plan? | Definition |
|---|---|---|
| | | If a transporter is not registered, the transporter must not receive payment for CEPs from a plan. |

(2) Registration under this chapter is only for purposes of administering the electronic product recycling program and does not constitute endorsement by ecology of a particular registrant.

NEW SECTION

**WAC 173-900-510 Initial registration as a CEP transporter.**

**Step 1: Complete the transporter registration form.**

(1) Each transporter must use the form provided by ecology and must include all of the following:

(a) Contact and location information;

(b) Business license information;

(c) Permit information;

(d) Description of services provided; and

(e) Geographic areas where services are provided.

**Step 2: Submit the registration form.**

(2) The individual responsible for implementing the transporter requirements must sign the form. Signing the form means the transporter has provided accurate and complete information on the form and will comply with the transporter standards in WAC 173-900-550.

(3) The transporter must submit the form using one of the options below:

(a) On-line registration;

(b) The original paper version through:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

NEW SECTION

**WAC 173-900-520 How transporters know if their registration is approved.**

**Step 1: Ecology review of transporter registration form.**

(1) After receiving a form, ecology will review the form to determine if the form is complete and accurate.

(2) If the form is not complete and accurate, ecology will contact the transporters to:

(a) Tell the transporter what information is missing or inaccurate; and

(b) Request a revised form.

(3) The transporter must submit a revised form within thirty days from the day ecology contacted the transporter.

**Step 2: Approval or denial of transporter registration forms.**

(4) **Approval.**

(a) Approval means that ecology has determined the form is complete and accurate.

(b) If ecology approves the transporter's registration, ecology will post the transporter's name on the "transporter registration list" and place the transporter in "in compliance" status. The transporter is allowed to transport CEPs for a plan.

(5) **Denial.**

(a) Denial means that ecology has determined the form is not complete and accurate and the transporter did not revise information as requested.

(b) If ecology denies a transporter's registration, ecology will remove the transporter's name from the "transporter registration list" if listed, and will notify the transporter of the denial.

(c) The transporter must not transport CEPs for a plan.

(d) For initial transporter registration, if ecology denies a registration, the transporter may resubmit an initial registration form.

NEW SECTION

**WAC 173-900-530 Annual renewal of transporter registration.** (1) A transporter must submit its annual renewal registration form to ecology between June 1 and September 1 of each calendar year for the next program year.

(2) If a transporter does not submit a renewal registration form, ecology will remove the transporter from the "transporter registration list."

(3) The transporter must submit its annual registration form using one of the options below:

(a) Submit the on-line registration form;

(b) Submit a paper version through:

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(4) Ecology will review transporter registration forms submitted for annual registration under the process described in WAC 173-900-520.

(5) For annual registrations, if ecology denies the transporter's registration form, ecology will remove the transporter from the "transporter registration list." In order to resume transporting CEPs for a plan, the transporter must resubmit an initial registration (WAC 173-900-510) and receive registration approval from ecology.

NEW SECTION

**WAC 173-900-540 Updates to transporter registration.** (1) A registered transporter must submit an updated registration form to ecology within fourteen days of a change to the information provided in a registration form.

(2) The transporter must submit updates to its registration form by using one of the options below:

(a) Updating the transporter's registration information using the on-line form;

(b) Submitting a paper version of the form with updated information through:

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(3) Ecology will review transporter updated registration forms under the process described in WAC 173-900-520.

NEW SECTION

**WAC 173-900-550 Performance standards for transporters.** (1) All registered transporters must comply with all applicable laws, rules, and local ordinances.

(2) A registered transporter must allow access to ecology or their authorized third party representative for purposes of conducting sampling to determine return share.

(3) A registered transporter must allow access to ecology for inspections to determine compliance with the requirements in this chapter.

(4) Transporters must deliver CEPs for a plan to registered direct processors.

NEW SECTION

**WAC 173-900-560 Ecology determination of transporter compliance.** (1) Beginning January 1, 2009, ecology may inspect any transporter used by a plan for compliance with this chapter.

(2) If ecology determines a violation occurred, ecology will document each violation and follow the warning, violation, and penalties procedures in Part V, WAC 173-900-570, 173-900-580, and 173-900-590.

NEW SECTION

**WAC 173-900-570 Transporter violations.** Transporter violations are described in Table 570.

**Table 570**
**Transporter Violations**

| Starting | If | Then | and Ecology Will |
|---|---|---|---|
| September 1, 2007 | A transporter has transported CEPs for a plan and is not registered under this chapter. | It is a **transporter registration violation.** | Follow the warning, violation, and penalties procedures in Part V, WAC 173-900-580 and 173-900-590. |
| Effective date of this chapter | A transporter does not update its registration information within fourteen days of a change. | It is a **transporter registration violation.** | Follow the warning, violation, and penalties procedures in Part V, WAC 173-900-580 and 173-900-590. |
| January 1, 2009 | A transporter transporting CEPs for a plan is out of compliance with the transporter standards in WAC 173-900-550. | It is a **transporter standards violation.** | Follow the warning, violation, and penalties procedures in Part V, WAC 173-900-580 and 173-900-590. |

NEW SECTION

**WAC 173-900-580 Warnings and penalties for transporters.**

**Table 580**
**Transporter Warning and Penalties**

| Type of Violation | Written Warning | First Penalty | Second and Subsequent Penalties |
|---|---|---|---|
| Transporter Registration Violation | Warning Letter | Up to $1,000 | Up to $2,000 |
| Transporter Standards Violation | Warning Letter | Up to $1,000 | Up to $2,000 |

**Warning letter:**

(1) When ecology issues a written warning letter via certified mail to a transporter, for any transporter violation the warning will include a copy of the requirements to let the transporter know what must be done to be in compliance.

(2) Ecology will send a copy of the warning letter to the authority and authorized party of each plan.

**Penalties:**

(3) **First penalties:** If the transporter does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 580 above and ecology will:

(a) Either change the transporter's status to "in violation" or add the transporter to the "transporter registration list" and put them in "in violation" status; and

(b) Send a penalty notice for a "plan violation" to the authority and authorized party of each plan that uses the transporter (see WAC 173-900-380).

(4) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 580 no more often than every thirty days for the same violation.

(5) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

**Appeals:**

(6) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

NEW SECTION

**WAC 173-900-590 Corrective actions for transporter violations.** For ecology to change a transporter from the "in violation" status to "in compliance" status on the "transporter registration list," the transporter must:

(1) Provide evidence that the violation has been corrected; and

(2) Pay or settle any penalties to ecology.

## PART VI
## DIRECT PROCESSOR REQUIREMENTS

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-600 ((~~Manufacturer - Warning, violations, and penalties.~~)) What direct processors need to know to process CEPs for a CEP recycling plan.** (((~~(1) As of January 1, 2007, all manufacturers of CEPs must register with ecology in order to offer for sale or sell, or have a retailer offer for sale or sell, their products in or into Washington state.~~

~~(2) Ecology will place a manufacturer in "in violation" status if a violation, as described in this chapter, is committed by the manufacturer.~~

~~(3) **Types of violations:**~~

~~(a) **Registration violation:** As of January 1, 2007:~~

~~(i) It is a manufacturer violation if a manufacturer offers for sale or sells CEPs in or into Washington state and is not registered under this chapter.~~

~~(ii) It is also a manufacturer violation if, on the date the products are ordered from the manufacturer or their agent, the manufacturer was not in "in compliance" or "pending" status and the retailer offers for sale or sells those CEPs.~~

~~**Notification to retailers:** A manufacturer may notify, in writing, retailers if the manufacturer's CEPs cannot be offered for sale or sold in or into Washington state. A copy of this notice must be supplied to ecology to avoid the registration violation.~~

~~(iii) When the violation consists of the sale or offering for sale of a CEP, manufactured by an unregistered manufacturer, each unit offered for sale or sold is a separate violation for the manufacturer.~~

~~(b) **Unlabeled electronic products violations:** As of January 1, 2007, it is a manufacturer violation if a manufacturer, or a retailer, offers for sale or sells the manufacturer's electronic product in or into Washington state that is not labeled with the manufacturer's brand name. Each of the manufacturer's unlabeled units offered for sale or sold is a separate violation for the manufacturer.~~

~~(4) **Warnings and penalties:**~~

~~(a) Notice of violation: Ecology will issue a written warning, via certified mail, for the first violation of subsection (3) of this section. The written warning will include a copy of the requirements to let the manufacturer know what is needed for them to be in compliance.~~

~~(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:~~

~~(i) Of up to one thousand dollars for the first violation; and~~

~~(ii) Of up to two thousand dollars for the second and each subsequent violation.~~

~~(iii) Ecology will issue a penalty no more often than every thirty days for the same violation.~~

~~(c) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.~~)) (1) To be a direct processor and

process CEPs for a plan under this chapter the direct processor must:

(a) Submit an initial registration form;

(b) Update registration information if it changes;

(c) Renew registration annually;

(d) Be identified as a direct processor in an ecology approved plan;

(e) Be in "in compliance" status on the "direct processor registration list" on ecology's web site; and

(f) Meet the minimum or preferred performance standards, throughout the program year, assigned to the direct processor on the "direct processor registration list."

(2) At least thirty days prior to receiving CEPs for processing, the direct processor must submit a registration form to ecology and may not begin processing until ecology places the direct processor in "in compliance" status on the "direct processor registration list" on ecology's web site.

**Table 600**
**Direct Processor Status**

| Direct Processor's Status | Can a direct processor process CEPs for a plan? | Definition |
|---|---|---|
| In compliance | Yes | **"In compliance"** means the direct processor is registered and complies with the requirements in WAC 173-900-650. |
| In violation | No | **"In violation"** means the direct processor is in violation of the requirements in this chapter and the plan cannot use the services of the direct processor until compliance is achieved. |
| Processor's name is not on the "processor registration list" | No | If the direct processor's name is not on the "direct processor registration list," that processor must not provide processing services to a plan or receive compensation from a plan for processing services. |

(3) The authority shall contract with any processor that meets the direct processor performance standards in this chapter and meets any requirements described in the authority's operating plan or through contractual arrangements with the authority.

(a) Processors used by the standard plan shall:

(i) Provide documentation to the authority at least annually regarding how they are meeting the performance standards in WAC 173-900-650, including enough detail to allow the standard plan to meet the plan's annual reporting requirements (see annual reporting in WAC 173-900-800); and

(ii) Submit to annual compliance audits meeting the audit requirements in WAC 173-900-365 conducted by or for the authority.

(b) The authority shall compensate such processors for the reasonable costs, as determined by the authority, associated with processing unwanted electronic products.

(c) Such processors must demonstrate that the unwanted electronic products have been received from registered collectors or transporters and provide other documentation, as may be required by the authority.

(4) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-610 ((~~Retailer—Warning, violations, and penalties.~~)) Initial registration for direct processors.**

(((~~(1) **Types of violations:**~~

~~(a) **Registration violation:** As of January 1, 2007, it is a retailer violation if a retailer "offers for sale" or "sells" CEPs if, at the time the products are ordered from the manufacturer or their agent, the manufacturer was not in "in compliance" or "pending" status.~~

~~(i) When the violation consists of the sale or offering for sale of a CEP, manufactured by an unregistered manufacturer, or a manufacturer in "in violation" status, each unit offered for sale or sold is a separate violation for the retailer.~~

~~(ii) If the retailer can prove that the products were ordered from the manufacturer or their agent prior to January 1, 2007, the offering for sale, or selling, of those products is not a violation even if the manufacturer fails to register.~~

~~(b) **Unlabeled electronic products violations:** As of January 1, 2007, a retailer must not "offer for sale" or "sell" an electronic product in or into Washington state that is not labeled with the manufacturer's brand name.~~

~~(i) Each unlabeled unit offered for sale or sold is a separate violation for the retailer.~~

~~(ii) If the retailer can demonstrate to ecology that the retailer was in possession of the unlabeled electronic products prior to January 1, 2007, the "offering for sale" or "sale" of these electronic products is not a violation.~~

~~(2) **Warning and penalties:**~~

~~(a) Notice of violation: Ecology will issue a written warning, via certified mail, to the retailer for the first violation for either subsection (1)(a) or (b) of this section. The written warning will include a copy of the requirements to let~~

~~the retailer know what is needed for them to be in compliance.~~

~~(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:~~

~~(i) Of up to one thousand dollars for the first violation; and~~

~~(ii) Of up to two thousand dollars for the second and each subsequent violation.~~

~~(iii) Ecology will issue a penalty no more often than every thirty days for each violation.~~

~~(c) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.~~))

**Table 610**
**Direct Processor Registration Types**

| Type of Registration | Definition | Due Date |
|---|---|---|
| Initial registration | Direct processor is not currently registered with ecology under this chapter. | Submit registration form to ecology at any time. |
| Annual renewal | Direct processor is currently registered with ecology under this chapter. | Submit renewal form to ecology between June 1 and September 1 of each year. |

At least thirty days prior to receiving CEPs for processing, the direct processor must submit a registration form to ecology and may not begin processing until ecology places the direct processor in "in compliance" status on the "direct processor registration list" on ecology's web site.

**Step 1: Complete a direct processor registration form.**

(1) Each direct processor must complete a registration form which includes all the following:

(a) Contact and location information;

(b) Business license information;

(c) Documentation of any necessary operating permits issued as required by local, state, or national authorities;

(d) Description of services provided;

(e) Geographic areas from which electronic products are accepted; and

(f) The names of plans the direct processor is contracted to provide processing services to meet the requirements of this chapter.

**Step 2: Submit the direct processor registration form.**

(2) The person responsible for implementing the direct processor requirements under this chapter must sign the registration form. The signature certifies the company has provided accurate and complete information on the form and is complying with all applicable state, local, and national laws and regulations.

(3) The person must submit the form to ecology. When mailing in an original paper copy, the person must use one of the addresses below:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-620 ((~~Collector—Warning, violations, and penalties.~~)) How direct processors know if their registration is approved.** (((~~(1) Ecology will place a collector in "in violation" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site if a violation is committed by the collector. For a collector, "in violation" status means the collector must not collect CEPs in Washington state and violations are subject to the warning and penalties in subsection (3) of this section.~~

~~(2) **Collection of CEPs without being registered with ecology violation:** As of September 1, 2007, it is a violation for collectors to collect CEPs in Washington state if the collector is not registered with ecology.~~

~~(3) **Collector warning and penalties:**~~

~~(a) Notice of violation: Ecology will issue a written warning, via certified mail, to the collector for the first violation of this section. The written warning will include a copy of the requirements to let the collector know what is needed for them to be in compliance.~~

~~(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:~~

~~(i) Of up to one thousand dollars for the first violation; and~~

~~(ii) Of up to two thousand dollars for the second and each subsequent violation.~~

~~(iii) Ecology will issue a penalty no more often than every thirty days for each violation.~~

~~(c) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.~~))

**Step 1: Ecology review of direct processor registration forms.**

(1) After receiving a registration form, ecology will review the form to determine if the form is complete and accurate.

(2) If the form is not complete and accurate, ecology will contact the direct processor to:

(a) Tell the direct processor what information is missing or inaccurate; and

(b) Request a revised form.

(3) The direct processor must submit the revised form within thirty days from the day ecology contacted the direct processor.

**Step 2: Approval or denial of direct processor registration.**

(4) **Approval.**

(a) Approval means that ecology has determined the form is complete and accurate.

(b) If ecology approves the direct processor's registration, ecology will:

(i) Place the direct processor's name on the "direct processor registration list"; and

(ii) Place the direct processor in "in compliance" status.

(c) The direct processor may process CEPs for a plan.

(5) **Denial.**

(a) Denial means that ecology has determined the form is not complete and accurate and the direct processor did not revise information as requested.

(b) If ecology denies a direct processor's registration, ecology will notify the direct processor of the denial and either:

(i) Remove the direct processor's name from the "direct processor registration list"; or

(ii) For renewals and updates, change the direct processor's status to "in violation" on the "direct processor registration list."

(iii) For initial direct processor registration, if ecology denies a registration, the direct processor may resubmit an initial registration form.

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-630 ((~~Transporter—Warning, violations, and penalties.~~)) Annual renewal of direct processor registration.** (((~~(1) Ecology will place a transporter in "in violation" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site if a violation is committed by the transporter.~~

~~For a transporter, "in violation" status means the transporter must not transport CEPs in Washington state and violations are subject to the warning and penalties in subsection (3) of this section.~~

~~(2) **Transportation of CEPs without being registered with ecology violation:** As of September 1, 2007, it is a violation for transporters to transport CEPs in Washington state if the transporter is not registered with ecology.~~

~~(3) **Transporter warning and penalties:**~~

~~(a) Notice of violation: Ecology will issue a written warning, via certified mail, to the transporter for the first violation of this section. The written warning will include a copy of the requirements to let the transporter know what is needed for them to be in compliance.~~

~~(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:~~

~~(i) Of up to one thousand dollars for the first violation; and~~

~~(ii) Of up to two thousand dollars for the second and each subsequent violation.~~

~~(iii) Ecology will issue a penalty no more often than every thirty days for each violation.~~

~~(c) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.~~)) (1) Direct processors must submit their annual renewal registration form to ecology between June 1 and September 1 of each calendar year for the next program year.

(2) If an annual renewal registration form is not received during this time period, and subsequently approved by ecology, the direct processor will be removed from the "direct processor registration list" and must not process CEPs for a plan until a registration form is submitted and approved.

(3) When mailing in the original paper copy, the direct processor must use one of the addresses below:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(4) Ecology will review direct processor registration forms submitted for annual renewal under the process described in WAC 173-900-620.

(5) For annual registrations, if ecology denies the direct processor's registration form, ecology will remove the direct processor from the "direct processor registration list." In order to resume processing services for a plan, the processor must resubmit an initial registration (WAC 173-900-610) and receive registration approval from ecology.

NEW SECTION

**WAC 173-900-640 Updates to direct processor registration.** (1) A direct processor must submit an updated registration form to ecology thirty days prior to providing new, additional, or reducing processing services for a plan.

(2) When mailing in the original paper copy, the direct processor must use one of the addresses below:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(3) Ecology will review direct processor updated registration forms under the process described in WAC 173-900-620.

NEW SECTION

**WAC 173-900-650 Performance standards for direct processors.** (1) This section includes performance standards for environmentally sound handling and management of CEPs by direct processors to protect human health and the environment. There are two levels of performance standards:

(a) Minimum standards (required);

(b) Preferred standards (voluntary program).

(2) Ecology will list all registered direct processors on the agency web site and indicate which level of performance standards, minimum or preferred, the processor meets.

(3) Each registered direct processor used by a plan must meet the minimum performance levels in this section to provide processing services for a plan.

**Minimum performance standards for direct processors.**

(4) Minimum performance standards for direct processors include the following requirements:

Responsible management priorities.

Legal requirements.

Environmental, health, and safety, management systems (EHSMS).

Recordkeeping.

On-site requirements.

Materials of concern.

Recycling, reuse, and disposal.

Transport.

Prison labor.

Facility access.

Notification of penalties and violations.

Noncompliance with minimum performance standards.

(5) **Responsible management priorities.**

A direct processor must periodically evaluate its management strategies to assure it takes advantage of new more effective technologies and is otherwise continuously improving its practices and processes.

(6) **Legal requirements.**

(a) A direct processor must comply with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries that are applicable to the operations and transactions in which it engages related to the processing of CEPs, components, parts, and materials and disposal of residuals. These include but are not limited to applicable legal requirements relating to:

(i) Waste and recyclables processing, storage, handling, and shipping; and

(ii) Air emissions and waste water discharge, including storm water discharges; and

(iii) Worker health and safety; and

(iv) Transboundary movement of electronic equipment, components, materials, waste, or scrap for reuse, recycling, or disposal.

(b) Upon request by a covered entity, a direct processor must make available information to that covered entity about any financial penalties, regulatory orders, or violations the direct processor received in the previous three years. If the direct processor receives subsequent penalties or regulatory orders, the direct processor must make that information available within sixty days after any subsequent penalties or regulatory orders are issued.

(7) **Environmental, health, and safety management systems (EHSMS).**

(a) A direct processor must develop, document, fully implement, and update at least annually a written EHSMS that includes all of the following:

(i) Written goals and procedures that require the direct processor to systematically manage its environmental, health, and safety matters.

(ii) Utilization of a "plan, do, check, act" model that identifies environmental aspects, implements operational controls, and provides corrective action procedures. Elements of this model must include:

(A) **Plan**

(I) Identification of environmental impacts, and legal and regulatory requirements;

(II) Establishment of environmental goals, objectives and targets;

(III) Plan actions that work toward achieving identified goals;

(IV) Plan for emergency preparedness and response; and

(V) Commitment of management support.

(B) **Do**

(I) Establish roles and responsibilities for the EHSMS and provide adequate resources;

(II) Assure that staff are trained and capable of carrying out responsibilities; and

(III) Establish a process for communicating about the EHSMS within the business.

(C) **Check**

(I) Monitor key activities and track performance;

(II) Identify and correct problems and prevent recurrence; and

(III) Provide a measurement system that quantifies the application of the model.

(D) **Act**

(I) Conduct annual progress reviews;

(II) Act to make necessary changes to the EHSMS; and

(III) Create and implement an action plan for continual improvement.

(iii) A worker safety and health management plan that conforms to a consensus-based standard covering worker health and safety such as ANSI Z10 or to a similarly rigorous in-house standard.

(iv) A plan for responding to and reporting exceptional releases that could pose a risk to worker safety, public health, or the environment. Such releases include emergencies such as accidents, spills, fires, and explosions. The direct processor must submit this plan to all appropriate emergency responders, e.g., police, fire department, hospitals.

(v) A plan is conformable with ISO 14001, Institute of Scrap Recycling Industries' Recycling Industry Operating Standards ("RIOS"), the International Association of Electronic Recyclers' ("IAERs'") standard, or other standards designed at a level appropriate for processing at the facility.

(b) A direct processor must ensure all employees understand and follow the portions of the EHSMS relevant to the activities they perform.

(8) **Recordkeeping.**

(a) A direct processor must maintain documentation such as commercial contracts, bills of lading, or other commercially accepted documentation for all transfers of CEPs, components, parts, materials, and residual into and out of its facilities.

(b) A direct processor must retain the documents required in this subsection (8) for at least three years.

(9) **On-site requirements.**

(a) **General**

(i) Direct processors must take all practicable steps to maximize recycling.

(ii) A direct processor must have the expertise and technical capability to process each type of CEP and component it accepts in a manner protective of worker safety, public health, and the environment.

(iii) A direct processor must use materials handling, storage and management practices, that assure that all work and storage areas are kept clean and orderly.

(iv) Speculative accumulation:

(A) "Speculative accumulation" means holding, storing or accumulating CEPs, components, parts, materials, or residual derived therefrom for more than one hundred eighty days.

(B) Generators and facilities holding, storing, or accumulating CEPs, components, parts, materials, or residual derived therefrom for more than one hundred eighty days will be considered holding, storing, accumulating solid or hazardous waste and subject to applicable treatment, storage or disposal regulations or equivalent.

(v) A direct processor must use a certified scale to weigh CEPs and components counted towards a plan's equivalent share.

(b) **Storage**

A direct processor must store materials of concern removed from CEPs, components, parts, materials, or residuals in accordance with subsection (11) of this section in a manner that:

(i) Protects them from adverse atmospheric conditions and floods and, as warranted, includes a catchment system;

(ii) Is secure from unauthorized entrance; and

(iii) Is in clearly labeled containers and/or storage areas.

(c) **Exceptional releases posing risks**

A direct processor must be prepared to immediately implement the practices set forth in its EHSMS for responding to and reporting exceptional releases that could pose a risk to worker safety, public health, or the environment, including emergencies such as accidents, spills, fires, and explosions.

(10) **Materials of concern.**

Materials of concern must be handled according to the standards in this section. "Materials of concern" are any of the following:

(a) Any devices, including fluorescent tubes, containing mercury or PCBs;

(b) Batteries;

(c) CRTs and leaded glass; and

(d) Whole circuit boards.

(11) **Recycling, reuse, and disposal.**

(a) **Recycling**

(i) A direct processor must remove from CEPs and components destined for recycling any parts that contain materials of concern that would pose a risk to worker safety, public health, or the environment during subsequent processing.

(ii) A direct processor must remove any parts that contain materials of concern prior to mechanical or thermal processing and handle them in a manner consistent with the regulatory requirements that apply to the items, or any substances contained therein. Circuit boards and materials derived therefrom will be allowed to be shredded prior to separating.

(b) **Reuse**

(i) "Reuse" means any operation by which an electronic product or component of a covered electronic product changes ownership and is used, as is, for the same purpose for which it was originally purchased.

(ii) For a CEP, component or part to be put to reuse it must be fully functioning.

(iii) CEPs, components and parts gleaned for reuse shall not be included in the weight totals submitted to a plan for compensation.

(c) **Disposal of residuals**

(i) "Residuals" are leftover materials from processing CEPs, components, parts and materials. Residuals cannot be used for their original function or cannot be recycled and are sent by a processor to a disposal facility.

(ii) Residuals must be properly designated and managed under applicable solid waste and hazardous waste laws at the location where disposal occurs.

(iii) A direct processor must not send residuals containing materials of concern to incinerators or solid waste landfills if doing so will pose a higher risk to worker safety, public health, or the environment than alternative management strategies.

(iv) Residuals from processing of materials of concern must not be mixed with other residuals for the purpose of disposal.

(12) **Transport.**

A direct processor must ensure that all CEPs, CEP components and materials to be transported are packaged in compliance with all applicable transport laws and rules.

(13) **Prison labor.**

Direct processors may not use federal or state prison labor for processing.

(14) **Facility access.**

Direct processors must allow access to the facility and the documentation required in this section for the purposes of assessing compliance with the requirements in this chapter and for sampling to:

(a) Ecology and ecology's designee(s);

(b) Third-party observers for the purposes of sampling;

(c) For processors used by the standard plan:

(i) The authority;

(ii) The authority's designee(s);

(d) For processors used by an independent plan:

(i) That plan's authorized party;

(ii) The authorized party's designee(s) for that plan.

(15) **Notification of penalties and violations.**

Each direct processor must notify ecology within thirty days if the direct processor receives any penalties, violations or regulatory orders related to processing activities.

(16) **Noncompliance with minimum performance standards.**

A direct processor may not comply with a specific minimum performance standard in this section when the national, state, or local laws or rules where the processor is located and a performance standard conflict. When a conflict exists, the processor's audit report must document the conflict and processor's compliance with the corresponding laws or rules (see WAC 173-900-365).

**Voluntary preferred performance standards.**

(17) In addition to meeting the minimum performance standards in this section, a processor may receive preferred status from ecology if the processor conforms with the voluntary performance standards in ecology's "*Environmentally Sound Management and Performance Standards for Direct Processors*."

## PART VII
## RETAILER REQUIREMENTS

NEW SECTION

**WAC 173-900-700 Retailer—Offering for sale or selling CEPs in or into Washington state.** In order for a retailer to offer for sale or sell a CEP in or into Washington state, on the date the product was ordered:

(1) The brand name on the CEP must be on the "manufacturer registration list" posted on ecology's web site; and

(2) The manufacturer must be in "pending" or "in compliance" status.

NEW SECTION

**WAC 173-900-710 CEP required brand labeling.** (1) Beginning January 1, 2007, no person may sell or offer for sale an electronic product to any person in Washington state unless the electronic product is labeled with the manufacturer's brand.

(2) The label must be permanently affixed and readily visible.

(3) In-state retailers in possession of unlabeled, or white box, electronic products on January 1, 2007, may exhaust their stock through sales to the public.

NEW SECTION

**WAC 173-900-720 Ecology determination of compliance for retailers. Retailers:**

(1) Beginning January 1, 2007, ecology may inspect any retailer's CEP inventory offered for sale in or into Washington state to determine if the requirements in this chapter are met. If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violations, and penalties procedures in WAC 173-900-730, 173-900-740 and 173-900-750.

(2) Beginning January 1, 2007, ecology may check any retailer's CEP inventory offered for sale in or into Washington state to determine if brand labeling requirements in WAC 173-900-710 have been met. If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violations, and penalties procedures in WAC 173-900-730, 173-900-740 and 173-900-750.

NEW SECTION

**WAC 173-900-730 Retailer violations.** (1) A retailer is "in violation" of this chapter when one or more of the following retailer violations occurs:

(a) Offering for sale or selling violation;

(b) Labeling violation; or

(c) Public outreach violation.

(2) **Retailer offering for sale or selling violation.**

A retailer is in "offering for sale or selling violation" of this chapter when a retailer offers for sale or sells CEPs and:

(a) On the date the electronic products are ordered from the manufacturer or their agent, the manufacturer's name or brand name does not appear on ecology's "manufacturer registration list."

(i) This means that brand of the manufacturer's electronic products must not be sold in or into Washington state.

(ii) Each unit offered for sale or sold is a separate violation by the retailer.

(iii) If the retailer can prove that the retailer ordered the electronic products from the manufacturer or their agent prior to January 1, 2007, the offering for sale, or selling, of those products is not a retailer violation.

(b) On the date the electronic products were ordered from the manufacturer or their agent, the manufacturer was in "in violation" status on ecology's "manufacturer registration list."

(i) Each unit offered for sale or sold is a separate violation for the retailer.

(ii) If the retailer can prove that the products were ordered from the manufacturer or their agent when the brand and manufacturer name was on ecology's "manufacturer registration list" and was in "in compliance" or "pending" status, the offering for sale, or selling, of those products is not a violation.

(3) **Retailer labeling violations.**

(a) It is a retailer "labeling violation" when a retailer offers for sale or sells an electronic product in or into Washington state that is not labeled with the manufacturer's brand name.

(b) Each unlabeled unit offered for sale or sold is a separate violation by the retailer.

(c) If the retailer can demonstrate to ecology that the retailer was in possession of the unlabeled electronic products prior to January 1, 2007, the offering for sale or selling of these electronic products is not a violation.

(4) **Retailer public outreach violation.**

It is a retailer violation if the retailer does not meet the public outreach requirements in WAC 173-900-980.

NEW SECTION

**WAC 173-900-740 Warning, penalties, and corrective action for all retailer violations.**

**Table 740**
**Retailer Warning and Penalties**

| Type of Violation | Written Warning | First Penalty | Second and Subsequent Penalties |
|---|---|---|---|
| Offering for Sale or Selling Violation | Warning Letter | Up to $1,000 | Up to $2,000 |
| Labeling Violation | Warning Letter | Up to $1,000 | Up to $2,000 |
| Public Outreach Violation | Warning Letter | Up to $1,000 | Up to $2,000 |

**Warning letter:**

(1) When ecology issues a written warning letter via certified mail to a retailer, for any violation, the warning will include a copy of the requirements to let the retailer know what the retailer must do to be in compliance.

**Penalties:**

(2) **First penalties:** If the retailer does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 740 above.

(3) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 740 no more often than every thirty days for the same violation.

(4) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

**Appeals:**

(5) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

NEW SECTION

**WAC 173-900-750 Corrective action for all retailer violations.** (1) For offering for sale and selling violations, the retailer must stop offering for sale or selling CEPs until the manufacturer is listed as "pending" or "in compliance" status on ecology's "manufacturer registration list."

(2) For a labeling violation, the retailer must meet the requirements in WAC 173-900-710;

(3) For a public outreach violation, the retailer must meet the requirements in WAC 173-900-980; and

(4) The retailer must pay or settle any penalties.

## PART VIII
## REPORTING REQUIREMENTS

NEW SECTION

**WAC 173-900-800 CEP recycling plan annual reports.** (1) By March 1, 2010, and each program year thereafter, the authority and each authorized party must file an annual report with ecology for the preceding year's program. Ecology will review the report and notify the authority or authorized party of any deficiencies that need to be addressed.

(2) **Annual report content:** The annual report must include the following information:

(a) The total weight in pounds of CEPs, including orphans, for the preceding program year including documentation verifying collection and processing of that material for:

(i) CEPs collected, reported by county, not including CEPs gleaned for reuse;

(ii) CEPs recycled;

(iii) Nonrecycled residual from CEPs; and

(iv) Final destination for the processing of CEPs and components and final destination for disposal of residuals.

(b) The total weight in pounds of CEPs received from each nonprofit charitable organization primarily engaged in the business of reuse and resale used by the plan;

(c) The total weight in pounds of CEPs that were received in large quantities from small businesses, small governments, charities and school districts;

(d) The collection services provided in each county and for each city with a population greater than ten thousand including a list of all collection sites and services operating in the state in the prior program year and the parties who operated them;

(e) Processor information:

(i) A list of all direct processors used;

(ii) The weight of CEPs processed by each direct processor;

(iii) A description of the processes and methods used by each direct processor to recycle the CEPs including a description of the processing and facility locations; and

(iv) A compliance audit report meeting the requirements in WAC 173-900-365 for each direct processor listed in the authority or authorized party's ecology approved plan;

(f) A list of subcontractors used by the direct processor including their facility addresses;

(g) Educational and promotional efforts that were undertaken to inform covered entities about where and how to reuse and recycle their CEPs;

(h) The results of sampling as required in WAC 173-900-900;

(i) The amount of unwanted electronic products, electronic components, and electronic scrap that have been exported from Washington state to countries that are not members of the organization for economic cooperation and development or the European Union;

(j) The list of manufacturers that are participating in the plan;

(k) Signature of the authority or the authorized party;

(l) Any other clarifying information deemed necessary by ecology to determine compliance with this chapter; and

(m) Documentation of work done with the processors used by the plan to promote and encourage the design of electronic products that are less toxic and contain components that are more recyclable.

(3) **Submittal:** The authority or authorized party must submit:

(a) One electronic copy in a format usable by ecology that allows electronic editing and commenting; and

(b) Two paper copies to one of the following addresses:

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(c) Faxes are not accepted.

(4) All reports must use the "CEP recycling report template" provided by ecology.

(5) **Review and approval:** Ecology will review each report within ninety days of receipt and will notify the authority or authorized party of any need for additional information or documentation, or any deficiency in its program or the report.

(a) Within five business days of receipt of the report, ecology will notify the authority or authorized party that the report has been received and it is under review.

(b) If ecology determines that there are no deficiencies in the report, a written notice of approval will be sent via certified mail.

(c) If ecology determines that additional information is needed, the authority or authorized party must submit the additional information to ecology within thirty days of receipt of the notice.

(d) If ecology determines that there are deficiencies in the authority's or authorized party's program, the authority or authorized party must submit an updated plan to ecology following the process in WAC 173-900-335.

(6) Ecology will post all reports on the agency web site.

(7) Proprietary information submitted to ecology under this chapter is exempt from public disclosure under RCW 42.56.270.

NEW SECTION

**WAC 173-900-810 Local government and community satisfaction reports.** (1) Starting January 1, 2010, local governments and local communities are encouraged to submit an annual satisfaction report to ecology by March 1 of each calendar year.

(2) The entity responsible for preparing the solid waste management plan for an area is responsible for submitting the satisfaction report to ecology.

(3) **Report content:** If submitting a report to ecology, the report must include information about local government and community satisfaction with the services provided by plans in their community including:

(a) Accessibility and convenience of services;

(b) How services are working in their community;

(c) What services are not working and why;

(d) Suggestions for improvements to the services being provided by plans;

(e) Description of public outreach and education; and

(f) Any other information the local government determines is important to include.

(4) **Submittal:** If submitting a report, the submitting entity must submit:

(a) One electronic copy, by e-mail or other electronic means, in a format usable by ecology that allows electronic editing and commenting; and

(b) One paper copy by mail to one of the following addresses:

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(5) All reports must use the "local government satisfaction report template" prescribed by ecology.

(6) **Review and approval:** Ecology will review each report within ninety days of receipt and will notify the submitting entity of any need for additional information or documentation.

(a) Within five business days of receipt of the report, ecology will notify the submitting entity that the satisfaction report has been received and it is under review.

(b) If ecology determines that no additional information is needed, ecology will send a written notice of approval to the submitting entity.

(c) If ecology determines that additional information is needed, the submitting entity must submit the additional information to ecology within thirty days of receipt of the notice.

(7) If a report is submitted, ecology will use the information provided in these reports when reviewing plan updates and revisions.

(a) Reports indicating dissatisfaction will be sent to the authority or authorized party.

(b) The authority or authorized party has sixty days to respond to the report submittee(s) and ecology addressing issues raised in the report.

(c) If based on this response, ecology determines that the plan is failing to provide service in a community, ecology will send written notice, via certified mail, to the authority or authorized party.

(d) The authority or authorized party will have sixty days from receipt of the notice to submit an updated plan to ecology (see WAC 173-900-335).

(8) At any time, communities may submit comments to ecology about the CEP recycling programs in their area.

NEW SECTION

**WAC 173-900-820 Nonprofit charitable organization collection reports.** (1) Starting in 2010, and every calendar year thereafter, nonprofit charitable organizations that are primarily engaged in the business of reuse and resale that collect CEPs for a plan must submit an annual report to ecology by March 1.

(2) The report must indicate and document the weight of CEPs sent for recycling during the previous program year attributed to each plan that the nonprofit charitable organization is participating in.

(3) **Submittal:** The nonprofit charitable organization must submit:

(a) One electronic copy, by e-mail or other electronic means, in a format usable by ecology that allows electronic editing and commenting; and

(b) One paper copy by mail to one of the following addresses:

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(4) All reports must use the "nonprofit charitable organization report template" prescribed by ecology.

(5) **Review and approval:** Ecology will review each report within ninety days of receipt and will notify the nonprofit charitable organization of any need for additional information or documentation.

(a) Within five business days of receipt of the report, ecology will notify the nonprofit charitable organization that the collection report has been received and it is under review.

(b) If ecology determines no additional information is needed, ecology will send written notice to the nonprofit charitable organization.

(c) If ecology determines that additional information is needed, the nonprofit charitable organization must submit the additional information to ecology within thirty days of receipt of the notice.

(d) If a nonprofit charitable organization used by a plan does not submit an annual collection report, that is approved by ecology, the plan cannot receive the five percent credit for using that organization as a collector.

## PART IX
## SAMPLING, RETURN SHARE, AND EQUIVALENT SHARE

NEW SECTION

**WAC 173-900-900 Return share sampling.** (1) Each plan must implement and finance an auditable, statistically significant sampling of CEPs entering its program every program year using the method described in this section.

(2) CEPs reclaimed for reuse, or use in new products shall not be included in the sampling data collected under this section.

(3) Sampling data collected must include:

(a) The data as required by the return share sampling program for each CEP unit;

(b) A list of the brand names of CEPs by product type (computer, laptop or portable computer, monitor, or television);

(c) The number of CEPs by product type;

(d) The weight of CEPs that are identified for each brand name;

(e) The weight of CEPs that lack a manufacturer's brand; and

(f) The total weight of the sample by product type.

(4) **Third-party observer.**

(a) The sampling must be conducted in the presence of a third-party observer approved by ecology. Ecology will create a list of approved third-parties that a plan must use when conducting sampling to meet the requirements in this section. Ecology will post a list of approved third-party observers on the agency web site.

(b) The third-party observer will:

(i) Receive the sampling instructions from ecology;

(ii) Keep a sampling log for each day the third-party observed sampling;

(iii) Notify the direct processor twenty-four hours, not including Saturdays, Sundays or holidays, prior to the day when sampling will occur at the processor's facility;

(iv) Verify that the sampling method in this section and the sampling instructions provided by ecology are followed during the sampling event;

(v) Certify the sampling data collected; and

(vi) Submit the data and sampling log to ecology.

(c) If the third-party observer notices that sampling is not conducted in accordance with the methods in this section or the sampling instructions provided by ecology, the third-party observer must follow the procedures in subsection (6)(a) of this section.

(d) The third-party observer must not share the sampling instructions with the direct processor or the plan prior to the sampling day.

(e) The third-party observer must make a sampling log for each day the third-party observes sampling. The sampling log must include:

(i) Date and time of sampling;

(ii) Location of sampling;

(iii) Name of the manager operating the facility on that day;

(iv) Names of the members of the sampling team and role of each team member in the sampling process;

(v) A general timeline of activities throughout the day including start time for CEP sampling process, breaks taken, changes in sampling team personnel or roles, unusual events, and time when sampling process ended;

(vi) Any deviation from the sampling method in this section or sampling instructions provided by ecology including but not limited to the functioning of sampling equipment and return share sampling program;

(vii) An approximate percentage of the types of CEPs present in deliveries coming from different collectors;

(viii) Changes in rate and volume of CEPs coming into the facility;

(ix) Observations or concerns about the procedures used by the sampling team and the CEPs sampled;

(x) When sampling is stopped, a description of why and what steps were taken to try and fix the problem;

(xi) Suggestions for improving future sampling events.

(f) If a third party fails to meet these protocols, ecology may remove the third party from the list of approved observers.

(g) A plan cannot end a contract with a third-party observer for reporting errors, concerns or discrepancies with sampling to ecology.

(5) **Observation of sampling by ecology.** Ecology may, at its discretion, observe sampling and audit the method and the results in addition to the third-party observer.

(6) **Incorrect sampling.**

(a) If the third-party observer sees that the sampling is not implemented according to the method set forth in this section or the sampling instructions provided by ecology, the third-party observer must note which samples were taken incorrectly in the sampling log and work with the sampling team to correct the problem for future samples. If the problem cannot be corrected for the next sampled unit, the third-party observer must:

(i) Stop the sampling for that day;

(ii) Notify ecology of the problem; and

(iii) Notify the authority or authorized party.

(b) If ecology observes, or is notified by a third-party observer, that the sampling is not implemented according to the method set forth in this section or the sampling instructions provided by ecology, ecology may:

(i) Notify the plan of the problem;

(ii) Stop sampling for that day; or

(iii) Eliminate the data about the CEPs sampled for that entire sampling day.

(c) Ecology may also use data analysis, inspections, sworn reports or complaints from individuals to determine incorrect sampling.

(d) If any plan has data from more than one sampling day eliminated for any reason, ecology may estimate that plan's equivalent share based on samples collected by other plans in order to ensure that bias in that plan's sample does not reduce its own return share. This adjustment may be used for three years (see subsection (7) of this section).

(e) If ecology or the third-party observer stops sampling, no alternative sampling date will be assigned to the plan.

(7) **Three year rolling average to be used to construct the statistics needed for the return share.**

(a) Ecology will construct the final average results for each plan using the most recent three years of sample data.

(b) For the first two years of sampling only the years available will be used.

(8) **Review of the sampling method.**

(a) After the fifth program year, ecology may reassess the sampling methods required in this section. Ecology may adjust:

(i) Who will do the sampling;

(ii) The sample size;

(iii) The frequency of sampling;

(iv) The distribution of the sampling places;

(v) Information collected during sampling; and

(vi) The method for collecting the sample.

(b) Prior to making any changes, ecology must notify the public and provide a public comment period.

(9) **Method for sampling.**

| Steps in the sampling method | |
|---|---|
| **Step 1:** | Ecology creates a third-party observer list. |
| **Step 2:** | Selection and payment of third party by the plans. |
| **Step 3:** | Ecology determines the sample size for a program year. |
| **Step 4:** | Ecology assigns a sample allocation to each plan. |
| **Step 5:** | Ecology provides quarterly sampling instructions to each third-party observer identified by the plans. |
| **Step 6:** | The plan conducts and records the sampling. |

| Steps in the sampling method | |
|---|---|
| **Step 7:** | Reporting the sample. |
| **Step 8:** | Ecology must adjust for over sampling or under sampling. |
| **Step 9:** | Ecology tabulates sampling results quarterly. |
| **Step 10:** | Ecology uses sampling results to calculate return share. |

**Step 1: Ecology creates a third-party observer list.**

(a) Ecology will list approved third-party observers on the agency web site.

(b) By December 1 of every other year ecology will announce:

(i) The third-party qualifications; and

(ii) The process for a third party to seek approval to be listed as a third-party observer.

(c) A third party may submit a request to be listed at any time during the year.

**Step 2: Selection and payment of a third party by a plan.**

(d) Each plan must select a third party from ecology's list to observe sampling conducted for the plan and notify ecology of the third-party observer with which they have contracted.

(e) The plans must cover the costs, including travel, of any third-party observer used by the plan to observe its sampling activities.

(f) The authority or authorized party must remit payment to the third-party observer for sampling in and outside of Washington state.

**Step 3: Ecology determines the sample size for a program year.**

(g) **Sample size.**

(i) The sample size will be statistically determined by applying the formula below:

$$\text{Sample Size } n = \left[\frac{\pi(1-\pi)z^2}{d^2}\right](m)$$

Where

$\pi$ = Maximum brand return share in the population, in the form of a fraction. For the first year this number is estimated from data collected by the National Center for Electronics Recycling from other jurisdictions where brand returns were tallied

**z** = Standardized statistical critical value associated with the confidence level of ninety-five percent is 1.96

**d** = The maximum margin of error which is .005 at the ninety-five percent confidence level

**m** = Sample size increase due to unidentifiable brands. In consideration of the fact that the brand names of some units are not identifiable (e.g., white box units with no brand, or returned units where the brand is no longer legible), the sample sizes taken must be larger than those determined purely by statistical techniques. Across all product categories the incident rate for nonidentifiable samples is equal to the orphan share of CEPs sampled.

(ii) Sample size is expressed as a number of individual units of CEPs, and each unit to be sampled will be individually weighed.

**Step 4: Ecology assigns a sample allocation to each plan.**

(h) Ecology will assign the minimum sample size annually on the basis of each plan's return share.

(i) Starting in 2008, ecology will announce the total sample size and the proportionate plan share for sampling for each plan by December 1st of each year.

**Step 5: Ecology provides quarterly sampling instructions to each third-party observer identified by the plans.**

(j) Ecology will provide the contracted third-party observers with quarterly sampling instructions. Quarters begin in January, April, July, and October.

(k) The sampling instructions will include the dates for sampling, the processing facility(ies) where sampling will take place, instructions for random selection of units for sampling, and the hours of sampling.

(l) Each plan must conduct sampling for each date listed in the third-party observer's sampling instructions provided by ecology.

**Step 6: The plan conducts and records the sampling.**

(m) **Field sampling.**

(i) Once the third-party observer arrives at the processing facility, the plan or direct processor must introduce the observer to the members of the sampling team that will be conducting sampling for that day and let the third-party observer know the role of each member of the sampling team.

(ii) The third-party observer must inform the sampling team how to select CEP units based on the sampling instructions provided by ecology for that sampling day.

(iii) The sampling team must place a unique bar code sticker on every CEP entering the processing facility during the assigned sampling period, whether by truckload, walk-in, or other method. Prior to placing the bar code on the CEP, no sorting of CEPs can occur at the processing facility.

(iv) Before any CEP is sent for processing the sampling team must use a hand held bar code reader to scan the bar code sticker placed on that unit by the sampling team.

(v) The return share sampling computer program provided by ecology will identify whether a particular unit should be sampled.

(vi) Units identified as requiring sampling must be set aside for sampling, and units identified as not requiring sampling would be available for processing immediately.

(vii) Units identified as requiring sampling become part of the sample for that day and the sampling team must record the required data for each of those units even if it takes more than one day.

(viii) The sampling team must record all the data for the sample using the return share sampling computer program provided by ecology.

(n) If a brand name is not listed in the computer program, the sampling team must record a minimum of three digital images. The images must be of sufficient clarity that ecology can identify any printed information on the CEP.

(i) The first image will be of the entire front of the CEP.

(ii) The second image will be focused on the brand identification logo (if available).

(iii) The third image will be of the label on the back or bottom of the CEP (if available).

(iv) The photographs must be attached to the appropriate electronic record in the return share sampling computer program in a jpeg format.

**Step 7: Reporting the sample.**

(o) At the end of the sampling day the plan must provide the results to the third-party observer. The results must include all of the data required in subsection (3) of this section.

(p) The third-party observer will certify the results and submit one paper and one electronic copy of the results to ecology and the authority or authorized party.

**Step 8: Ecology must adjust for over sampling or under sampling.**

(q) If ecology determines that over or under sampling has occurred, ecology must adjust such over or under sampling as follows:

Vi = Si x Sample size assigned/Sample size taken

Pi = Wi x Sample size assigned/Sample size taken

Where:
Si is the total number of units weighed for brand i
Wi is the total weight of units for brand i.

(r) Ecology may adjust the extrapolation of under sampling data to account for outliers that may over estimate small manufacturer returns.

**Step 9: Ecology tabulates sampling results quarterly.**

(s) Quarterly, ecology will combine the sampling results required in Step 7 from all plans. If ecology observes discrepancies, ecology will follow the method in subsection (4) of this section.

**Step 10: Ecology uses sampling results to calculate return share.**

(t) Ecology will combine the sampling results from each quarter and use this data when calculating return share as described in WAC 173-900-910.

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

NEW SECTION

**WAC 173-900-910 Calculating return share.** (1) In order for a CEP to be counted in a plan's return share, the CEP or CEP components must go to a direct processor that meets the requirements in Part VI of this chapter.

(2) **Return shares issued in 2007 through 2009:**

(a) Ecology must determine return shares for all manufacturers in the standard plan or an independent plan by using all reasonable means and base those determinations on the best available information regarding return share data from other states and other pertinent data.

(b) If ecology does not have any return data on a particular manufacturer, ecology will assign that manufacturer to the lowest represented percentage of return share on the preliminary return list.

(c) Ecology will use the first return share to:

(i) Appoint five board members for the first term of appointments to the materials management and financing authority board of directors from the top ten manufacturers holding the highest return share; and

(ii) Establish the first program year return share for manufacturers in a plan.

(3) **Return shares issued 2010 and later:** For the second and all subsequent program years, ecology will determine the return share for each manufacturer in the standard plan or an independent plan by dividing the weight of CEPs identified for each manufacturer through the sampling methodology and protocol in WAC 173-900-900 by the total sampled weight of CEPs identified for all manufacturers in the plans. That quotient will then be multiplied by one hundred to establish a percentage share for each manufacturer.

NEW SECTION

**WAC 173-900-920 Use and publication of CEP return shares.**

**Return shares for program year 2009:**

(1) Ecology will announce the preliminary return share for each manufacturer and each plan by June 1 of each year.

(2) Ecology will publish the preliminary return shares on the agency web site.

(3) Ecology will notify each registered manufacturer by June 1 of each year.

(4) Manufacturers may challenge their preliminary return share by written petition to ecology. The petition must be received by ecology within thirty days of the date of publication of the preliminary return shares.

(5) The petition must contain:

(a) A detailed explanation of the grounds for the challenge;

(b) An alternative calculation, and the basis for such a calculation;

(c) Documentary evidence supporting the challenge; and

(d) Complete contact information for requests for additional information or clarification.

(6) Sixty days after the publication of the preliminary return share, ecology will make a final decision on return shares, having fully taken into consideration any and all challenges to its preliminary calculations.

(7) A written record of challenges received and a summary of the basis for the challenges, as well as ecology's response, must be published at the same time as the publication of the final return shares.

(8) By August 1, 2007, ecology shall publish the final return shares for the first program year.

**Return shares announced for program year 2010 and thereafter:**

(9) Ecology will announce the preliminary return share and notify each registered manufacturer by June 1 of each year.

(10) Manufacturers may challenge their preliminary return share by written petition to ecology. The petition must be received by ecology within thirty days of the date of publication of the preliminary return shares.

(11) The petition must contain:

(a) A detailed explanation of the grounds for the challenge;

(b) An alternative calculation, and the basis for such a calculation;

(c) Documentary evidence supporting the challenge; and

(d) Complete contact information for requests for additional information or clarification.

(12) Sixty days after the publication of the preliminary return share, ecology will make a final decision on return shares, having fully taken into consideration any and all challenges to its preliminary calculations.

(13) A written record of challenges received and a summary of the basis for the challenges, as well as ecology's response, must be published at the same time as the publication of the final return shares.

(14) By August 1 of each program year, ecology shall publish the final return shares for use in the coming program year.

(15) Ecology will publish the final return shares on the agency web site.

NEW SECTION

**WAC 173-900-930 Calculating the total equivalent share.**

**Step 1: Calculating individual manufacturer equivalent share.**

(1) Ecology must determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the return share percentage for each manufacturer by one hundred, then multiplying the quotient by the sum of total weight in pounds of CEPs collected, not including any CEPs, components or parts gleaned for reuse, for that program year and any additional credited pounds under WAC 173-900-940.

(2) The manufacturer is responsible for distributing responsibility for equivalent share among its past and present licensees.

**Step 2: Calculating a plan's equivalent share.**

(3) A plan's equivalent share is equal to the total of the equivalent shares for all manufacturers participating in the plan.

NEW SECTION

**WAC 173-900-940 Equivalent share credits.** Plans that use the collection services of nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale must be given an additional five percent credit to be applied toward a plan's equivalent share for pounds that are received for recycling from those organizations. Ecology may adjust the percentage of credit annually.

NEW SECTION

**WAC 173-900-950 Notification of equivalent share.** By June 1 of each program year starting in 2010, ecology will notify each:

(1) Manufacturer of the manufacturer's equivalent share of CEPs to be applied to the previous program year;

(2) Plan of the plan's equivalent share of CEPs to be applied to the previous program year;

(3) Manufacturer and plan of how its equivalent share was determined.

NEW SECTION

**WAC 173-900-960 Share payments.** (1) For a CEP recycling plan, if the total weight in pounds of CEPs collected by the plan and processed by a processor during a program year is less than the plan's equivalent share of CEPs for that year, then the authority or authorized party must submit to ecology a payment equal to the weight in pounds of the deficit multiplied by the reasonable collection, transportation, processing, and recycling cost for CEPs and an administrative fee.

(2) Moneys collected by ecology must be deposited in the electronic products recycling account created under RCW 70.95N.130.

(3) For a plan, if the total weight in pounds of CEPs collected during a program year is more than the plan's equivalent share of CEPs for that year, then ecology shall submit to the authority or authorized party, a payment equal to the weight in pounds of the surplus multiplied by the reasonable collection, transportation, processing, and recycling cost for CEPs.

(4) For purposes of this section, the initial reasonable collection, transportation, processing, and recycling cost for

CEPs is forty-five cents per pound and the administrative fee is five cents per pound.

(5) Ecology may annually adjust the reasonable collection, transportation, processing, and recycling cost for CEPs and the administrative fee described in this section. Prior to making any changes ecology will:

(a) Post the proposed new amounts on the agency web site;

(b) Send notice to all registered manufacturers;

(c) Provide a thirty-day comment period;

(d) Evaluate comments and make revisions to the amounts if appropriate; and

(e) Post the new amounts on the agency web site.

(6) Ecology will notify all registered manufacturers of any changes to the reasonable collection, transportation, processing, and recycling cost or the administrative fee by January 1 of the program year in which the change is to take place.

NEW SECTION

**WAC 173-900-970 Collecting and paying share payments.**

**Billing share payments.**

(1) By June 1 of each program year, ecology will bill any authorized party or authority that has not attained its plan's equivalent share as determined in WAC 173-900-930 share payments. The authorized party or authority must remit payment to ecology within sixty days from the billing date.

**Ecology payment of share payments.**

(2) By September 1 of each program year, ecology must pay any authorized party or authority that exceeded its plan's equivalent share.

## PART X
## PUBLIC OUTREACH

NEW SECTION

**WAC 173-900-980 Public outreach.**

**Independent and standard plans:**

(1) Public outreach and marketing requirements: An independent plan and the standard plan must inform covered entities about where and how to reuse and recycle their CEPs at the end of the product's life. At a minimum, the plan must:

(a) Include a web site or a toll-free number that gives information about the recycling program in sufficient detail to educate covered entities regarding how to return their CEPs for recycling;

(b) Describe the method or methods used to provide outreach to covered entities; and

(c) Ensure outreach throughout the state.

**Ecology:**

(2) Ecology will promote CEP recycling by:

(a) Posting information describing where to recycle unwanted CEPs on its web site;

(b) Providing information about recycling CEPs through a toll-free telephone service; and

(c) Developing and providing artwork for use by others in flyers, signage, web content, and other advertising mechanisms.

(3) Ecology will determine the effectiveness of the public outreach and education campaign based on information supplied in the reports required under this chapter.

**Local governments:**

(4) Local governments must promote CEP recycling, including listings of local collection sites and services, through existing educational methods typically used by each local government.

**Retailers:**

(5) A retailer who sells new CEPs must provide information to consumers describing where and how to recycle CEPs and opportunities and locations for the convenient collection or return of the products at the point of sale. This outreach may include:

(a) Use of ecology's artwork in advertisements such as on flyers, shelf-tags, or brochures for this program.

(b) Providing ecology's toll-free telephone number and web site.

(c) Providing information about how to recycle CEPs in Washington either in, on, or with the packaging;

(6) Remote sellers may include the information in a visible location on their web site as fulfillment of this requirement.

**Collaboration:**

(7) Manufacturers, state government, local governments, retailers, and collection sites and services must collaborate in the development and implementation of the public information campaign.

## PART XI
## THE MATERIALS MANAGEMENT AND FINANCE AUTHORITY (THE AUTHORITY)

NEW SECTION

**WAC 173-900-990 Ecology's relationship to the authority.** (1) The director of the department of ecology, or the director's designee, will serve as an ex officio member of the materials management and finance authority board of directors.

(a) Ex officio designations must be made in writing and communicated to the authority director.

(b) The function of ecology's membership is advisory only and carries no voting privileges on matters brought before the board.

(2) Ecology must provide staff to assist in the creation of the authority.

(a) If requested by the authority, ecology will also provide start-up support staff to the authority for its first twelve months of operation, or part thereof, to assist in the quick establishment of the authority.

(b) Staff expenses incurred by ecology must be paid back to ecology through funds collected by the authority and must be reimbursed to ecology from the authority's financial resources within the first twenty-four months of operation.

NEW SECTION

**WAC 173-900-993 Appointing the board of the authority.** The board of directors of the authority is comprised of eleven participating manufacturers:

(1) Five board positions are reserved for representatives of the top ten brand owners by return share of covered electronic products.

(2) Six board positions are reserved for representatives of other brands. At least one of these board positions is reserved for a manufacturer who is also a retailer selling their own private label.

(3) The board must have representation from both television and computer manufacturers.

(4) The board of directors is appointed by the director of the department of ecology.

(a) Manufacturers will indicate their interest in serving on the board of directors to ecology.

(b) Manufacturers expressing interest will be asked to submit the name of their representative.

(c) Ecology will select board members from the candidates that have expressed interest using the following criteria:

(i) Five from the top ten brand owners by return share of CEPs willing to participate on the board;

(ii) One retailer that is also a manufacturer;

(iii) Representation of manufacturers from eastern Washington;

(iv) Representation from small, in-state manufacturers;

(v) Balance between manufacturers whose business is primarily that of television manufacturing and those whose business is primarily that of computer manufacturing; and

(vi) At least one manufacturer that is a new market entrant.

(5) The first board will be appointed from those manufacturers expressing interest in serving on the board in the first registration of manufacturers.

(6) The first board of directors will serve a term of one year.

(7) Subsequent appointments to the board of directors will be made on intervals established in the authority by-laws created by the board.

NEW SECTION

**WAC 173-900-995 Board reimbursement for use of ecology support staff.** (1) The costs collected under this section are only for support provided during the start-up and the first twelve months of operation for the board.

(2) The board must reimburse all costs to ecology within twenty-four months of beginning operation.

(3) Ecology will calculate reimbursements based on actual costs:

Reimbursement Amount = Direct Costs + Indirect Costs

Where:

(a) **Direct costs** include ecology staff time and other costs related to accomplishing the activities identified in subsection (1) of this section. Direct staff costs are the costs of hours worked, including salaries and benefits required by law to be paid to, or on behalf of, employees. Other direct costs are costs incurred as a direct result of ecology staff working with the board including, for example, costs of: Travel, printing and publishing of documents, and other work, contracted or otherwise, associated with the board.

(b) **Indirect costs** are those general management and support costs of ecology. Ecology applies them using the agency's approved federal indirect cost rate.

(4) **Cost reimbursement invoicing and payment.** Invoices are generally sent about the last week of the month, for the previous month's activity. Payment is expected within thirty days after the date that ecology has issued the invoice. If the board uses ecology support staff, the authority must reimburse ecology from the authority's financial resources within the first twenty-four months of operation.

NEW SECTION

**WAC 173-900-997 The standard plan's assessment of charges and apportionment of costs.** (1) Manufacturers participating in the standard plan must pay the authority to cover all administrative and operational costs associated with the collection, transportation, processing, and recycling of covered electronic products within the state of Washington incurred by the standard program operated by the authority to meet the standard plan's equivalent share obligation.

(2) The authority must assess charges on each manufacturer participating in the standard plan and collect funds from each participating manufacturer for the manufacturer's portion of the costs in subsection (1) of this section.

(a) Such apportionment must be based on return share, market share, any combination of return share and market share, or any other equitable method.

(b) The authority's apportionment of costs to manufacturers participating in the standard plan may not include nor be based on electronic products imported through the state and subsequently exported outside the state.

(c) Charges assessed under this section must not be formulated in such a way as to create incentives to divert imported electronic products to ports or distribution centers in other states.

(d) The authority must adjust the charges to manufacturers participating in the standard plan as necessary in order to ensure that all costs associated with the identified activities are covered.

(3) The authority may require financial assurances or performance bonds for manufacturers participating in the standard plan, including but not limited to new entrants and white box manufacturers, when determining equitable methods for apportioning costs to ensure that the long-term costs for collecting, transporting, and recycling of a covered electronic product are borne by the appropriate manufacturer in the event that the manufacturer ceases to participate in the program.

(4) Nothing in this section authorizes the authority to assess fees or levy taxes directly on the sale or possession of electronic products.

(5) If a manufacturer has not met its financial obligations as determined by the authority, the authority must notify ecology that the manufacturer is not participating in the standard plan (see WAC 173-900-350).

(6) The authority must submit its plan for assessing charges and apportioning cost on manufacturers as part of the standard plan (see Part III, WAC 173-900-320).

(7) **Appeals:** Any manufacturer participating in the standard plan may appeal an assessment of charges or apportionment of cost as collected by the authority.

(a) The manufacturer must pay their charges or apportionment to the authority and submit a written petition to the director of the department of ecology within fourteen calendar days of receipt of notification of charges or apportionment. The written petition must include proof that:

(i) The authority's assessments or apportionment of costs were an arbitrary administrative decision;

(ii) An abuse of administrative discretions is proven; or

(iii) It is not an equitable assessment of apportionment of costs.

(b) Within thirty calendar days of receipt of the written petition, the director or the director's designee will review the appeal.

(c) The director will reverse any assessments of charges or apportionment of costs if the appeal is determined to be correct.

(d) If the director reverses an assessment of charges, the authority must:

(i) Redetermine the assessment or apportionment of costs and submit a plan revision as described in WAC 173-900-335, CEP recycling plan update; and

(ii) Once the revision is approved by ecology, send refunds or assess additional charges to standard plan participants per the revision.

(8) **Arbitration:** Disputes regarding the final decision by the director or the director's designee may be challenged through arbitration.

(a) The director shall appoint one member to serve on the arbitration panel.

(b) The challenging party shall appoint one member to serve on the arbitration panel.

(c) These two members shall choose a third person to serve. If the two persons cannot agree on a third person, the presiding judge of the Thurston county superior court shall choose a third person.

(d) The decision of the arbitration panel shall be final and binding, subject to review by the superior court solely upon the question of whether the decision of the panel was arbitrary or capricious.

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|---|---|
| WAC 173-900-040 | Required brand labeling. |
| WAC 173-900-050 | Offering for sale or selling covered electronic products (CEPs) in or into Washington. |

AMENDATORY SECTION (Amending Order 03-10, filed 11/30/04, effective 1/1/05)

**WAC 173-303-040 Definitions.** When used in this chapter, the following terms have the meanings given below.

"Aboveground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

"Active life" of a facility means the period from the initial receipt of dangerous waste at the facility until the department receives certification of final closure.

"Active portion" means that portion of a facility which is not a closed portion, and where dangerous waste recycling, reuse, reclamation, transfer, treatment, storage or disposal operations are being or have been conducted after:

The effective date of the waste's designation by 40 CFR Part 261; and

March 10, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261. (See also "closed portion" and "inactive portion.")

"Active range" means a military range that is currently in service and is being regularly used for range activities.

"Acute hazardous waste" means dangerous waste sources (listed in WAC 173-303-9904) F020, F021, F022, F023, F026, or F027, and discarded chemical products (listed in WAC 173-303-9903) that are identified with a dangerous waste number beginning with a "P", including those wastes mixed with source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954. The abbreviation "AHW" will be used in this chapter to refer to those dangerous and mixed wastes which are acute hazardous wastes. Note - the terms acute and acutely are used interchangeably.

"Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of dangerous waste from its point of generation to a storage or treatment tank(s), between dangerous waste storage and treatment tanks to a point of disposal on-site, or to a point of shipment for disposal off-site.

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

"Batch" means any waste which is generated less frequently than once a month.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Berm" means the shoulder of a dike.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: Process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

While in operation, the unit must maintain a thermal energy recovery efficiency of at least sixty percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

The unit must export and utilize at least seventy-five percent of the recovered energy, calculated on an annual basis. In this calculation, no credit will be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

The unit is one which the department has determined, on a case-by-case basis, to be a boiler, after considering the standards in WAC 173-303-017(6).

"By-product" means a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

"Carcinogenic" means a material known to contain a substance which has sufficient or limited evidence as a human or animal carcinogen as listed in both IARC and either IRIS or HEAST.

"Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

"Chemical agents and chemical munitions" are defined as in 50 U.S.C. section 1521 (j)(1).

"Cleanup-only facility" means a site, including any contiguous property owned or under the control of the owner or operator of the site, where the owner or operator is or will be treating, storing, or disposing of remediation waste, including dangerous remediation waste, and is not, has not and will not be treating, storing or disposing of dangerous waste that is not remediation waste. A cleanup-only facility is not a "facility" for purposes of corrective action under WAC 173-303-646.

"Closed portion" means that portion of a facility which an owner or operator has closed, in accordance with the approved facility closure plan and all applicable closure requirements.

"Closure" means the requirements placed upon all TSD facilities to ensure that all such facilities are closed in an acceptable manner (see also "post-closure").

"Commercial chemical product or manufacturing chemical intermediate" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient.

"Commercial fertilizer" means any substance containing one or more recognized plant nutrients and which is used for its plant nutrient content and/or which is designated for use or claimed to have value in promoting plant growth, and includes, but is not limited to, limes, gypsum, and manipulated animal manures and vegetable compost. The commercial fertilizer must be registered with the state or local agency regulating the fertilizer in the locale in which the fertilizer is being sold or applied.

"Compliance procedure" means any proceedings instituted pursuant to the Hazardous Waste Management Act as amended in 1980 and 1983, and chapter 70.105A RCW, or regulations issued under authority of state law, which seeks to require compliance, or which is in the nature of an enforcement action or an action to cure a violation. A compliance procedure includes a notice of intention to terminate a permit pursuant to WAC 173-303-830(5), or an application in the state superior court for appropriate relief under the Hazardous Waste Management Act. A compliance procedure is considered to be pending from the time a notice of violation or of intent to terminate a permit is issued or judicial proceedings are begun, until the department notifies the owner or operator in writing that the violation has been corrected or that the procedure has been withdrawn or discontinued.

"Component" means either the tank or ancillary equipment of a tank system.

"Constituent" or "dangerous waste constituent" means a chemically distinct component of a dangerous waste stream or mixture.

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of WAC 173-303-695.

"Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of dangerous waste or dangerous waste constituents which could threaten human health or environment.

"Contract" means the written agreement signed by the department and the state operator.

"Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

"CRT collector" means a person who receives CRTs for recycling, repair, resale, or donation.

"CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

"CRT processing" means conducting all of the following activities:

• Receiving broken or intact CRTs; and

• Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

• Sorting or otherwise managing glass removed from CRT monitors.

"Dangerous waste constituents" means those constituents listed in WAC 173-303-9905 and any other constituents that have caused a waste to be a dangerous waste under this chapter.

"Dangerous waste management unit" is a contiguous area of land on or in which dangerous waste is placed, or the largest area in which there is a significant likelihood of mixing dangerous waste constituents in the same area. Examples of dangerous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"Dangerous wastes" means those solid wastes designated in WAC 173-303-070 through 173-303-100 as dangerous, or extremely hazardous or mixed waste. As used in this chapter, the words "dangerous waste" will refer to the full universe of wastes regulated by this chapter. The abbreviation "DW" will refer only to that part of the regulated universe which is not extremely hazardous waste. (See also "extremely hazardous waste," "hazardous waste," and "mixed waste" definitions.)

"Debris" means solid material exceeding a 60 mm particle size that is intended for disposal and that is: A manufactured object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 40 CFR Part 268 Subpart D (incorporated by reference in WAC 173-303-140 (2)(a)); process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least seventy-five percent of their original volume. A mixture of debris that has not been treated to the standards provided by 40 CFR 268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

"Department" means the department of ecology.

"Dermal $LD_{50}$" means the single dosage in milligrams per kilogram (mg/kg) body weight which, when dermally (skin) applied for 24 hours, within 14 days kills half of a group of ten rabbits each weighing between 2.0 and 3.0 kilograms.

"Designated facility" means a dangerous waste treatment, storage, or disposal facility that has received a permit (or interim status) in accordance with the requirements of this chapter, has received a permit (or interim status) from another state authorized in accordance with 40 CFR Part 271, has received a permit (or interim status) from EPA in accordance with 40 CFR Part 270, has a permit by rule under WAC 173-303-802(5), or is regulated under WAC 173-303-120 (4)(c) or 173-303-525 when the dangerous waste is to be recycled, and that has been designated on the manifest pursuant to WAC 173-303-180(1). If a waste is destined to a facility in an authorized state that has not yet obtained authorization to regulate that particular waste as dangerous, then the designated facility must be a facility allowed by the receiving state to accept such waste. The following are designated facilities only for receipt of state-only waste; they cannot receive federal hazardous waste from off-site: Facilities operating under WAC 173-303-500 (2)(c).

"Designation" is the process of determining whether a waste is regulated under the dangerous waste lists, WAC 173-303-080 through 173-303-082; or characteristics, WAC 173-303-090; or criteria, WAC 173-303-100. The procedures for designating wastes are in WAC 173-303-070. A waste that has been designated as a dangerous waste may be either DW or EHW.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in WAC 173-303-573 (9)(a), (b) and (c) and 173-303-573 (20)(a), (b) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"Dike" means an embankment or ridge of natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other substances.

"*Dioxins and furans (D/F)*" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

"Director" means the director of the department of ecology or his designee.

"Discharge" or "dangerous waste discharge" means the accidental or intentional release of hazardous substances, dangerous waste or dangerous waste constituents such that the substance, waste or a waste constituent may enter or be emitted into the environment.

"Disposal" means the discharging, discarding, or abandoning of dangerous wastes or the treatment, decontamination, or recycling of such wastes once they have been discarded or abandoned. This includes the discharge of any dangerous wastes into or on any land, air, or water.

"Domestic sewage" means untreated sanitary wastes that pass through a sewer system to a publicly owned treatment works (POTW) for treatment.

"Draft permit" means a document prepared under WAC 173-303-840 indicating the department's tentative decision to issue or deny, modify, revoke and reissue, or terminate a permit. A notice of intent to terminate or deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination as discussed in WAC 173-303-830 is not a draft permit.

"Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

"Elementary neutralization unit" means a device which:

Is used for neutralizing wastes which are dangerous wastes only because they exhibit the corrosivity characteristics defined in WAC 173-303-090 or are listed in WAC 173-303-081, or in 173-303-082 only for this reason; and

Meets the definition of tank, tank system, container, transport vehicle, or vessel.

"Enforceable document" means an order, consent decree, plan or other document that meets the requirements of 40 CFR 271.16(e) and is issued by the director to apply alternative requirements for closure, post-closure, ground water monitoring, corrective action or financial assurance under WAC 173-303-610 (1)(d), 173-303-645 (1)(e), or 173-303-620 (8)(d) or, as incorporated by reference at WAC 173-303-400, 40 CFR 265.90(f), 265.110(d), or 265.140(d). Enforceable documents include, but are not limited to, closure plans and post-closure plans, permits issued under chapter 70.105 RCW, orders issued under chapter 70.105 RCW and orders and consent decrees issued under chapter 70.105D RCW.

"Environment" means any air, land, water, or ground water.

"EPA/state identification number" or "EPA/state ID#" means the number assigned by EPA or by the department of ecology to each generator, transporter, and TSD facility.

"Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of dangerous waste and that is in operation, or for which installation has commenced on or prior to February 3, 1989. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

A continuous on-site physical construction or installation program has begun; or

The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

"Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

"Existing TSD facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980, for wastes designated by 40 CFR Part 261, or August 9, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261. A facility has commenced construction if the owner or operator has obtained permits and approvals necessary under federal, state, and local statutes, regulations, and ordinances and either:

A continuous on-site, physical construction program has begun; or

The owner or operator has entered into contractual obligation, which cannot be ((~~cancelled~~)) canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

"Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

"Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

"Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

"Extremely hazardous waste" means those dangerous and mixed wastes designated in WAC 173-303-100 as extremely hazardous. The abbreviation "EHW" will be used in this chapter to refer to those dangerous and mixed wastes which are extremely hazardous. (See also "dangerous waste" and "hazardous waste" definitions.)

"Facility" means:

• All contiguous land, and structures, other appurtenances, and improvements on the land used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of dangerous waste. A facility may consist of several treatment, storage, or disposal operational units (for example,

one or more landfills, surface impoundments, or combination of them). Unless otherwise specified in this chapter, the terms "facility," "treatment, storage, disposal facility," "TSD facility," "dangerous waste facility" or "waste management facility" are used interchangeably.

• For purposes of implementing corrective action under WAC 173-303-64620 or 173-303-64630, "facility" also means all contiguous property under the control of an owner or operator seeking a permit under chapter 70.105 RCW or chapter 173-303 WAC and includes the definition of facility at RCW 70.105D.020(4).

"Facility mailing list" means the mailing list for a facility maintained by the department in accordance with WAC 173-303-840 (3)(e)(I)(D).

"Final closure" means the closure of all dangerous waste management units at the facility in accordance with all applicable closure requirements so that dangerous waste management activities under WAC 173-303-400 and 173-303-600 through 173-303-670 are no longer conducted at the facility. Areas only subject to generator standards WAC 173-303-170 through 173-303-230 need not be included in final closure.

"Fish LC50" means the concentration that will kill fifty percent of the exposed fish in a specified time period. For book designation, LC50 data must be derived from an exposure period greater than or equal to twenty-four hours. A hierarchy of species LC50 data should be used that includes (in decreasing order of preference) salmonids, fathead minnows (Pimephales promelas), and other fish species. For the ninety-six-hour static acute fish toxicity test, described in WAC 173-303-110 (3)(b)(i), coho salmon (Oncorhynchus kisutch), rainbow trout (Oncorhynchus mykiss), or brook trout (Salvelinus fontinalis) must be used.

"Food chain crops" means tobacco, crops grown for human consumption, and crops grown to feed animals whose products are consumed by humans.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"Fugitive emissions" means the emission of contaminants from sources other than the control system exit point. Material handling, storage piles, doors, windows and vents are typical sources of fugitive emissions.

"Generator" means any person, by site, whose act or process produces dangerous waste or whose act first causes a dangerous waste to become subject to regulation.

"Genetic properties" means those properties which cause or significantly contribute to mutagenic, teratogenic, or carcinogenic effects in man or wildlife.

"Ground water" means water which fills voids below the land surface and in the earth's crust.

"Halogenated organic compounds" (HOC) means any organic compounds which, as part of their composition, include one or more atoms of fluorine, chlorine, bromine, or iodine which is/are bonded directly to a carbon atom. This definition does not apply to the federal land disposal restrictions of 40 CFR Part 268 which are incorporated by reference at WAC 173-303-140 (2)(a). Note: Additional information on HOCs may be found in *Chemical Testing Methods for Designating Dangerous Waste*, Ecology Publication #97-407.

"Hazardous debris" means debris that contains a hazardous waste listed in WAC 173-303-9903 or 173-303-9904, or that exhibits a characteristic of hazardous waste identified in WAC 173-303-090.

"Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or 173-303-100.

"Hazardous wastes" means those solid wastes designated by 40 CFR Part 261, and regulated as hazardous and/or mixed waste by the United States EPA. This term will never be abbreviated in this chapter to avoid confusion with the abbreviations "DW" and "EHW." (See also "dangerous waste" and "extremely hazardous waste" definitions.)

"Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

"Ignitable waste" means a dangerous waste that exhibits the characteristic of ignitability described in WAC 173-303-090(5).

"Inactive portion" means that portion of a facility which has not recycled, treated, stored, or disposed dangerous waste after:

The effective date of the waste's designation, for wastes designated under 40 CFR Part 261; and

March 10, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261.

"Inactive range" means a military range that is not currently being used, but that is still under military control and considered by the military to be a potential range area, and that has not been put to a new use that is incompatible with range activities.

"Incinerator" means any enclosed device that:

Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

Meets the definition of infrared incinerator or plasma arc incinerator.

"Incompatible waste" means a dangerous waste which is unsuitable for placement in a particular device or facility because it may corrode or decay the containment materials, or is unsuitable for mixing with another waste or material because the mixture might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, fumes, mists, or gases, or flammable fumes or gases.

"Independent qualified registered professional engineer" means a person who is licensed by the state of Washington, or a state which has reciprocity with the state of Washington as defined in RCW 18.43.100, and who is not an employee of the owner or operator of the facility for which construction or modification certification is required. A qualified professional engineer is an engineer with expertise in the specific area for which a certification is given.

"Industrial-furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy: Cement kilns; lime kilns; aggregate kilns; phosphate kilns; blast furnaces; smelting, melting, and refining furnaces (including pyrometallurgical

devices such as cupolas, reverberator furnaces, sintering machines, roasters and foundry furnaces); titanium dioxide chloride process oxidation reactors; coke ovens; methane reforming furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; pulping liquor recovery furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; and halogen acid furnaces (HAFs) for the production of acid from halogenated dangerous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for dangerous waste burned as fuel, dangerous waste fed to the furnace has a minimum halogen content of 20% as-generated. The department may decide to add devices to this list on the basis of one or more of the following factors:

The device is designed and used primarily to accomplish recovery of material products;

The device burns or reduces secondary materials as ingredients in an industrial process to make a material product;

The device burns or reduces secondary materials as effective substitutes for raw materials in processes using raw materials as principal feedstocks;

The device burns or reduces raw materials to make a material product;

The device is in common industrial use to produce a material product; and

Other factors, as appropriate.

"Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Inground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

"Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the waste or reagents used to treat the waste.

"Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

"Interim status permit" means a temporary permit given to TSD facilities which qualify under WAC 173-303-805.

"Knowledge" means sufficient information about a waste to reliably substitute for direct testing of the waste. To be sufficient and reliable, the "knowledge" used must provide information necessary to manage the waste in accordance with the requirements of this chapter.

Note: "Knowledge" may be used by itself or in combination with testing to designate a waste pursuant to WAC 173-303-070 (3)(c), or to obtain a detailed chemical, physical, and/or biological analysis of a waste as required in WAC 173-303-300(2).

"Lamp," also referred to as "universal waste lamp" means any type of high or low pressure bulb or tube portion of an electric lighting device that generates light through the discharge of electricity either directly or indirectly as radiant energy. Universal waste lamps include, but are not limited to, fluorescent, mercury vapor, metal halide, high-pressure sodium and neon. As a reference, it may be assumed that four, four-foot, one-inch diameter unbroken fluorescent tubes are equal to 2.2 pounds in weight.

"Land disposal" means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

"Landfill" means a disposal facility, or part of a facility, where dangerous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

"Land treatment" means the practice of applying dangerous waste onto or incorporating dangerous waste into the soil surface so that it will degrade or decompose. If the waste will remain after the facility is closed, this practice is disposal.

"Large quantity handler of universal waste" means a universal waste handler (as defined in this section) who accumulates 11,000 pounds or more total of universal waste (batteries, thermostats, mercury-containing equipment, and lamps calculated collectively) and/or who accumulates more than 2,200 pounds of lamps at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 11,000 pounds or more total of universal waste and/or 2,200 pounds of lamps is accumulated.

"Leachable inorganic waste" means solid dangerous waste (i.e., passes paint filter test) that is not an organic/carbonaceous waste and exhibits the toxicity characteristic (dangerous waste numbers D004 to D011, only) under WAC 173-303-090(8).

"Leachate" means any liquid, including any components suspended in the liquid, that has percolated through or drained from dangerous waste.

"Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of dangerous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of dangerous waste into the secondary containment structure.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Liner" means a continuous layer of man-made or natural materials which restrict the escape of dangerous waste, dangerous waste constituents, or leachate through the sides, bottom, or berms of a surface impoundment, waste pile, or landfill.

"Major facility" means a facility or activity classified by the department as major.

"Manifest" means the shipping document, prepared in accordance with the requirements of WAC 173-303-180, which is used to identify the quantity, composition, origin, routing, and destination of a dangerous waste while it is being transported to a point of transfer, disposal, treatment, or storage.

"Manufacturing process unit" means a unit which is an integral and inseparable portion of a manufacturing operation, processing a raw material into a manufacturing intermediate or finished product, reclaiming spent materials or reconditioning components.

"Marine terminal operator" means a person engaged in the business of furnishing wharfage, dock, pier, warehouse, covered and/or open storage spaces, cranes, forklifts, bulk loading and/or unloading structures and landings in connection with a highway or rail carrier and a water carrier. A marine terminal operator includes, but is not limited to, terminals owned by states and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen and stevedores who operate port terminal facilities.

"Mercury-containing equipment" means a device or part of a device (excluding batteries, thermostats, and lamps) that contains elemental mercury necessary for its operation. Examples of mercury-containing equipment include thermometers, manometers, and electrical switches.

"Micronutrient fertilizer" means a produced or imported commercial fertilizer that contains commercially valuable concentrations of micronutrients but does not contain commercially valuable concentrations of nitrogen, phosphoric acid, available phosphorous, potash, calcium, magnesium, or sulfur. Micronutrients are boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.

"Military" means the Department of Defense (DOD), the Armed Services, Coast Guard, National Guard, Department of Energy (DOE), or other parties under contract or acting as an agent for the foregoing, who handle military munitions.

"Military munitions" means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: Confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include nonnuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

"Military range" means designated land and water areas set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas.

"Miscellaneous unit" means a dangerous waste management unit where dangerous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, temporary unit, staging pile, or unit eligible for a research, development, and demonstration permit under WAC 173-303-809.

"Mixed waste" means a dangerous, extremely hazardous, or acutely hazardous waste that contains both a nonradioactive hazardous component and, as defined by 10 CFR 20.1003, source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

"New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of dangerous waste and for which installation has commenced after February 3, 1989; except, however, for purposes of WAC 173-303-640 (4)(g)(ii) and 40 CFR 265.193 (g)(2) as adopted by reference in WAC 173-303-400(3), a new tank system is one for which construction commences after February 3, 1989. (See also "existing tank system.")

"New TSD facility" means a facility which began operation or for which construction commenced after November 19, 1980, for wastes designated by 40 CFR Part 261, or August 9, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261.

"NIOSH registry" means the registry of toxic effects of chemical substances which is published by the National Institute for Occupational Safety and Health.

"Nonsudden accident" or "nonsudden accidental occurrence" means an unforeseen and unexpected occurrence which takes place over time and involves continuous or repeated exposure.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage which the owner or operator neither expected nor intended to occur.

"Off-specification used oil fuel" means used oil fuel that exceeds any specification level described in Table 1 in WAC 173-303-515.

"Onground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent sur-

rounding surface so that the external tank bottom cannot be visually inspected.

"On-site" means the same or geographically contiguous property which may be divided by public or private right of way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right of way. Noncontiguous properties owned by the same person but connected by a right of way which they control and to which the public does not have access, are also considered on-site property.

"Operator" means the person responsible for the overall operation of a facility. (See also "state operator.")

"Oral $LD_{50}$" means the single dosage in milligrams per kilogram (mg/kg) body weight, when orally administered, which, within 14 days, kills half a group of ten or more white rats each weighing between 200 and 300 grams.

"Organic/carbonaceous waste" means a dangerous waste that contains combined concentrations of greater than ten percent organic/carbonaceous constituents in the waste; organic/carbonaceous constituents are those substances that contain carbon-hydrogen, carbon-halogen, or carbon-carbon chemical bonding.

"Partial closure" means the closure of a dangerous waste management unit in accordance with the applicable closure requirements of WAC 173-303-400 and 173-303-600 through 173-303-695 at a facility that contains other active dangerous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other dangerous waste management unit, while other units of the same facility continue to operate.

"Permit" means an authorization which allows a person to perform dangerous waste transfer, storage, treatment, or disposal operations, and which typically will include specific conditions for such facility operations. Permits must be issued by one of the following:

The department, pursuant to this chapter;

United States EPA, pursuant to 40 CFR Part 270; or

Another state authorized by EPA, pursuant to 40 CFR Part 271.

"Permit-by-rule" means a provision of this chapter stating that a facility or activity is deemed to have a dangerous waste permit if it meets the requirements of the provision.

"Persistence" means the quality of a material that retains more than half of its initial activity after one year (365 days) in either a dark anaerobic or dark aerobic environment at ambient conditions. Persistent compounds are either halogenated organic compounds (HOC) or polycyclic aromatic hydrocarbons (PAH) as defined in this section.

"Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

"Pesticide" means but is not limited to: Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life, or virus (except virus on or in living man or other animal) which is normally considered to be a pest or which the department of agriculture may declare to be a pest; any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; any substance or mixture of substances intended to be used as spray adjuvant; and, any other substance intended for such use as may be named by the department of agriculture by regulation. Herbicides, fungicides, insecticides, and rodenticides are pesticides for the purposes of this chapter.

"Pile" means any noncontainerized accumulation of solid, nonflowing dangerous waste that is used for treatment or storage.

"Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Point source" means any confined and discrete conveyance from which pollutants are or may be discharged. This term includes, but is not limited to, pipes, ditches, channels, tunnels, wells, cracks, containers, rolling stock, concentrated animal feeding operations, or watercraft, but does not include return flows from irrigated agriculture.

"Polycyclic aromatic hydrocarbons" (PAH) means those hydrocarbon molecules composed of two or more fused benzene rings. For purposes of this chapter, the PAHs of concern for designation are: Acenaphthene, acenaphthylene, fluorene, anthracene, fluoranthene, phenanthrene, benzo(a) anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, pyrene, chrysene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-c,d)pyrene, benzo(g,h,i)perylene, dibenzo [(a,e), (a,h), (a,i), and (a,l)] pyrenes, and dibenzo(a,j) acridine.

"Post-closure" means the requirements placed upon disposal facilities (e.g., landfills, impoundments closed as disposal facilities, etc.) after closure to ensure their environmental safety for a number of years after closure. (See also "closure.")

"Processed scrap metal" is scrap metal that has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (that is, sorted), and fines, drosses and related materials that have been agglomerated. Note: Shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (WAC 173-303-071 (3)(gg)).

"Prompt scrap metal" is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

"Publicly owned treatment works" or "POTW" means any device or system, owned by the state or a municipality, which is used in the treatment, recycling, or reclamation of municipal sewage or liquid industrial wastes. This term includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW.

"Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has suffi-

cient training and experience in ground water hydrology and related fields to make sound professional judgments regarding ground water monitoring and contaminant fate and transport. Sufficient training and experience may be demonstrated by state registration, professional certifications, or completion of accredited university courses.

"Reactive waste" means a dangerous waste that exhibits the characteristic of reactivity described in WAC 173-303-090(7).

"Reclaim" means to process a material in order to recover useable products, or to regenerate the material. Reclamation is the process of reclaiming.

"Recover" means extract a useable material from a solid or dangerous waste through a physical, chemical, biological, or thermal process. Recovery is the process of recovering.

"Recycle" means to use, reuse, or reclaim a material.

"Recycling unit" is a contiguous area of land, structures and equipment where materials designated as dangerous waste or used oil are placed or processed in order to recover useable products or regenerate the original materials. For the purposes of this definition, "placement" does not mean "storage" when conducted within the provisions of WAC 173-303-120(4). A container, tank, or processing equipment alone does not constitute a unit; the unit includes containers, tanks or other processing equipment, their ancillary equipment and secondary containment system, and the land upon which they are placed.

"Registration number" means the number assigned by the department of ecology to a transporter who owns or leases and operates a ten-day transfer facility within Washington state.

"Regulated unit" means any new or existing surface impoundment, landfill, land treatment area or waste pile that receives any dangerous waste after:

July 26, 1982, for wastes regulated by 40 CFR Part 261;

October 31, 1984 for wastes designated only by this chapter and not regulated by 40 CFR Part 261; or

The date six months after a waste is newly identified by amendments to 40 CFR Part 261 or this chapter which cause the waste to be regulated.

"Release" means any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous wastes, or dangerous constituents as defined at WAC 173-303-64610(4), into the environment and includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous wastes or dangerous constituents and includes the definition of release at RCW 70.105D.020(20).

"Remediation waste" means all solid and dangerous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup.

"Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of dangerous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or state approved corrective action.

"Representative sample" means a sample which can be expected to exhibit the average properties of the sample source.

"Reuse or use" means to employ a material either:

As an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

In a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

"Runoff" means any rainwater, leachate, or other liquid which drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid which drains over land onto any part of a facility.

"Satellite accumulation area" means a location at or near any point of generation where hazardous waste is initially accumulated in containers (during routine operations) prior to consolidation at a designated ninety-day accumulation area or storage area. The area must be under the control of the operator of the process generating the waste or secured at all times to prevent improper additions of wastes into the satellite containers.

"Schedule of compliance" means a schedule of remedial measures in a permit including an enforceable sequence of interim requirements leading to compliance with this chapter.

"Scrap metal" means bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility. This term does not include the treated effluent from a wastewater treatment plant.

"Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

"Small quantity handler of universal waste" means a universal waste handler (as defined in this section) who does not accumulate 11,000 pounds or more total of universal waste (batteries, thermostats, mercury-containing equipment, and lamps, calculated collectively) and/or who does not accumulate more than 2,200 pounds of lamps at any time.

"Solid acid waste" means a dangerous waste that exhibits the characteristic of low pH under the corrosivity tests of WAC 173-303-090 (6)(a)(iii).

"Solid waste management unit" or "SWMU" means any discernible location at a facility, as defined for the purposes of corrective action, where solid wastes have been placed at any time, irrespective of whether the location was intended

for the management of solid or dangerous waste. Such locations include any area at a facility at which solid wastes, including spills, have been routinely and systematically released. Such units include regulated units as defined by chapter 173-303 WAC.

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. *Sorb* means to either adsorb or absorb, or both.

"Special incinerator ash" means ash residues resulting from the operation of incineration or energy recovery facilities managing municipal solid waste from residential, commercial and industrial establishments, if the ash residues are designated as dangerous waste only by this chapter and not designated as hazardous waste by 40 CFR Part 261.

"Special waste" means any state-only dangerous waste that is solid only (nonliquid, nonaqueous, nongaseous), that is: Corrosive waste (WAC 173-303-090 (6)(b)(ii)), toxic waste that has Category D toxicity (WAC 173-303-100(5)), PCB waste (WAC 173-303-9904 under State Sources), or persistent waste that is not EHW (WAC 173-303-100(6)). Any solid waste that is regulated by the United States EPA as hazardous waste cannot be a special waste.

"Spent material" means any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

"Stabilization" and "solidification" means a technique that limits the solubility and mobility of dangerous waste constituents. Solidification immobilizes a waste through physical means and stabilization immobilizes the waste by bonding or chemically reacting with the stabilizing material.

"Staging pile" means an accumulation of solid, nonflowing, remediation waste that is not a containment building or a corrective action management unit and that is used for temporary storage of remediation waste for implementing corrective action under WAC 173-303-646 or other clean up activities.

"State-only dangerous waste" means a waste designated only by this chapter, chapter 173-303 WAC, and is not regulated as a hazardous waste under 40 CFR Part 261.

"State operator" means the person responsible for the overall operation of the state's extremely hazardous waste facility on the Hanford Reservation.

"Storage" means the holding of dangerous waste for a temporary period. "Accumulation" of dangerous waste, by the generator on the site of generation, is not storage as long as the generator complies with the applicable requirements of WAC 173-303-200 and 173-303-201.

"Sudden accident" means an unforeseen and unexpected occurrence which is not continuous or repeated in nature.

"Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serves to collect dangerous waste for transport to dangerous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

"Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), and which is designed to hold an accumulation of liquid dangerous wastes or dangerous wastes containing free liquids. The term includes holding, storage, settling, and aeration pits, ponds, or lagoons, but does not include injection wells.

"Tank" means a stationary device designed to contain an accumulation of dangerous waste, and which is constructed primarily of nonearthen materials to provide structural support.

"Tank system" means a dangerous waste storage or treatment tank and its associated ancillary equipment and containment system.

"Temporary unit" means a tank or container that is not an accumulation unit under WAC 173-303-200 and that is used for temporary treatment or storage of remediation waste for implementing corrective action under WAC 173-303-646 or other clean up activities.

"*TEQ*" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

"Thermal treatment" means the treatment of dangerous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the dangerous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

"Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of WAC 173-303-573 (9)(b)(ii) or (20)(b)(ii).

"$TLm_{96}$" means the same as "Aquatic $LC_{50}$."

"Totally enclosed treatment facility" means a facility for treating dangerous waste which is directly connected to a production process and which prevents the release of dangerous waste or dangerous waste constituents into the environment during treatment.

"Toxic" means having the properties to cause or to significantly contribute to death, injury, or illness of man or wildlife.

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, buildings, piers, and other similar areas where shipments of dangerous waste are held, consolidated, or transferred within a period of ten days or less during the normal course of transportation.

"Transport vehicle" means a motor vehicle, water vessel, or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, steamship, etc.) is a separate transport vehicle.

"Transportation" means the movement of dangerous waste by air, rail, highway, or water.

"Transporter" means a person engaged in the off-site transportation of dangerous waste.

"Travel time" means the period of time necessary for a dangerous waste constituent released to the soil (either by

accident or intent) to enter any on-site or off-site aquifer or water supply system.

"Treatability study" means a study in which a dangerous waste is subjected to a treatment process to determine: Whether the waste is amenable to the treatment process; what pretreatment (if any) is required; the optimal process conditions needed to achieve the desired treatment; the efficiency of a treatment process for a specific waste or wastes; or the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the exemptions contained in WAC 173-303-071 (3)(r) and (s), are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of dangerous waste.

"Treatment" means the physical, chemical, or biological processing of dangerous waste to make such wastes nondangerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume, with the exception of compacting, repackaging, and sorting as allowed under WAC 173-303-400(2) and 173-303-600(3).

"Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which dangerous wastes are degraded, transformed or immobilized.

"Triple rinsing" means the cleaning of containers in accordance with the requirements of WAC 173-303-160 (2)(b), containers.

"Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well, or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

"Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

"Unexploded ordnance (UXO)" means military munitions that have been primed, fused, armed, or otherwise prepared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

"Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating dangerous waste without posing a threat of release of dangerous waste to the environment.

"Universal waste" means any of the following dangerous wastes that are subject to the universal waste requirements of WAC 173-303-573:

Batteries as described in WAC 173-303-573(2);

Thermostats as described in WAC 173-303-573(3);

Lamps as described in WAC 173-303-573(5); and

Mercury-containing equipment as described in WAC 173-303-573(4).

"Universal waste handler":

Means:

A generator (as defined in this section) of universal waste; or

The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

Does not mean:

A person who treats (except under the provisions of WAC 173-303-573 (9)(a), (b), or (c) or (20)(a), (b), or (c)) disposes of, or recycles universal waste; or

A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

"Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

"Unsaturated zone" means the zone between the land surface and the water table.

"Uppermost aquifer" means the geological formation nearest the natural ground surface that is capable of yielding ground water to wells or springs. It includes lower aquifers that are hydraulically interconnected with this aquifer within the facility property boundary.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

"Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

"Waste-derived fertilizer" means a commercial fertilizer that is derived in whole or in part from solid waste as defined in chapter 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include fertilizers derived from biosolids or biosolid products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW.

"Wastewater treatment unit" means a device that:

Is part of a wastewater treatment facility which is subject to regulation under either:

Section 402 or section 307(b) of the Federal Clean Water Act; or

Chapter 90.48 RCW, State Water Pollution Control Act, provided that the waste treated at the facility is a state-only dangerous waste; and

Handles dangerous waste in the following manner:

Receives and treats or stores an influent wastewater; or

Generates and accumulates or treats or stores a wastewater treatment sludge; and

Meets the definition of tank or tank system in this section.

"Water or rail (bulk shipment)" means the bulk transportation of dangerous waste which is loaded or carried on board a vessel or railcar without containers or labels.

"Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a dangerous waste release, can be readily cleaned up prior to the release of dangerous waste or dangerous constituents to ground water or surface water.

Any terms used in this chapter which have not been defined in this section have either the same meaning as set forth in Title 40 CFR Parts 260, 264, 270, and 124 or else have their standard, technical meaning.

As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the singular include the plural, and words in the plural include the singular.

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

AMENDATORY SECTION (Amending Order 03-10, filed 11/30/04, effective 1/1/05)

**WAC 173-303-071 Excluded categories of waste.** (1) Purpose. Certain categories of waste have been excluded from the requirements of chapter 173-303 WAC, except for WAC 173-303-050, because they generally are not dangerous waste, are regulated under other state and federal programs, or are recycled in ways which do not threaten public health or the environment. WAC 173-303-071 describes these excluded categories of waste.

(2) Excluding wastes. Any persons who generate a common class of wastes and who seek to categorically exclude such class of wastes from the requirements of this chapter must comply with the applicable requirements of WAC 173-303-072. No waste class will be excluded if any of the wastes in the class are regulated as hazardous waste under 40 CFR Part 261.

(3) Exclusions. The following categories of waste are excluded from the requirements of chapter 173-303 WAC, except for WAC 173-303-050, 173-303-145, and 173-303-960, and as otherwise specified:

(a)(i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works (POTW) for treatment provided:

(A) The generator or owner/operator has obtained a state waste discharge permit issued by the department, a temporary permit obtained pursuant to RCW 90.48.200, or pretreatment permit (or written discharge authorization) from a local sewage utility delegated pretreatment program responsibilities pursuant to RCW 90.48.165;

(B) The waste discharge is specifically authorized in a state waste discharge permit, pretreatment permit or written discharge authorization, or in the case of a temporary permit the waste is accurately described in the permit application;

(C) The waste discharge is not prohibited under 40 CFR Part 403.5; and

(D) The waste prior to mixing with domestic sewage must not exhibit dangerous waste characteristics for ignitability, corrosivity, reactivity, or toxicity as defined in WAC 173-303-090, and must not meet the dangerous waste criteria for toxic dangerous waste or persistent dangerous waste under WAC 173-303-100, unless the waste is treatable in the publicly owned treatment works (POTW) where it will be received. This exclusion does not apply to the generation, treatment, storage, recycling, or other management of dangerous wastes prior to discharge into the sanitary sewage system;

(b) Industrial wastewater discharges that are point-source discharges subject to regulation under Section 402 of the Clean Water Act. This exclusion does not apply to the collection, storage, or treatment of industrial waste-waters prior to discharge, nor to sludges that are generated during industrial wastewater treatment. Owners or operators of certain wastewater treatment facilities managing dangerous wastes may qualify for a permit-by-rule pursuant to WAC 173-303-802(5);

(c) Household wastes, including household waste that has been collected, transported, stored, or disposed. Wastes that are residues from or are generated by the management of household wastes (e.g., leachate, ash from burning of refuse-derived fuel) are not excluded by this provision. "Household wastes" means any waste material (including, but not limited to, garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste will not be deemed to be treating, storing, disposing of, or otherwise managing dangerous wastes for the purposes of regulation under this chapter, if such facility:

(i) Receives and burns only:

(A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

(B) Solid waste from commercial or industrial sources that does not contain dangerous waste; and

(ii) Such facility does not accept dangerous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that dangerous wastes are not received at or burned in such facility;

(d) Agricultural crops and animal manures which are returned to the soil as fertilizers;

(e) Asphaltic materials designated only for the presence of PAHs by WAC 173-303-100(6). For the purposes of this exclusion, asphaltic materials means materials that have been used for structural and construction purposes (e.g., roads, dikes, paving) that were produced from mixtures of oil and sand, gravel, ash or similar substances;

(f) Roofing tars and shingles, except that these wastes are not excluded if mixed with wastes listed in WAC 173-303-081 or 173-303-082, or if they exhibit any of the characteristics specified in WAC 173-303-090;

(g) Treated wood waste and wood products including:

(i) Arsenical-treated wood that fails the test for the toxicity characteristic of WAC 173-303-090(8) (dangerous waste numbers D004 through D017 only) or that fails any state criteria, if the waste is generated by persons who utilize the arsenical-treated wood for the materials' intended end use. Intended end use means the wood product must have been used in typical treated wood applications (for example, fence posts, decking, poles, and timbers).

(ii) Wood treated with other preservatives provided such treated wood and wood waste (for example, sawdust and shavings) are, within one hundred eighty days after becoming waste:

(A) Disposed of at a landfill that is permitted in accordance with chapter 173-350 WAC, Solid waste handling

standards, or chapter 173-351 WAC, criteria for municipal solid waste landfills, and provided that such wood is neither a listed waste under WAC 173-303-9903 and 173-303-9904 nor a TCLP waste under WAC 173-303-090(8); or

(B) Sent to a facility that will legitimately treat or recycle the treated wood waste, and manage any residue in accordance with that state's dangerous waste regulations; or

(C) Sent off-site to a permitted TSD facility or placed in an on-site facility which is permitted by the department under WAC 173-303-800 through 173-303-845. In addition, creosote-treated wood is excluded when burned for energy recovery in an industrial furnace or boiler that has an order of approval issued pursuant to RCW 70.94.152 by ecology or a local air pollution control authority to burn creosote treated wood.

(h) Irrigation return flows;

(i) Reserve;

(j) Mining overburden returned to the mining site;

(k) Polychlorinated biphenyl (PCB) wastes:

(i) PCB wastes whose disposal is regulated by EPA under 40 CFR 761.60 (Toxic Substances Control Act) and that are dangerous either because:

(A) They fail the test for toxicity characteristic (WAC 173-303-090(8), Dangerous waste codes D018 through D043 only); or

(B) Because they are designated only by this chapter and not designated by 40 CFR Part 261, are exempt from regulation under this chapter except for WAC 173-303-505 through 173-303-525, 173-303-960, those sections specified in subsection (3) of this section, and 40 CFR Part 266;

(ii) Wastes that would be designated as dangerous waste under this chapter solely because they are listed as WPCB under WAC 173-303-9904 when such wastes are stored and disposed in a manner equivalent to the requirements of 40 CFR Part 761 Subpart D for PCB concentrations of 50 ppm or greater.

(l) Samples:

(i) Except as provided in (l)(ii) of this subsection, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter, when:

(A) The sample is being transported to a lab for testing or being transported to the sample collector after testing; or

(B) The sample is being stored by the sample collector before transport, by the laboratory before testing, or by the laboratory after testing prior to return to the sample collector; or

(C) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action).

(ii) In order to qualify for the exemptions in (l)(i) of this subsection, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(A) Comply with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(B) Comply with the following requirements if the sample collector determines that DOT or USPS, or other shipping requirements do not apply:

(I) Assure that the following information accompanies the sample:

(AA) The sample collector's name, mailing address, and telephone number;

(BB) The laboratory's name, mailing address, and telephone number;

(CC) The quantity of the sample;

(DD) The date of shipment;

(EE) A description of the sample; and

(II) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(iii) This exemption does not apply if the laboratory determines that the waste is dangerous but the laboratory is no longer meeting any of the conditions stated in (l)(i) of this subsection;

(m) Reserve;

(n) Dangerous waste generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste-treatment-manufacturing unit until it exits the unit in which it was generated. This exclusion does not apply to surface impoundments, nor does it apply if the dangerous waste remains in the unit more than ninety days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials;

(o) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (NAICS codes 331111 and 332111), except that these wastes are not excluded if they exhibit one or more of the dangerous waste criteria (WAC 173-303-100) or characteristics (WAC 173-303-090);

(p) Wastes from burning any of the materials exempted from regulation by WAC 173-303-120 (2)(a)(vii) and (viii). These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics or criteria;

(q) As of January 1, 1987, secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed;

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal; and

(v) A generator complies with the requirements of chapter 173-303 WAC for any residues (e.g., sludges, filters, etc.) produced from the collection, reclamation, and reuse of the secondary materials.

(r) Treatability study samples.

(i) Except as provided in (r)(ii) of this subsection, persons who generate or collect samples for the purpose of conducting treatability studies as defined in WAC 173-303-040 are not subject to the requirements of WAC 173-303-180, 173-303-190, and 173-303-200 (1)(a), nor are such samples included in the quantity determinations of WAC 173-303-070 (7) and (8) and 173-303-201 when:

(A) The sample is being collected and prepared for transportation by the generator or sample collector; or

(B) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(C) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study; or

(D) The sample or waste residue is being transported back to the original generator from the laboratory or testing facility.

(ii) The exemption in (r)(i) of this subsection is applicable to samples of dangerous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(A) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with nonacute dangerous waste, 1000 kg of nonacute dangerous waste other than contaminated media, 1 kg of acutely hazardous waste, 2500 kg of media contaminated with acutely hazardous waste for each process being evaluated for each generated waste stream; and

(B) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with nonacute dangerous waste or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of dangerous waste, and 1 kg of acutely hazardous waste; and

(C) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of (r)(ii)(C)(I) or (II) of this subsection are met.

(I) The transportation of each sample shipment complies with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(II) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

(AA) The name, mailing address, and telephone number of the originator of the sample;

(BB) The name, address, and telephone number of the laboratory or testing facility that will perform the treatability study;

(CC) The quantity of the sample;

(DD) The date of shipment; and

(EE) A description of the sample, including its dangerous waste number.

(D) The sample is shipped, within ninety days of being generated or of being taken from a stream of previously generated waste, to a laboratory or testing facility which is exempt under (s) of this subsection or has an appropriate final facility permit or interim status; and

(E) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(I) Copies of the shipping documents;

(II) A copy of the contract with the facility conducting the treatability study;

(III) Documentation showing:

(AA) The amount of waste shipped under this exemption;

(BB) The name, address, and EPA/state identification number of the laboratory or testing facility that received the waste;

(CC) The date the shipment was made; and

(DD) Whether or not unused samples and residues were returned to the generator.

(F) The generator reports the information required under (r)(ii)(E)(III) of this subsection in its annual report.

(iii) The department may grant requests, on a case-by-case basis, for up to an additional two years for treatability studies involving bioremediation. The department may grant requests on a case-by-case basis for quantity limits in excess of those specified in (r)(ii)(A) and (B) of this subsection and (s)(iv) of this subsection, for up to an additional 5000 kg of media contaminated with nonacute dangerous waste, 500 kg of nonacute dangerous waste, 1 kg of acute hazardous waste, and 2500 kg of media contaminated with acute hazardous waste or for up to an additional 10,000 kg of wastes regulated only by this chapter and not regulated by 40 CFR Part 261, to conduct further treatability study evaluation:

(A) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, (e.g., batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(B) In response to requests for authorization to ship, store, and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when:

There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(C) The additional quantities and time frames allowed in (r)(iii)(A) and (B) of this subsection are subject to all the provisions in (r)(i) and (r)(ii)(C) through (F) of this subsection. The generator or sample collector must apply to the department where the sample is collected and provide in writing the following information:

(I) The reason the generator or sample collector requires additional time or quantity of sample for the treatability study evaluation and the additional time or quantity needed;

(II) Documentation accounting for all samples of dangerous waste from the waste stream which have been sent for

or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(III) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(IV) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(V) Such other information that the department considers necessary.

(s) Samples undergoing treatability studies at laboratories and testing facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to chapter 70.105 RCW) are not subject to the requirements of this chapter, except WAC 173-303-050, 173-303-145, and 173-303-960 provided that the conditions of (s)(i) through (xiii) of this subsection are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to (s)(i) through (xiii) of this subsection. Where a group of MTUs are located at the same site, the limitations specified in (s)(i) through (xiii) of this subsection apply to the entire group of MTUs collectively as if the group were one MTU.

(i) No less than forty-five days before conducting treatability studies the laboratory or testing facility notifies the department in writing that it intends to conduct treatability studies under this subsection.

(ii) The laboratory or testing facility conducting the treatability study has an EPA/state identification number.

(iii) No more than a total of 10,000 kg of "as received" media contaminated with nonacute dangerous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" dangerous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(iv) The quantity of "as received" dangerous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with nonacute dangerous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of nonacute dangerous wastes other than contaminated media, and 1 kg of acutely hazardous waste. This quantity limitation does not include treatment materials (including nondangerous solid waste) added to "as received" dangerous waste.

(v) No more than ninety days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(vi) The treatability study does not involve the placement of dangerous waste on the land or open burning of dangerous waste.

(vii) The laboratory or testing facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(A) The name, address, and EPA/state identification number of the generator or sample collector of each waste sample;

(B) The date the shipment was received;

(C) The quantity of waste accepted;

(D) The quantity of "as received" waste in storage each day;

(E) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(F) The date the treatability study was concluded;

(G) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated TSD facility, the name of the TSD facility and its EPA/state identification number.

(viii) The laboratory or testing facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(ix) The laboratory or testing facility prepares and submits a report to the department by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(A) The name, address, and EPA/state identification number of the laboratory or testing facility conducting the treatability studies;

(B) The types (by process) of treatability studies conducted;

(C) The names and addresses of persons for whom studies have been conducted (including their EPA/state identification numbers);

(D) The total quantity of waste in storage each day;

(E) The quantity and types of waste subjected to treatability studies;

(F) When each treatability study was conducted;

(G) The final disposition of residues and unused sample from each treatability study.

(x) The laboratory or testing facility determines whether any unused sample or residues generated by the treatability study are dangerous waste under WAC 173-303-070 and if so, are subject to the requirements of this chapter, unless the residues and unused samples are returned to the sample originator under the exemption in (r) of this subsection.

(xi) The laboratory or testing facility notifies the department by letter when it is no longer planning to conduct any treatability studies at the site.

(xii) The date the sample was received, or if the treatability study has been completed, the date of the treatability study, is marked and clearly visible for inspection on each container.

(xiii) While being held on site, each container and tank is labeled or marked clearly with the words "dangerous waste" or "hazardous waste." Each container or tank must also be marked with a label or sign which identifies the major risk(s) associated with the waste in the container or tank for employees, emergency response personnel and the public.

Note: If there is already a system in use that performs this function in accordance with local, state, or federal regulations, then such system will be adequate.

(t) Petroleum-contaminated media and debris that fail the test for the toxicity characteristic of WAC 173-303-090(8) (dangerous waste numbers D018 through D043 only) and are subject to the corrective action regulations under 40 CFR Part 280.

(u) Special incinerator ash (as defined in WAC 173-303-040).

(v) Wood ash that would designate solely for corrosivity by WAC 173-303-090 (6)(a)(iii). For the purpose of this exclusion, wood ash means ash residue and emission control dust generated from the combustion of untreated wood, wood treated solely with creosote, and untreated wood fiber materials including, but not limited to, wood chips, saw dust, tree stumps, paper, cardboard, residuals from waste fiber recycling, deinking rejects, and associated wastewater treatment solids. This exclusion allows for the use of auxiliary fuels including, but not limited to, oils, gas, coal, and other fossil fuels in the combustion process.

(w)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in (w)(i) and (ii) of this subsection, so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or ground water or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in Part 265, Subpart W which is incorporated by reference at WAC 173-303-400 (3)(a), regardless of whether the plant generates a total of less than 220 pounds/month of dangerous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the department a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than three years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the department for reinstatement. The department may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(F) Additional reports.

(I) Upon determination by the department that the storage of wood preserving wastewaters and spent wood preserving solutions in tanks and/or containers poses a threat to public health or the environment, the department may require the owner/operator to provide additional information regarding the integrity of structures and equipment used to store wood preserving wastewaters and spent wood preserving solutions. This authority applies to tanks and secondary containment systems used to store wood preserving wastewaters and spent wood preserving solutions in tanks and containers. The department's determination of a threat to public health or the environment may be based upon observations of factors that would contribute to spills or releases of wood preserving wastewaters and spent wood preserving solutions or the generation of hazardous by-products. Such observations may include, but are not limited to, leaks, severe corrosion, structural defects or deterioration (cracks, gaps, separation of joints), inability to completely inspect tanks or structures, or concerns about the age or design specification of tanks.

(II) When required by the department, a qualified, independent professional engineer registered to practice in Washington state must perform the assessment of the integrity of tanks or secondary containment systems.

(III) Requirement for facility repairs and improvements. If, upon evaluation of information obtained by the department under (w)(iii)(F)(I) of this subsection, it is determined that repairs or structural improvements are necessary in order to eliminate threats, the department may require the owner/operator to discontinue the use of the tank system or container storage unit and remove the wood preserving wastewaters and spent wood preserving solutions until such repairs or improvements are completed and approved by the department.

(x) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(y) Used oil filters that are recycled in accordance with WAC 173-303-120, as used oil and scrap metal.

(z) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(aa) Wastes that fail the test for the toxicity characteristic in WAC 173-303-090 because chromium is present or are listed in WAC 173-303-081 or 173-303-082 due to the presence of chromium. The waste must not designate for any other characteristic under WAC 173-303-090, for any of the

criteria specified in WAC 173-303-100, and must not be listed in WAC 173-303-081 or 173-303-082 due to the presence of any constituent from WAC 173-303-9905 other than chromium. The waste generator must be able to demonstrate that:

(i) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(ii) The waste is generated from an industrial process that uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(iii) The waste is typically and frequently managed in nonoxidizing environments.

(bb)(i) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in WAC 173-303-040 - blast furnaces, smelting, melting and refining furnaces, and other devices the department may add to the list - of the definition for "industrial furnace"), that are disposed in subtitle D units, provided that these residues meet the generic exclusion levels identified in the tables in this paragraph for all constituents, and exhibit no characteristics of dangerous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

| Constituent | Maximum for any single composite sample-TCLP (mg/l) |
|---|---|
| Generic exclusion levels for K061 and K062 nonwastewater HTMR residues | |
| Antimony | 0.10 |
| Arsenic | 0.50 |
| Barium | 7.6 |
| Beryllium | 0.010 |
| Cadmium | 0.050 |
| Chromium (total) | 0.33 |
| (2)Lead | 0.15 |
| Mercury | 0.009 |
| Nickel | 1.0 |
| Selenium | 0.16 |
| Silver | 0.30 |
| Thallium | 0.020 |
| Zinc | 70 |
| Generic exclusion levels for F006 nonwastewater HTMR residues | |
| Antimony | 0.10 |
| Arsenic | 0.50 |
| Barium | 7.6 |
| Beryllium | 0.010 |
| Cadmium | 0.050 |
| Chromium (total) | 0.33 |
| Cyanide (total) (mg/kg) | 1.8 |
| Lead | 0.15 |
| Mercury | 0.009 |
| Nickel | 1.0 |
| Selenium | 0.16 |
| Silver | 0.30 |
| Thallium | 0.020 |
| Zinc | 70 |

(ii) A one-time notification and certification must be placed in the facility's files and sent to the department for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to subtitle D units. The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes and/or if the subtitle D unit receiving the waste changes. However, the generator or treater need only notify the department on an annual basis if such changes occur. Such notification and certification should be sent to the department by the end of the calendar year, but no later than December 31. The notification must include the following information: The name and address of the subtitle D unit receiving the waste shipments; the dangerous waste number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of dangerous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment." These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics (WAC 173-303-090) or criteria (WAC 173-303-100).

(cc)(i) Oil-bearing hazardous secondary materials (that is, sludges, by-products, or spent materials) that are generated at a petroleum refinery (NAICS code 324110) and are inserted into the petroleum refining process (NAICS code 324110 - including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (that is, cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph: Provided, That the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this

provision. Except as provided in (cc)(ii) of this subsection, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (that is, from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under WAC 173-303-081 and 173-303-082, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in (cc)(i) of this subsection. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (NAICS codes 211111, 211112, 213111, 213112, 541360, 237120, 238910, 324110, 486110, 486910, 486210, 221210, 486210, 487110, 488210, 488999, 722310, 424710, 454311, 454312, 424720, 425110, 425120). Recovered oil does not include oil-bearing hazardous wastes listed in WAC 173-303-081 and 173-303-082; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in WAC 173-303-040.

(dd) Dangerous waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are dangerous only because they exhibit the toxicity characteristic (TC) specified in WAC 173-303-090(8) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

(ee) Biological treatment sludge from the treatment of one of the following wastes listed in WAC 173-303-9904 - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (Dangerous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (Dangerous Waste No. K157) unless it exhibits one or more of the characteristics or criteria of dangerous waste.

(ff) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(gg) Shredded circuit boards being recycled: Provided, That they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

(hh) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (NAICS code 324110) along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in WAC 173-303-090(5) and/or toxicity for benzene (WAC 173-303-090(8), waste code D018); and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process.

An "associated organic chemical manufacturing facility" is a facility where the primary NAICS code is 325110, 325120, 325188, 325192, 325193, or 325199, but where operations may also include NAICS codes 325211, 325212, 325110, 325132, 325192; and is physically colocated with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (that is, sludges, by-products, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(ii) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in WAC 173-303-016(5).

(jj) Catalyst inert support media separated from one of the following wastes listed in WAC 173-303-9904 Specific Sources - Spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172). These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics or criteria.

(kk) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed: Provided, That:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, and K178 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in (kk)(i) of this subsection were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic or criteria of dangerous waste nor is derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169 - K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: If the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (for example, shutdown

of wastewater treatment system): Provided, That the impoundment has a double liner, and: Provided further, That the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(ll) Dredged material. Dredged material as defined in 40 CFR 232.2 that is subject to:

(i) The requirements of a permit that has been issued by the U.S. Army Corps of Engineers or an approved state under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) The requirements of a permit that has been issued by the U.S. Army Corps of Engineers under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of a U.S. Army Corps of Engineers civil works project, the administrative equivalent of the permits referred to in (ll)(i) and (ii) of this subsection, as provided for in U.S. Army Corps of Engineers regulations, including, for example, 33 CFR 336.1, 336.2 and 337.3.

(mm) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(nn)(i) Controlled substances, legend drugs, and over-the-counter drugs that are state-only dangerous wastes.

(A) Controlled substances as defined and regulated by chapter 69.50 RCW (Schedule I through V);

(B) Legend drugs as defined and regulated by chapter 69.41 RCW; and

(C) Over-the-counter drugs as defined and regulated by chapter 69.60 RCW.

(ii) Controlled substances, legend drugs, and over-the-counter drugs that are held in the custody of law enforcement agencies or possessed by any licensee as defined and regulated by chapter 69.50 RCW or Title 18 RCW and authorized to possess drugs within the state of Washington are excluded, provided the drugs are disposed of by incineration in a controlled combustion unit with a heat input rate greater than 250 million British thermal units/hour, a combustion zone temperature greater than 1500 degrees Fahrenheit, or a facility permitted to incinerate municipal solid waste.

(iii) For the purposes of this exclusion the term "drugs" means:

(A) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(B) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) Substances (other than food) intended to affect the structure or any function of the body of man or other animals, as defined in RCW 18.64.011(3). (Note: RCW 18.64.011 (3)(d) is intentionally not included in the definition of drugs for this exclusion.)

(iv) When possessed by any licensee the term drugs used in this exclusion means finished drug products.

(oo) ((~~Reserve.~~)) Cathode ray tubes (CRTs) and glass removed from CRTs:

(i) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(A) Storage. CRTs must be either:

(I) Stored in a building with a roof, floor, and walls; or

(II) Placed in a container (that is, a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials).

(B) Labeling. Each container in which the CRT is contained must be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s) - contains leaded glass" or "leaded glass from televisions or computers." It must also be labeled: "Do not mix with other glass materials."

(C) Transportation. CRTs must be transported in a container meeting the requirements of (oo)(i)(A)(II) and (B) of this subsection.

(D) Speculative accumulation and use constituting disposal. CRTs are subject to the limitations on speculative accumulation as defined in WAC 173-303-016 (5)(d). If they are used in a manner constituting disposal, they must comply with the applicable requirements of WAC 173-303-505 instead of the requirements of this section.

(E) Exports. In addition to the applicable conditions specified in (oo)(i)(A) through (D) of this subsection, exporters of CRTs must comply with the following requirements:

(I) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve-month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:

• Name, mailing address, telephone number and EPA/state ID number (if applicable) of the exporter of the CRTs.

• The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

• The estimated total quantity of CRTs specified in kilograms.

• All points of entry to and departure from each foreign country through which the CRTs will pass.

• A description of the means by which each shipment of the CRTs will be transported (for example, mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).

• The name and address of the recycler and any alternate recycler.

• A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

• The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(II) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Envi-

ronmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., N.W., Washington, D.C. In both cases, the following must be prominently displayed on the front of the envelope: "Attention: Notification of intent to export CRTs."

(III) Upon request by EPA, the exporter must furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(IV) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of (oo)(i)(E)(I) of this subsection. Where a claim of confidentiality is asserted with respect to any notification information required by (oo)(i)(E)(I) of this subsection, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(V) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an "Acknowledgment of Consent" to export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(VI) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change, except for changes to the telephone number in (oo)(i)(E)(I)(first bullet) of this subsection and decreases in the quantity indicated pursuant to (oo)(i)(E)(I)(third bullet) of this subsection. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to (oo)(i)(E)(I)(fourth bullet) and (i)(E)(I)(eighth bullet) of this section) and the exporter of CRTs receives from EPA a copy of the "Acknowledgment of Consent" to export CRTs reflecting the receiving country's consent to the changes.

(VII) A copy of the "Acknowledgment of Consent" to export CRTs must accompany the shipment of CRTs. The shipment must conform to the terms of the Acknowledgment.

(VIII) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs must renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with (oo)(i)(E)(VI) of this subsection and obtain another "Acknowledgment of Consent" to export CRTs.

(IX) Exporters must keep copies of notifications and "Acknowledgments of Consent" to export CRTs for a period of five years following receipt of the "Acknowledgment."

(ii) Requirements for used CRT processing: CRTs undergoing CRT processing as defined in WAC 173-303-040 are not solid wastes if they meet the following requirements:

(A) Storage. CRTs undergoing processing are subject to the requirement of (oo)(i)(D) of this subsection.

(B) Processing.

(I) All activities specified in the second and third bullets of the definition of "CRT processing" in WAC 173-303-040 must be performed within a building with a roof, floor, and walls; and

(II) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(iii) Processed CRT glass sent to CRT glass making or lead smelting: Glass from CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in WAC 173-303-016 (5)(d).

(iv) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of WAC 173-303-505.

(v) Notification and recordkeeping for cathode ray tubes (CRTs) exported for reuse.

(A) Persons who export CRTs for reuse must send a one-time notification to the U.S. EPA Regional Administrator. The notification must include a statement that the notifier plans to export CRTs for reuse, the notifier's name, address, and EPA/state ID number (if applicable) and the name and phone number of a contact person.

(B) Persons who export CRTs for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. This documentation must be retained for a period of at least five years from the date the CRTs were exported.

(pp) Zinc fertilizers made from hazardous wastes provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

| Maximum Allowable Total Concentration Constituent in Fertilizer, per Unit (1%) of Zinc (ppm) | |
|---|---|
| Arsenic | 0.3 |
| Cadmium | 1.4 |
| Chromium | 0.6 |
| Lead | 2.8 |
| Mercury | 0.3 |

(B) For dioxin contaminants the fertilizer must contain no more than eight parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of (pp)(ii) of this subsection. Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this subsection (3)(pp).

(qq) Debris. Provided the debris does not exhibit a characteristic identified in WAC 173-303-090, the following materials are not subject to regulation under this chapter:

(i) Hazardous debris that has been treated using one of the required extraction or destruction technologies specified in Table 1 of 40 CFR section 268.45, which is incorporated by reference at WAC 173-303-140 (2)(a); persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(ii) Debris that the department, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

## WSR 07-21-020
### PERMANENT RULES
### DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed October 8, 2007, 10:52 a.m., effective November 8, 2007]

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

Purpose: The department is amending WAC 388-106-0225 How do I pay for MPC?, to increase the personal needs allowance 3.3%. This change is due to the Washington state 2007-09 operating budget (SHB 1128).

When effective, these permanent rules supersede emergency rules filed as WSR 07-17-147.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0225.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: Washington state 2007-09 operating budget (SHB 1128).

Adopted under notice filed as WSR 07-17-146 on August 21, 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 1, Repealed 0.

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

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

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

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

Date Adopted: October 1, 2007.

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

**WAC 388-106-0225 How do I pay for MPC?** (1) If you live in your own home, you do not participate toward the cost of your personal care services.

(2) If you live in a residential facility and are:

(a) An SSI beneficiary who receives only SSI income, you only pay for board and room. You are allowed to keep a personal needs allowance of ((~~at least thirty-eight~~)) forty dollars and ((~~eighty-four~~)) twelve cents per month;

(b) An SSI beneficiary who receives SSI and SSA benefits, you only pay for board and room. You are allowed to keep a personal needs allowance of ((~~at least fifty-eight dollars and eighty-four cents per month~~)) forty dollars and twelve cents. You keep an additional twenty dollar disregard from non-SSI income;

(c) An SSI-related person under WAC 388-511-1105, you may be required to participate towards the cost of your personal care services in addition to your board and room if your financial eligibility is based on the facility's state contracted rate described in WAC 388-513-1305. You ((~~will receive~~)) are allowed to keep a personal needs allowance of ((~~fifty-eight~~)) forty dollars and ((~~eighty-four~~)) twelve cents. You keep an additional twenty dollar disregard from non-SSI income; or

(d) A GA-X client in a residential care facility, you are allowed to keep a personal allowance of only thirty-eight dollars and eighty-four cents per month. The remainder of your grant must be paid to the facility.

(3) The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the Medicaid resident dies in the facility; or

(b) Day of service before the day the Medicaid resident is discharged.

## WSR 07-21-035
### PERMANENT RULES
## ENERGY FACILITY SITE EVALUATION COUNCIL

[Filed October 9, 2007, 4:25 p.m., effective November 9, 2007]

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

Purpose: Expedite and reduce the costs of siting of energy facilities.

Citation of Existing Rules Affected by this Order: Repealing WAC 463-28-030, 463-28-040 and 463-28-050; and amending WAC 463-28-010, 463-28-060, 463-28-070, 463-28-080, 463-47-060, 463-47-090, 463-47-110, 463-47-140, and 463-66-040.

Statutory Authority for Adoption: RCW 80.50.040(1).

Adopted under notice filed as WSR 07-09-059 on April 13, 2007.

Changes Other than Editing from Proposed to Adopted Version: Proposed changes to WAC 463-66-070 were not adopted and WAC 463-66-080 was not repealed.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 9, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, Repealed 3.

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

Date Adopted: October 9, 2007.

Allen J. Fiksdal
Manager

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-28-010 Purpose.** This chapter sets forth procedures to be followed by the council in determining whether to recommend to the governor that the state preempt ((~~local~~)) land use plans ((~~or~~)), zoning ordinances, or other development regulations for a site or portions of a site for an energy facility, or alternative energy facility.

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

**WAC 463-28-060 ((~~Request for preemption—~~))Adjudicative proceeding.** (1) Should ((~~an applicant elect to continue processing the application and file a request with the council for state preemption,~~)) the council determine under WAC 463-26-110 a site or any portions of a site is inconsistent it will schedule an adjudicative proceeding ((~~hearing on the application as specified~~)) under chapter 463-30 WAC to consider preemption.

(2) The proceeding for preemption may be combined or scheduled concurrent with the adjudicative proceeding held under RCW 80.50.090(3).

(3) The council shall determine ((~~during the adjudicative proceeding~~)) whether to recommend to the governor that the state ((~~should~~)) preempt the ((~~local~~)) land use plans ((~~or~~)), zoning ordinances, or other development regulations for a site or portions of a site for the energy facility or alternative energy resource proposed by the applicant. ((~~The factors to be evidenced under this issue are those set forth in WAC 463-28-040. The determination of preemption shall be by council order, and shall be included in its recommendation to the governor pursuant to RCW 80.50.100.~~))

AMENDATORY SECTION (Amending Order 78-3, filed 6/23/78)

**WAC 463-28-070 Certification—Conditions—State/local interests.** If the council approves the request for preemption it shall include conditions in the draft certification agreement which ((~~give due consideration to~~)) consider state or local governmental or community interests affected by the construction or operation of the energy facility or alternative energy resource and the purposes of laws or ordinances, or rules or regulations promulgated thereunder that are preempted ((~~or superseded~~)) pursuant to RCW 80.50.110 (2).

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

**WAC 463-28-080 Preemption—((~~Failure to justify~~)) Recommendation.** ((~~During the adjudicative proceeding, if the council determines that the applicant has failed to justify the request for state preemption, the council shall do so by issuance of an order accompanied by findings of fact and conclusions of law. Concurrent with the issuance of its order, the council shall report to the governor its recommendation for rejection of certification of the energy facility proposed by the applicant.~~)) The council's determination on a request for preemption shall be part of its recommendation to the governor pursuant to RCW 80.50.100.

REPEALER

The following sections of the Washington Administrative Code are repealed:

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|---|---|
| WAC 463-28-030 | Determination of noncompliance—Procedures. |
| WAC 463-28-040 | Inability to resolve noncompliance. |
| WAC 463-28-050 | Failure to request preemption. |

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-47-060 Additional timing considerations.** (1) The council will determine when it receives an applica-

tion whether the proposal is an "action" and, if so, whether it is "categorically exempt" from SEPA. If the proposal is an action and is not exempt, the council will request the applicant to complete an environmental checklist. A checklist is not needed if the council and applicant agree an EIS is required, SEPA compliance has been completed, SEPA compliance has been initiated by another agency, or a checklist is included with the application. The applicant should also complete an environmental checklist if the council is unsure whether the proposal is exempt.

(2) The council may initiate an adjudicative proceeding ((~~hearing~~)) required by RCW 80.50.090 prior to completion of the draft EIS. ((~~The council shall initiate and conclude an adjudicative proceeding prior to issuance of the final EIS.~~))

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-47-090 EIS preparation.** (1) Preparation of draft and final EISs ((~~and~~)), SEISs, or addenda is the responsibility of the council. ((~~Before the council issues an EIS,~~)) The responsible official shall be satisfied that ((~~it complies~~)) these documents comply with these rules and chapter 197-11 WAC prior to issuance.

(2) The council ((~~normally will~~)) has the following options for draft and final EISs, SEISs, or addenda preparation:

(a) The council prepares its own ((~~draft and final EISs. It may~~)) documents.

(b) The council's independent consultant prepares any or all of the documents under the supervision of the responsible official.

(c) The council requires the applicant to prepare the documents with oversight from the responsible official.

(3) If the council prepares its own draft and final EISs, SEISs, or addenda, or its independent consultant prepares them, the council can require an applicant to provide information that the council or independent consultant does not possess, including specific investigations.

(((~~(3) If the council would be unable to prepare a draft and/or final EIS due to its commitments or other constraints the council may allow an applicant the following option for preparation of the draft and/or final EIS for the applicant's proposal:~~

~~(a)~~)) (4) The applicant ((~~and the council agree upon a method of funding in which the applicant will~~)) shall bear the expense of the ((~~EIS~~)) draft and final EISs, SEISs, or addenda preparation, but the consultant will work directly for the council.

(((~~(b) The outside party will prepare the document under the supervision of the council or council subcommittee, and the responsible official.~~

~~(c)~~)) (5) Normally, the council will have the documents printed and distributed.

(((~~(4)~~)) (6) Whenever someone other than the council prepares a draft or final EISs, SEISs, or addenda, the ((~~council shall~~)) responsible official:

(a) May direct the areas of research and examination to be undertaken and the content and organization of the document.

(b) Shall initiate and coordinate scoping, ensuring that the individuals preparing the ((~~EIS~~)) documents receive((~~s~~)) all substantive information submitted by any agency or person.

(c) Shall assist in obtaining information on file with ((~~another agency~~)) other agencies that is needed by the persons preparing the ((~~EIS~~)) document.

(d) Shall allow the person preparing the ((~~EIS~~)) document access to council records relating to the ((~~EIS~~)) document (under chapter 42.17 RCW—Public disclosure and public records law).

AMENDATORY SECTION (Amending Order 84-2, filed 9/14/84)

**WAC 463-47-110 Policies and procedures for conditioning or denying permits or other approvals.** (1)(a) The overriding policy of the council is to avoid or mitigate adverse environmental impacts which may result from the council's decisions.

(b) The council shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The council recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(d) The council shall ensure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.

(2)(a) When the environmental document for a proposal shows it will cause significant adverse impacts that the proponent does not plan to mitigate, the council shall consider whether:

(i) The environmental document identified mitigation measures that are reasonable and capable of being accomplished;

(ii) Other local, state, or federal requirements and enforcement would mitigate the significant adverse environmental impacts; and

(iii) Reasonable mitigation measures are sufficient to mitigate the significant adverse impacts.

(b) The council may:

(i) Condition the approval or recommendation for approval for a proposal if mitigation measures are reasonable and capable of being accomplished and the proposal is inconsistent with the policies in subsection (1) of this section.

(ii) Reject or recommend rejection of the application if reasonable mitigation measures are insufficient to mitigate significant adverse environmental impacts and the proposal is inconsistent with the policies in subsection (1) of this section.

(c) The procedures in WAC 197-11-660 must also be followed when conditioning, denying or recommending permits or ((~~rejection of~~)) rejecting applications.

AMENDATORY SECTION (Amending Order 84-2, filed 9/14/84)

**WAC 463-47-140 Responsibilities of the council's responsible official.** The ((~~council~~)) EFSEC manager shall be responsible for the following:

(1) Coordinating activities to comply with SEPA and encouraging consistency in SEPA compliance.

(2) Providing information and guidance on SEPA and the SEPA rules to council, council staff, groups, and citizens.

(3) Reviewing SEPA documents falling under council interests and providing the department of ecology with comments.

(4) Maintaining the files for EISs, DNSs, and scoping notices, and related SEPA matters.

(5) Writing and/or coordinating EIS preparation, including scoping and the scoping notice, making sure to work with interested agencies.

(6) Publishing and distributing its SEPA rules and amending its SEPA rules, as necessary.

(7) Fulfilling the council's other general responsibilities under SEPA and the SEPA rules.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-66-040 Amendment review.** In reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

(1) The intention of the original SCA;

(2) Applicable laws and rules; ((~~and~~))

(3) The public health, safety, and welfare; and

(4) The provisions of chapter 463-72 WAC.

## WSR 07-21-036
### PERMANENT RULES
### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 10, 2007, 11:29 a.m., effective November 10, 2007]

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

Purpose: The revision clarifies the school district reporting requirements and defines the number of basic students allowed on a combined transportation route (basic and special needs students).

Citation of Existing Rules Affected by this Order: Amending WAC 392-141-152.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 07-17-115 on August 17, 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 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 3, 2007.

Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending Order 98-08, filed 8/7/98, effective 9/7/98)

**WAC 392-141-152 Definition—Combined transportation route.** As used in this chapter, "combined transportation route" means a special transportation route as defined in WAC 392-141-148 on which a student or students, who would otherwise qualify for basic transportation as defined in WAC 392-141-146, are allowed to ride. The number of basic transportation students allowed on a designated combined route shall not exceed ((~~thirty percent of the actual number of seating positions on a type A school bus, twenty percent of the actual number of seating positions on a type B school bus, or ten percent of the actual number of seating positions on a type C or D school bus used on the combined route. If the total number of seating positions multiplied by the appropriate percentage results in a fractional number of students, the result shall be rounded to the next highest whole number~~)) ten students.

## WSR 07-21-037
### PERMANENT RULES
### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 10, 2007, 11:33 a.m., effective November 10, 2007]

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

Purpose: Rules are updated to reflect changes in the state and federal revenues in the levy base due to the addition of revenue codes in the school district accounting manual.

Citation of Existing Rules Affected by this Order: Amending WAC 392-139-310.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 07-17-088 on August 15, 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: October 10, 2007.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 06-17-142, filed 8/22/06, effective 9/22/06)

**WAC 392-139-310 Determination of excess levy base.** The superintendent of public instruction shall calculate each school district's excess levy base as provided in this section.

(1) Sum the following state and federal allocations from the prior school year(s) as determined in subsections (4) and (5) of this section:

(a) The basic education allocation as defined in WAC 392-139-115 and as reported on the August Report 1191;

(b) The state and federal categorical allocations for the following:

(i) Pupil transportation. Allocations for pupil transportation include allocations for the following accounts:

4199 Transportation - operations; ((~~and~~))
4399 Transportation - operations;
4499 Transportation - depreciation;
6199 Transportation - operations;
6299 Transportation - operations; and
6399 Transportation - operations.

(ii) Special education. Allocations for special education include allocations for the following accounts:

4121 Special education; ((~~and~~))
4321 Special education;
6124 Special education supplemental;
6224 Special education supplemental; and
6324 Special education supplemental.

(iii) Education of highly capable students. Allocations for education of highly capable students include allocations identified by account 4174 Highly capable.

(iv) Compensatory education. Allocations for compensatory education include allocations identified by the following accounts:

3100 Barrier reduction;
4155 Learning assistance;
4165 Transitional bilingual;
4163 Promoting academic success;
4166 Student achievement;
4365 Transitional bilingual;
6151 Disadvantaged;
6153 Migrant;
6164 Limited English proficiency;
6251 Disadvantaged;
6253 Migrant;
6264 ((~~Bilingual (direct);~~)) Limited English proficiency;
6267 Indian education - JOB;
6268 Indian education - ED; ((~~and~~))
6351 Disadvantaged;
6353 Migrant;
6364 Limited English proficiency;
6367 Indian education - JOM; and
6368 Indian education - ED.

(v) Food services. Allocations for food services include allocations identified by the following accounts:

4198 School food services (state);
4398 School food services;
6198 School food services (federal);
6298 School food services;
6398 School food services; and
6998 USDA commodities.

(vi) Statewide block grant programs. Allocations for statewide block grant programs include allocations identified by the following accounts:

6176 Targeted assistance;
6276 Targeted assistance; and
6376 Targeted assistance.

(c) General federal programs. Allocations for general federal programs identified by the following accounts:

5200 General purpose direct federal grants - unassigned;
6100 Special purpose - OSPI - unassigned;
6121 Special education - Medicaid reimbursement;
6138 Secondary vocational education;
6146 Skills center;
6152 School improvement;
6154 Reading first;
6162 Math and science - professional development;
6200 Direct special purpose grants; ((~~and~~))
6221 Special education - Medicaid reimbursement;
6238 Secondary vocational education;
6246 Skills center;
6252 School improvement;
6254 Reading first;
6262 Math and science - professional development;
6300 Federal grants through other agencies - unassigned;
6310 Medicaid administrative match; ((~~and~~))
6321 Special education - Medicaid reimbursement;
6338 Secondary vocational education;
6346 Skills center;
6352 School improvement;
6354 Reading first; and
6362 Math and science - professional development.

(2) Increase the result obtained in subsection (1) of this section by the percentage increase per full-time equivalent

student in the state basic education appropriation between the prior school year and the current school year as stated in the state Operating Appropriations Act divided by 0.55.

(3) Revenue accounts referenced in this section are defined in the accounting manual for public school districts in the state of Washington.

(4) The dollar amount of revenues for state and federal categorical allocations identified in this section shall come from the following sources:

(a) The following state and federal categorical allocations are taken from the Report 1197 Column A (Annual Allotment Due):

3100 Barrier reduction;
4121 Special education;
4155 Learning assistance;
4163 Promoting academic success;
4165 Transitional bilingual;
4166 Student achievement;
4174 Highly capable;
4198 School food services (state);
4199 Transportation - operations;
4499 Transportation - depreciation;
6121 Special education - Medicaid reimbursements;
6124 Special education - supplemental;
6138 Secondary vocational education;
6146 Skills center;
6151 Disadvantaged;
6152 School improvement;
6153 Migrant;
6154 Reading first;
6162 Math and science - professional development;
6164 Limited English proficiency;
6176 Targeted assistance; ((~~and~~))
6198 School food services (federal); and
6199 Transportation - operations.

(b) For the 2004 calendar year, the following state and federal allocations are taken from the F-195 budget including budget extensions.

For the 2005 calendar year and thereafter, the following federal allocations shall be taken from the school district's second prior year F-196 annual financial report:

4321 Special education;
4365 Transitional bilingual;
4398 School food services;
4399 Transportation - operations;
5200 General purpose direct federal grants - unassigned;
6100 Special purpose - OSPI - unassigned;
6200 Direct special purpose grants;
6221 Special education - Medicaid reimbursement;
6224 Special education supplemental;
6238 Secondary vocational education;
6246 Skills center;
6251 Disadvantaged;
6252 School improvement;
6253 Migrant;
6254 Reading first;
6262 Math and science - professional development;
6264 ((~~Bilingual (direct);~~)) Limited English proficiency;
6267 Indian education - JOM;
6268 Indian education - ED;
6276 Targeted assistance;
6298 School food services;
6299 Transportation - operations;
6300 Federal grants through other agencies - unassigned;
6310 Medicaid administrative match;
6321 Special education - Medicaid reimbursement;
6324 Special education supplemental;
6338 Secondary vocational education;
6346 Skills center;
6351 Disadvantaged;
6352 School improvement;
6353 Migrant;
6354 Reading first;
6362 Math and science - professional development;
6364 Limited English proficiency;
6367 Indian education - JOM;
6368 Indian education - ED;
6376 Targeted assistance;
6398 School food services;
6399 Transportation - operations; and
6998 USDA commodities.

(5) Effective for levy authority and local effort assistance calculations for the 2005 calendar year and thereafter:

(a) District revenues determined in subsection (4) of this section shall be reduced for revenues received as a fiscal agent. School districts shall report fiscal agent revenues pursuant to instructions provided by the superintendent of public instruction.

(b) The amount determined in subsection (4)(b) of this section, after adjustment for fiscal agent moneys, shall be inflated for one year using the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce.

(6) State and federal moneys generated by a school district's students and redirected by the superintendent of public instruction to an educational service district at the request of the school district shall be included in the district's levy base.

(7) State basic education moneys generated by a school district's students and allocated directly to a technical college shall be included in the district's levy base.

## WSR 07-21-057
### PERMANENT RULES
## DEPARTMENT OF TRANSPORTATION

[Filed October 11, 2007, 2:37 p.m., effective November 11, 2007]

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

Purpose: To amend WAC 468-100-102 (1)(b) to reflect regulatory changes made by the Federal Highway Administration (FHWA) to the Federal Regulations in 49 C.F.R. Part 24, Section 24 that became effective on February 3, 2005.

Citation of Existing Rules Affected by this Order: Amending WAC 468-100-102 (1)(b).

Statutory Authority for Adoption: Chapter 8.26 RCW.

Adopted under notice filed as WSR 07-16-081 on July 30, 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 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: October 5, 2007.

John F. Conrad
Assistant Secretary
Engineering and
Regional Operations

AMENDATORY SECTION (Amending WSR 06-02-068, filed 1/3/06, effective 2/3/06)

**WAC 468-100-102 Criteria for appraisals.** (1) **Standards of appraisal:** The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support the appraiser's opinion of value. At a minimum, the appraisal shall contain the following items:

(a) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(b) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a five-year sales history of the property.

(c) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(d) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(e) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property.

(f) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(2) **Influence of the project on just compensation.** To the extent permitted by applicable law, the appraiser in his "before" valuation shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to the physical deterioration within the reasonable control of the owner.

(3) **Owner retention of improvements:** If the owner of a real property improvement agrees and is permitted to obtain the right to remove it in whole or in part from the project site, the amount to be offered for the interest in the real property to be acquired shall be the amount determined to be just compensation for the owner's entire interest in the real property. The salvage value (defined in WAC 468-100-002(23)) of the improvement to be removed shall be deducted from the agency's payment.

(4) **Qualifications of appraisers:** The agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(5) **Conflict of interest:** No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation.

No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work.

No appraiser shall act as a negotiator for real property which that person has appraised, except that the agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is ten thousand dollars, or less.

## WSR 07-21-059
### PERMANENT RULES
### HORSE RACING COMMISSION
[Filed October 12, 2007, 8:56 a.m., effective November 12, 2007]

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

Purpose: To amend WAC 260-36-085 in order to increase license fees to comply with RCW 67.16.020(1) by collecting license fees adequate to offset the cost of administration of the licensing program of the agency.

Citation of Existing Rules Affected by this Order: Amending WAC 260-36-085.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 07-18-027 on August 27, 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.

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

Date Adopted: October 11, 2007.

R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-01-054, filed 12/14/06, effective 1/14/07)

**WAC 260-36-085 License and fingerprint fees.** The following are the license fees for any person actively participating in racing activities:

| | |
|---|---|
| Apprentice jockey | $((~~69.00~~)) 76.00 |
| Assistant trainer | $((~~32.00~~)) 36.00 |
| Association employee—management | $((~~21.00~~)) 25.00 |
| Association employee—hourly/seasonal | $((~~11.00~~)) 15.00 |
| Association volunteer nonpaid | No fee |
| Authorized agent | $((~~21.00~~)) 25.00 |
| Clocker | $((~~21.00~~)) 25.00 |
| Exercise rider | $((~~69.00~~)) 76.00 |
| Groom | $((~~21.00~~)) 25.00 |
| Honorary licensee | $((~~11.00~~)) 15.00 |
| Jockey agent | $((~~69.00~~)) 76.00 |
| Jockey | $((~~69.00~~)) 76.00 |
| Other | $((~~21.00~~)) 25.00 |
| Owner | $((~~69.00~~)) 76.00 |
| Pony rider | $((~~69.00~~)) 76.00 |
| Service employee | $((~~21.00~~)) 25.00 |
| Spouse groom | $((~~21.00~~)) 25.00 |
| Stable license | $((~~42.00~~)) 47.00 |
| Trainer | $((~~69.00~~)) 76.00 |
| Vendor | $((~~106.00~~)) 116.00 |
| Veterinarian | $((~~106.00~~)) 116.00 |

The license fee for multiple licenses may not exceed $((~~106.00~~)) 116.00, except persons applying for owner, veterinarian or vendor license must pay the license fee established for each of these licenses.

The following are examples of how this section applies:

Example one - A person applies for the following licenses: Trainer ($((~~69.00~~)) 76.00), exercise rider ($((~~69.00~~)) 76.00), and pony rider ($((~~69.00~~)) 76.00). The total license fee for these multiple licenses would only be $((~~106.00~~)) 116.00.

Example two - A person applies for the following licenses: Owner ($((~~69.00~~)) 76.00), trainer ($((~~69.00~~)) 76.00) and exercise rider ($((~~69.00~~)) 76.00). The total cost of the trainer and exercise rider license would be $((~~106.00~~)) 116.00. The cost of the owner license ($((~~69.00~~)) 76.00) would be added to the maximum cost of multiple licenses ($((~~106.00~~)) 116.00) for a total license fee of $((~~175.00~~)) 192.00.

Example three - A person applies for the following licenses: Owner ($((~~69.00~~)) 76.00), vendor ($((~~106.00~~)) 116.00), and exercise rider ($((~~69.00~~)) 76.00). The license fees for owner ($((~~69.00~~)) 76.00) and vendor ($((~~106.00~~)) 116.00) are both added to the license fee for exercise rider ($((~~69.00~~)) 76.00) for a total license fee of $((~~244.00~~)) 268.00.

In addition to the above fees, a $10.00 fee will be added to cover the costs of conducting a fingerprint-based background check. The background check fee will be assessed

only once annually per person regardless of whether the person applies for more than one type of license in that year.

The commission will review license and fingerprint fees annually to determine if they need to be adjusted to comply with RCW 67.16.020.

## WSR 07-21-060
### PERMANENT RULES
### DEPARTMENT OF AGRICULTURE

[Filed October 12, 2007, 9:45 a.m., effective December 1, 2007]

Effective Date of Rule: December 1, 2007.

Purpose: This rule-making order modifies the seed program fee schedule. These modifications realign certain fees to correspond to the amount of time necessary to render a particular service. Specifically some fees are being raised, and other fees have been lowered. In addition fees have been established for new services offered by the seed program. Typographical errors and formatting of certain charts have also been addressed making the fee schedule easier to understand.

Citation of Existing Rules Affected by this Order: Amending chapter 16-303 WAC.

Statutory Authority for Adoption: RCW 15.49.310.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 07-17-073 on August 13, 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 10, 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 10, 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: October 12, 2007.

Robert W. Gore
for Valoria Loveland
Director

AMENDATORY SECTION (Amending WSR 05-12-053, filed 5/26/05, effective 6/26/05)

**WAC 16-303-200 Seed program testing fees.** Seed testing fees are as follows:

(1)

| Category | Crop kind | PURITY | GERM/1 | TZ | Additional Crops in each Category/2 |
|---|---|---|---|---|---|
| 1 | Agricultural Grasses | 37.00 | 22.60 | 41.83 | Alkaligrass, Bermudagrass, Canarygrass, Foxtail, Switchgrass, Timothy, Zoysia |
| 2 | Alfalfa & Clover | 28.78 | 24.66 | 41.83 | Alfalfa, Black Medic, Clover, Lupine, Milkvetch, Sainfoin, Trefoil |
| 3 | Beans | 26.72 | 24.66 | 41.83 | Beans |
| 4 | Beets | 39.06 | 43.16 | 41.83 | Beets, Swiss chard, Spinach |
| 5 | Bentgrass, redtop | 65.78 | 34.94 | 41.83 | Bentgrass, Redtop |
| 6 | Bluegrass | 45.22 | 30.82 | 41.83 | Bluegrass, all types |
| 7 | Brassica ((~~sp.~~)) Species | 69.88 | 34.94 | 41.83 | Brassica Species |
| 8 | Brome | 47.28 | 24.66 | 41.83 | **Brome:** Mountain, Smooth, Meadow |
| 9 | Fescue | 37.00 | 24.66 | 41.83 | **Fescue:** Tall and Meadow |
| 10 | Fescue, all others | 45.22 | 24.66 | 41.83 | **Fescue:** Arizona, Blue, Blue Hard, Chewings, Creeping, Hard, Idaho, Red, Sheep |
| 11 | Flax | 28.78 | 24.66 | 41.83 | Lewis flax |
| 12 | Orchardgrass | 51.38 | 26.72 | 41.83 | Orchardgrass |
| 13 | Peas and other large seeded legumes | 28.78 | 24.66 | 41.83 | Peas, Chickpeas, Lentil, Vetch |
| 14 | Primrose | 28.78 | 24.66 | 41.83 | Primrose |
| 15 | Ryegrass | 45.22 | 22.60 | 41.83 | Ryegrass, (Perennial or Annual) |
| 16 | Small burnet | 28.78 | 24.66 | 41.83 | Small burnet |

| Category | Crop kind | PURITY | GERM/1 | TZ | Additional Crops in each Category/2 |
|---|---|---|---|---|---|
| 17 | Sudangrass | 28.78 | 24.66 | 41.83 | Sudangrass |
| 18 | Vegetables | 28.78 | 24.66 | 45.00 | **Vegetables:** Arugula, Asparagus, Cantaloupe, Carrot, Celery, Corn, Coriander, Cucumber, Dill, Eggplant, Endive, Leek, Lettuce, Okra, Onion, Parsley, Parsnip, Pepper, Pumpkin, Radish, Squash, Tomato, Watermelon |
| 19 | Grains ((~~and Pulses~~)) | 28.78 | 24.66 | 41.83 | Wheat, Triticale, Sunflower, Sorghum, Safflower, Rye, Rice, Millet, Buckwheat, Barley, Oats, ((~~Vetch~~)) Emmer, Spelt |
| 20 | Wheatgrass, Wildrye, other native ((~~sp.~~)) species Group A | 78.12 | 30.82 | 41.83 | ((~~**Wheatgrass:** Beardless, Bluebunch, Crested, Intermediate, Pubescent, R/S, Slender, Siberian, Tall, Thickspike, Western Wildrye~~)) Bluestem, Buffalograss, Lovegrass, Penstemon, Sand dropseed, Sideoats, Squirreltail; Intermediate, Pubescent, Tall, Thickspike, Slender, and Western wheatgrasses; Small-seeded wildrye |
| | Wheatgrass, Wildrye, other native species and flowers Group B | 69.00 | 30.82 | 41.83 | ((~~**Other Native Species:** Echinacea, Green needlegrass, Indian ricegrass, Junegrass, Little bluestem, Needle and Thread, Squirreltail, Kochia, Penstemon, Oatgrass, Prairie sandreed, Sand dropseed, Sand Lovegrass, Sideoats grama~~)) Bitterbrush, Echinacea, Indian ricegrass, Junegrass, Kochia, Oatgrass, Indian ricegrass, Blue and other large-seeded wildrye, Crested and Siberian wheatgrasses |
| | Wheatgrass, Wildrye, other native species and flowers Group C | 69.00 | 114.48* | 41.83 | Green needlegrass, Needle & Thread, Penstemon *(Germination requires 400 seed TZ according to AOSA Rules) |

/1 Standard 400 seed germination test.

(2) Crops not listed in the above table will be charged by the category that they fit into.

AMENDATORY SECTION (Amending WSR 05-12-053, filed 5/26/05, effective 6/26/05)

**WAC 16-303-210 Fees for special seed tests.**

| Test | Fee | Additional Information |
|---|---|---|
| (1) All states noxious weed examination | $ 33.38 | |
| (2) **Dormant Seed Test** | $ 41.83 | |
| (a) For crops requiring a 400 seed TZ as required in the AOSA rules | $ 83.66 | |
| (b) This fee also applies to paired tests when required by AOSA rules | | |
| (3) ((~~Brassica seed chemical identification (4)~~)) Cold (vigor) test for wheat | ~~$ 20.94~~ $ 65.00 | |
| (((~~(5)~~))) (4) **Crop or weed exam** | | Standard noxious amount from AOSA rules |

| Test | Fee | Additional Information |
|---|---|---|
| (a) Turf-type and other small seeded grasses | $ 38.00 | Kentucky bluegrass, timothy, alkaligrass, fine-leaved fescues |
| (b) Small seeded legumes and medium seeded crops | $ 44.00 | Brassicas, ryegrass, tall fescue |
| (c) Wheatgrass and native species | $ 50.00 | |
| (d) Grains and ((~~pulses~~)) large seeded legumes | $ 22.00 | |
| (((~~6~~))) (5) Fescue seed ammonia test | $ 30.82 | Required on all certified Blue, Hard, and Sheep fescues |
| (((~~7~~))) (6) Fluorescence test (400 seed test) | $ 26.72 | Required on all Perennial and Annual ryegrass samples |
| (((~~8~~))) (7) Miscellaneous services, samples requiring extra time, field run samples, etc. | $ ((~~30.00~~)) 35.00/hour | |
| (((~~9~~))) (8) Pest and disease (phyto exam) and/or soil exam | $ 34.94 | |
| (((~~10~~))) (9) Quarantine tests on seed | | |
| Bluegrass and Bentgrass | $ 18.04/5 grams | |
| Other grasses | $ 18.04/10 grams | |
| (((~~11~~))) (10) Rules test—Canadian | PURITY | GERMINATION |
| Alfalfa, clover, peas, lentils | $ 32.37 | $ 24.66 |
| Kentucky bluegrass | $ 49.34 | $ 30.82 |
| Bentgrass | $ 72.47 | $ 34.94 |
| (((~~12~~))) (11) Rules test—I.S.T.A. | PURITY | GERMINATION |
| Alfalfa, clover, peas, lentils | $ 32.37 | $ 30.82 |
| Kentucky bluegrass | $ 49.34 | $ 30.82 |
| (((~~13~~))) (12) Moisture test | $ 30.00 | |
| (((~~14~~))) (13) Seed Count | (($ 21.84)) | |
| (((~~15~~))) (a) Large seed | $ 9.25 | |
| (b) Small seed | $ 12.30 | |
| (14) Out-sourcing charge | $ 15.00 | |
| (((~~16~~))) (15) Sod seed analysis | Bluegrass $ 75.00<br>Fescue $ 52.00<br>Ryegrass $ 42.00 | |
| (((~~17~~))) (16) Sodium Hydroxide test for presence of red and/or white wheat | $ 20.54 | |
| (((~~18~~))) (17) Undesirable grass species test (includes an all states noxious test) examination (UGS test) | $ 70.37 | |
| (18) Germination test in soil | $ 50.00 | |
| (19) Wheat bioassay test | $ 50.00 | |
| (20) Germination on mixtures Germination requiring embryo excision | $ 35.00 per hour for separation of kinds or preparation time | This is in addition to the established germination fee |

AMENDATORY SECTION (Amending WSR 03-18-071, filed 8/29/03, effective 9/29/03)

**WAC 16-303-230 Official seed sampling or similar service.** Fees for official sampling are in addition to travel time and mileage.

| Crop | Fee | Minimum charge |
|---|---|---|
| Peas, beans, small grains or seeds of similar size | Standard sampling $((~~0.05~~)) 0.07 Per cwt. | $ ((~~30.00~~)) 35.00 |

| Crop | Fee | Minimum charge |
|---|---|---|
| | I.S.T.A. sampling $ 0.09 Per cwt. plus $ 7.50 Per lot | $ 35.00 plus $7.50 Per lot |
| For all other kinds | Standard sampling $((~~0.15~~)) 0.018 Per cwt. | $ ((~~30.00~~)) 35.00 |
| | I.S.T.A. sampling $ 0.22 Per cwt. plus $ 7.50 Per lot | $ 35.00 plus $ 7.50 Per lot |

AMENDATORY SECTION (Amending WSR 03-18-071, filed 8/29/03, effective 9/29/03)

**WAC 16-303-240 Fees for blending seed.** Blending fee is not applicable to salvage blends.

| | | |
|---|---|---|
| Grass option B* | Washington origin seed | $ 1.02 per cwt. |
| Grass option B* | Out-of-state origin | $ 0.61 per cwt. |
| Grass option A and all other blends of other crops | | $ ((~~0.05~~)) 0.07 per cwt. |

*See WAC 16-303-320, footnote 6 for information on option A and option B.

AMENDATORY SECTION (Amending WSR 05-12-053, filed 5/26/05, effective 6/26/05)

**WAC 16-303-250 Miscellaneous charges for seed services.** Fees for miscellaneous department seed services are as follows:

| Service | Fee |
|---|---|
| Rush samples (including phone or FAX report if requested at time sample is submitted) | $ 15.00 |
| High priority sample - purity result completed before the end of the next business day. (Special circumstances only. Call ahead for availability.) | $ 150.00 |
| Phone reports on test result, per call | $ 7.18 |
| Preliminary report on germination | $ ((~~20.00~~)) 5.00 |
| Additional mailing of report | $ 5.12 each destination |
| Additional copies of reports | $ ((~~5.12~~)) 2.50 minimum fee |
| Revised reports | $ 10.26 minimum (hourly fee when applicable) |
| Fee for special shipping and handling service, for example Federal Express, Air Parcel or air freight | $ 3.70 plus exact shipping cost |
| Fee for facsimile transmission of documents | $ 1.00 per document |
| Mileage - additional or special requested trips | As established by the Washington State Office of Financial Management |
| Stand-by time - or travel time $ ((~~30.00~~)) 35.00/hour | Travel time to be charged when special trip is requested. |
| ((~~Sample envelopes~~ | ~~Customer will be charged the exact cost of the envelopes.~~)) |

AMENDATORY SECTION (Amending WSR 03-18-071, filed 8/29/03, effective 9/29/03)

**WAC 16-303-300 ((~~Phyto-sanitary~~)) Phytosanitary certification of seed—Fees.**

| Service | Fee | Additional Information |
|---|---|---|
| Federal Phytosanitary certificate | $ ((~~30.00~~)) 35.00 | |
| State Phytosanitary certificate | $ 40.00 | |
| Field inspection—All seed except wheat seed (for each required inspection) | $ 5.30 per acre, per required inspection | $ 50.00 minimum fee, per inspection |
| Field inspection—Wheat seed only | $ 2.12 per acre or fraction thereof | $ 50.00 minimum fee, per inspection |
| Area inspection (((~~billed at time certificate is issued~~)) | ~~$ .05 per cwt.~~)) $ 0.53/acre | ((~~$ 50.00 minimum fee per certificate $ 159.25 maximum fee per certificate~~)) |
| Late fee - per application | $ 41.00 | |

AMENDATORY SECTION (Amending WSR 05-12-053, filed 5/26/05, effective 6/26/05)

**WAC 16-303-310 Organization for economic cooperation and development scheme for varietal certification (O.E.C.D.) fees.** In addition to fees required by applicable Washington certification rules, the following fees shall apply to all seed tagged O.E.C.D. and is payable by the person requesting O.E.C.D. certificate. The certifying agency may require fees paid in advance:

| Service | Fee | Additional Information |
|---|---|---|
| O.E.C.D. certificate | $ 15.41 each | |
| O.E.C.D. grow out test | $ 65.72 each entry | No charge for control entry |
| O.E.C.D. assessment | cost to program | This is a pass through fee to USDA |
| O.E.C.D. tagging fee | $ 0.84/cwt. | All grasses except tall fescue |
| | $ 0.51/cwt. | Tall fescue |
| | $ 0.53/cwt. | all other crops |

AMENDATORY SECTION (Amending WSR 03-18-071, filed 8/29/03, effective 9/29/03)

**WAC 16-303-315 Service fee for sod quality seed tags and tagging.** Service fee for sod quality seed tags and tagging shall be $ ((~~0.12~~)) 0.22 per cwt.

AMENDATORY SECTION (Amending WSR 03-18-071, filed 8/29/03, effective 9/29/03)

**WAC 16-303-317 Annual and rough bluegrass quarantine fees.** Fees for sampling and analysis for the presence of annual or rough bluegrass are those fees established in this chapter and:

(1) Annual bluegrass and rough bluegrass - inspection fee for nursery plantings for the presence of annual bluegrass is $ 59.10 per acre or portion thereof. The tagging fee is $ 0.53 cwt. with a minimum fee of $ 23.12.

(2) Quarantine inspection of grass seed fields found to be in violation of the quarantine requirements will be charged at the rate of $ ((~~150.00~~)) 200.00 per field inspection.

AMENDATORY SECTION (Amending WSR 05-12-053, filed 5/26/05, effective 6/26/05)

**WAC 16-303-320 Certification fees for seed certified by the department.** (1) Fees apply to both new and renewal applications.

The seed processor is responsible for seed certification fees including sampling, testing, production and final certification fees, and may accept responsibility for any other additional fees associated with certification. Fees for services such as O.E.C.D. and sod quality, etc., are in addition to the fees listed in this section.

| Seed | Application Fee 1/ | Seedling field inspection fee | Seedling producing or field inspection Fee 2/ | Late Application Penalty Fee | Reinspection Fee (other than isolation) | Production Fee (includes tagging) 7/ | Seed shipped Out-of-State (uncleaned) |
|---|---|---|---|---|---|---|---|
| Alfalfa, Red clover, White clover and Trefoil | $ 30.00 per variety per grower | $ 50.00/field | $ 1.85/acre | $ 41.00 | $ 53.44 ea. field | $ 0.53/cwt. 5/ | $ 0.20/cwt. |
| Bean | $ 30.00 per variety per grower | N/A | $ 1.85/acre 3/ (one inspection) $ 3.70/acre 4/ (two inspections) | $ 41.00 | $ 53.44 ea. field | $ 0.53/cwt. | $ 0.20/cwt. |
| Turnip, Rutabaga, Kale | $ 30.00 per field | N/A | $ 3.70/acre (two inspections) | $ 41.00 | $ 53.44 each field | $ 0.53/cwt. | $ 0.20 |
| Perennial Grasses 6/ | $ 30.00 per field | $ 50.00/field | $ 50.00 per field | $ 41.00 | $ 53.44 each field | Option A $ 0.84/cwt. for all grass except tall fescue $ 0.51/cwt. tall fescue Option B $ 1.17/cwt. (min. $ 11.66) | $ 0.31 |
| Corn | $ 30.00 ((~~for each separate combination/ or isolation~~)) Per field | N/A | $ 50.00 first acre $ 10.99 ea. additional acre except hybrid corn $ 4.85 ea. additional acre | ((———)) $ 41.00 | ——— | ((———)) $ 0.11 per tag issued or minimum fee of $10.00 per lot | ((———)) $ 3.00 per document |
| Annual grasses | $ 30.00 per field | N/A | $ 1.85/acre | $ 41.00 per field | ((———)) $ 53.44 each field | $ 0.42/cwt. | $ 0.20 |
| Rapeseed, Canola, and Mustard | $ 30.00 per variety per grower | N/A | $ 1.85/acre (one inspection) | $ 41.00 per grower | $ 53.44 ea. field | $ 0.53/cwt. | $ 0.20 |

1/ Seed certification application due dates can be found in WAC 16-302-050.

2/ Seedling producing or field inspection fees are refundable if the acreage is withdrawn before the inspection is completed. In the case of bean seed, fees are required of seedling fields to be harvested for certification the year of planting.

3/ One inspection is required for Great Northern Red Mexican, pinto, pink, and small white bean.

4/ Includes windrow inspection which is required for certification of snap beans, kidney beans, and eligibility for shipment into the state of Idaho.

5/ Production fees are billed at completion of laboratory analysis tests. If no seed is tagged, $ 0.10 of the $ 0.53 per cwt. production fee is refundable.

6/ Option A: Inspection and final certification fees are based on pounds sampled and billed upon completion of required laboratory tests.
Option B: Inspection and final certification fees are based on pounds tagged after required laboratory tests are completed. Those dealers requesting sampling and tagging privileges and/or participation in Option B must sign a memorandum of agreement that shall expire on June 30 of each year. The memorandum may be terminated by the director if the conditioner violates certification standards or requirements of memorandum.

7/ Does not include shipping and handling charge for tags.

8/ Service inspection of seed fields
Service inspection will be charged the established hourly rate inclusive of travel time and inspection time. This excludes the seedling inspection which is charged according to the above chart.
Service inspections will be charged a mileage fee based upon the OFM mileage rate.

9/ Hybrid inspections (pollen counts)
All crops except corn:
(a) $ 45.00 per inspection if done at the time of the certification inspection.
(b) $ 125 per inspection if not conducted at the time of the certification inspection.

(2) Other fees associated with grass seed certification:

Out-of-state origin seed tagged with interagency certification tags.

| | |
|---|---|
| Grass Option A: | $ 0.31 per cwt. |
| Grass Option B: | $ 0.68 per cwt. |
| Reissuance of cert. tags: | $ 0.11 per tag or minimum fee of $ 11.66 |

AMENDATORY SECTION (Amending WSR 06-11-066, filed 5/12/06, effective 6/12/06)

**WAC 16-303-340 Seed certification fees for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum and small grains.** (1) Seed certification fees for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum and small grains are as follows:

| | |
|---|---|
| (a) Application fee per variety per grower | $((~~21.88~~)) 22.97 |
| (b) Field inspection fee per acre except millet and hybrid sorghum | $((~~3.02~~)) 3.11 |
| (c) Millet - first acre | $32.55 |
| - each additional acre | $6.48 |
| (d) Hybrid sorghum - first acre | $32.55 |
| - each additional acre | $13.00 |
| (e) Special field inspection fee per acre | $2.58 |
| (f) Late application fee | $((~~20.50~~)) 30.75 |
| (g) Reinspection fee | $((~~41.05~~)) 43.10 |

minimum for each field which did not pass field inspection plus $((~~0.44~~)) 0.46 for each acre over twenty-five. The reinspection fee for isolation requirements only for a field of any size is $((~~41.05~~)) 43.10.

| | |
|---|---|
| (h) Final certification fee | $0.25 |

per cwt. of clean seed sampled, which is charged to conditioning plant, or production fee $0.105

per cwt. of production from fields inspected which is utilized for seed, which is charged to the grower or the final seller prior to brokerage, retail sale, sale to plant not approved for conditioning certified seed, or transshipment out-of-state.

| | |
|---|---|
| (i) Sampling fee | $0.105 |

per cwt. of clean seed sampled, with minimum charge of $10.30 per sample, which is charged to conditioning plant in lieu of mechanical sampling.

(2) A field may be withdrawn upon notification by the applicant to the certifying agency's office before field inspection. In such case, the field inspection fee is refunded upon request until June 30 of the year following harvest.

(3) Harvest before field inspection causes forfeitures of both the application and field inspection fees, and completion of certification.

## WSR 07-21-065
### PERMANENT RULES
### DEPARTMENT OF ECOLOGY

[Order 06-10—Filed October 12, 2007, 3:06 p.m., effective November 12, 2007]

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

Purpose: This rule amendment specifically addresses the following:

- **Risk Policies Applicable to Certain Mixtures:** Changes to the rule require that cleanup levels for mixtures of dioxins and furans, PAHs, and PCBs must each be based on a cancer risk of one-in-a-million.
- **Toxic Equivalency Factors Used to Characterize Mixtures:** Changes to the rule incorporate the most recent toxicity equivalency factors (TEFs) for dioxins/furans and PCBs recommended by the World Health Organization and updated potency equivalency factors (PEFs) for carcinogenic PAHs adopted by the California Environmental Protection Agency.

- **Methods for Calculating Soil Cleanup Levels:** Changes to the rule include a method for considering the relative bioavailability of soil-bound dioxins and furans when establishing soil cleanup levels.
- **Evaluating Cross-media Impacts:** Changes to the rule require that, when evaluating cross-media impacts, cleanup proponents consider the physical chemical properties of individuals PAH compounds or dioxin congeners.

Citation of Existing Rules Affected by this Order: Amending chapter 173-340 WAC, WAC 173-340-708, 173-340-740, 173-340-745, and 173-340-900.

Statutory Authority for Adoption: RCW 70.105D.030 (2).

Adopted under notice filed as WSR 07-08-100 on April 3, 2007.

Changes Other than Editing from Proposed to Adopted Version: A technical correction was made to the chemical abstract number for 1, 2, 3, 4, 7, 8 hexachloro dibenzo-p-dioxin in table 708-1, WAC 173-340-900. The correct CAS number is 39227-28-6.

A final cost-benefit analysis is available by contacting Ann McNeely, 300 Desmond Drive, Lacey, WA 98504, phone (360) 407-7205, fax (360) 407-7154, e-mail amcn461@ecy.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 4, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

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

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

Date Adopted: October 12, 2007.

Jay J. Manning
Director

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 8/15/01)

**WAC 173-340-708 Human health risk assessment procedures.** (1) **Purpose.** This section defines the risk assessment framework that shall be used to establish cleanup levels, and remediation levels using a quantitative risk assessment, under this chapter. As used in this section, cleanup levels and remediation levels means the human health risk assessment component of these levels. This chapter defines certain default values and methods to be used in calculating cleanup levels and remediation levels. This section allows varying from these default values and methods under certain circumstances. When deciding whether to approve alternate values and methods the department shall ensure that the use of alternative values and methods will not significantly delay site cleanups.

(2) **Selection of indicator hazardous substances.**

When defining cleanup requirements at a site that is contaminated with a large number of hazardous substances, the department may eliminate from consideration those hazardous substances that contribute a small percentage of the overall threat to human health and the environment. The remaining hazardous substances shall serve as indicator hazardous substances for purposes of defining site cleanup requirements. See WAC 173-340-703 for additional information on establishing indicator hazardous substances.

(3) **Reasonable maximum exposure.**

(a) Cleanup levels and remediation levels shall be based on estimates of current and future resource uses and reasonable maximum exposures expected to occur under both current and potential future site use conditions, as specified further in this chapter.

(b) The reasonable maximum exposure is defined as the highest exposure that is reasonably expected to occur at a site under current and potential future site use. WAC 173-340-720 through 173-340-760 define the reasonable maximum exposures for ground water, surface water, soil, and air. These reasonable maximum exposures will apply to most sites where individuals or groups of individuals are or could be exposed to hazardous substances. For example, the reasonable maximum exposure for most ground water is defined as exposure to hazardous substances in drinking water and other domestic uses.

(c) Persons performing cleanup actions under this chapter may use the evaluation criteria in WAC 173-340-720 through 173-340-760, where allowed in those sections, to demonstrate that the reasonable maximum exposure scenarios specified in those sections are not appropriate for cleanup levels for a particular site. For example, the criteria in WAC 173-340-720(2) could be used to demonstrate that the reasonable maximum exposure for ground water beneath a site does not need to be based on drinking water use. The use of an alternate exposure scenario shall be documented by the person performing the cleanup action. Documentation for the use of alternate exposure scenarios under this provision shall be based on the results of investigations performed in accordance with WAC 173-340-350.

(d) Persons performing cleanup actions under this chapter may also use alternate reasonable maximum exposure scenarios to help assess the protectiveness to human health of a cleanup action alternative that incorporates remediation levels and uses engineered controls and/or institutional controls to limit exposure to the contamination remaining on the site.

(i) An alternate reasonable maximum exposure scenario shall reflect the highest exposure that is reasonably expected to occur under current and potential future site conditions considering, among other appropriate factors, the potential for institutional controls to fail and the extent of the time period of failure under these scenarios and the land uses at the site.

(ii) Land uses other than residential and industrial, such as agricultural, recreational, and commercial, shall not be used as the basis for a reasonable maximum exposure scenario for the purpose of establishing a cleanup level. How-

ever, these land uses may be used as a basis for an alternate reasonable maximum exposure scenario for the purpose of assessing the protectiveness of a remedy. For example, if a cap (with appropriate institutional controls) is the proposed cleanup action at a commercial site, the reasonable maximum exposure scenario for assessing the protectiveness of the cap with regard to direct soil contact could be changed from a child living on the site to a construction or maintenance worker and child trespasser scenario.

(iii) The department expects that in evaluating the protectiveness of a remedy with regard to the soil direct contact pathway, many types of commercial sites may, where appropriate, qualify for alternative exposure scenarios under this provision since contaminated soil at these sites is typically characterized by a cover of buildings, pavement, and landscaped areas. Examples of these types of sites include:

(A) Commercial properties in a location removed from single family homes, duplexes or subdivided individual lots;

(B) Private and public recreational facilities where access to these facilities is physically controlled (e.g., a private golf course to which access is restricted by fencing);

(C) Urban residential sites (e.g., upper-story residential units over ground floor commercial businesses);

(D) Offices, restaurants, and other facilities primarily devoted to support administrative functions of a commercial/industrial nature (e.g., an employee credit union or cafeteria in a large office or industrial complex).

(e) A conceptual site model may be used to identify when individuals or groups of individuals may be exposed to hazardous substances through more than one exposure pathway. For example, a person may be exposed to hazardous substances from a site by drinking contaminated ground water, eating contaminated fish, and breathing contaminated air. At sites where the same individuals or groups of individuals are or could be consistently exposed through more than one pathway, the reasonable maximum exposure shall represent the total exposure through all of those pathways. At such sites, the cleanup levels and remediation levels derived for individual pathways under WAC 173-340-720 through 173-340-760 and WAC 173-340-350 through 173-340-390 shall be adjusted downward to take into account multiple exposure pathways.

(4) **Cleanup levels for individual hazardous substances.** Cleanup levels for individual hazardous substances will generally be based on a combination of requirements in applicable state and federal laws and risk assessment.

(5) **Multiple hazardous substances.**

(a) Cleanup levels for individual hazardous substances established under Methods B and C and remediation levels shall be adjusted downward to take into account exposure to multiple hazardous substances. This adjustment needs to be made only if, without this adjustment, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand ($1 \times 10^{-5}$).

(b) Adverse effects resulting from exposure to two or more hazardous substances with similar types of toxic response are assumed to be additive unless scientific evidence is available to demonstrate otherwise. Cancer risks resulting from exposure to two or more carcinogens are assumed to be additive unless scientific evidence is available to demonstrate otherwise.

(c) For noncarcinogens, for purposes of establishing cleanup levels under Methods B and C, and for remediation levels, the health threats resulting from exposure to two or more hazardous substances with similar types of toxic response may be apportioned between those hazardous substances in any combination as long as the hazard index does not exceed one (1).

(d) For carcinogens, for purposes of establishing cleanup levels under Methods B and C, and for remediation levels, the cancer risks resulting from exposure to multiple hazardous substances may be apportioned between hazardous substances in any combination as long as the total excess cancer risk does not exceed one in one hundred thousand ($1 \times 10^{-5}$).

(e) The department may require biological testing to assess the potential interactive effects associated with chemical mixtures.

(f) When making adjustments to cleanup levels and remediation levels for multiple hazardous substances, the concentration for individual hazardous substances shall not be adjusted downward to less than the practical quantitation limit or natural background.

(6) **Multiple pathways of exposure.**

(a) Estimated doses of individual hazardous substances resulting from more than one pathway of exposure are assumed to be additive unless scientific evidence is available to demonstrate otherwise.

(b) Cleanup levels and remediation levels based on one pathway of exposure shall be adjusted downward to take into account exposures from more than one exposure pathway. The number of exposure pathways considered at a given site shall be based on the reasonable maximum exposure scenario as defined in WAC 173-340-708(3). This adjustment needs to be made only if exposure through multiple pathways is likely to occur at a site and, without the adjustment, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand ($1 \times 10^{-5}$).

(c) For noncarcinogens, for purposes of establishing cleanup levels under Methods B and C, and remediation levels, the health threats associated with exposure via multiple pathways may be apportioned between exposure pathways in any combination as long as the hazard index does not exceed one (1).

(d) For carcinogens, for purposes of establishing cleanup levels under Methods B and C, and for remediation levels, the cancer risks associated with exposure via multiple pathways may be apportioned between exposure pathways in any combination as long as the total excess cancer risk does not exceed one in one hundred thousand ($1 \times 10^{-5}$).

(e) When making adjustments to cleanup levels and remediation levels for multiple pathways of exposure, the concentration for individual hazardous substances shall not be adjusted downward to less than the practical quantitation limit or natural background.

(7) **Reference doses.**

(a) The chronic reference dose/reference concentration and the developmental reference dose/reference concentration shall be used to establish cleanup levels and remediation levels under this chapter. Cleanup levels and remediation lev-

els shall be established using the value which results in the most protective concentration.

(b) Inhalation reference doses/reference concentrations shall be used in WAC 173-340-750. Where the inhalation reference dose/reference concentration is reported as a concentration in air, that value shall be converted to a corresponding inhaled intake (mg/kg-day) using a human body weight of 70 kg and an inhalation rate of 20 $m^3$/day, and take into account, where available, the respiratory deposition and absorption characteristics of the gases and inhaled particles.

(c) A subchronic reference dose/reference concentration may be used to evaluate potential noncarcinogenic effects resulting from exposure to hazardous substances over short periods of time. This value may be used in place of the chronic reference dose/reference concentration where it can be demonstrated that a particular hazardous substance will degrade to negligible concentrations during the exposure period.

(d) For purposes of establishing cleanup levels and remediation levels for hazardous substances under this chapter, a reference dose/reference concentration established by the United States Environmental Protection Agency and available through the "integrated risk information system" (IRIS) data base shall be used. If a reference dose/reference concentration is not available through the IRIS data base, a reference dose/reference concentration from the U.S. EPA Health Effects Assessment Summary Table ("HEAST") data base or, if more appropriate, the National Center for Environmental Assessment ("NCEA") shall be used.

(e) If a reference dose/reference concentration is available through IRIS, HEAST, or the NCEA, it shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of this value is inappropriate.

(f) If a reference dose/reference concentration for a hazardous substance including petroleum fractions and petroleum constituents is not available through IRIS, HEAST or the NCEA or is demonstrated to be inappropriate under (e) of this subsection and the department determines that development of a reference dose/reference concentration is necessary for the hazardous substance at the site, then a reference dose/reference concentration shall be established on a case-by-case basis. When establishing a reference dose on a case-by-case basis, the methods described in "Reference Dose (RfD): Description and Use in Health Risk Assessment: Background Document 1A", USEPA, March 15, 1993, shall be used.

(g) In estimating a reference dose/reference concentration for a hazardous substance under (e) or (f) of this subsection, the department shall, as appropriate, consult with the science advisory board, the department of health, and the United States Environmental Protection Agency and may, as appropriate, consult with other qualified persons. Scientific data supporting such a change shall be subject to the requirements under WAC 173-340-702 (14), (15) and (16). Once the department has established a reference dose/reference concentration for a hazardous substance under this provision, the department is not required to consult again for the same hazardous substance.

(h) Where a reference dose/reference concentration other than those established under (d) or (g) of this subsection is used to establish a cleanup level or remediation level at individual sites, the department shall summarize the scientific rationale for the use of those values in the cleanup action plan. The department shall provide the opportunity for public review and comment on this value in accordance with the requirements of WAC 173-340-380 and 173-340-600.

(8) **Carcinogenic potency factor.**

(a) For purposes of establishing cleanup levels and remediation levels for hazardous substances under this chapter, a carcinogenic potency factor established by the United States Environmental Protection Agency and available through the IRIS data base shall be used. If a carcinogenic potency factor is not available from the IRIS data base, a carcinogenic potency factor from HEAST or, if more appropriate, from the NCEA shall be used.

(b) If a carcinogenic potency factor is available from the IRIS, HEAST or the NCEA, it shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of this value is inappropriate.

(c) If a carcinogenic potency factor is not available through IRIS, HEAST or the NCEA or is demonstrated to be inappropriate under (b) of this subsection and the department determines that development of a cancer potency factor is necessary for the hazardous substance at the site, then one of the following methods shall be used to establish a carcinogenic potency factor:

(i) The carcinogenic potency factor may be derived from appropriate human epidemiology data on a case-by-case basis; or

(ii) The carcinogenic potency factor may be derived from animal bioassay data using the following procedures:

(A) All carcinogenicity bioassays shall be reviewed and data of appropriate quality shall be used for establishing the carcinogenic potency factor.

(B) The linearized multistage extrapolation model shall be used to estimate the slope of the dose-response curve unless the department determines that there is clear and convincing scientific data which demonstrates that the use of an alternate extrapolation model is more appropriate;

(C) All doses shall be adjusted to give an average daily dose over the study duration; and

(D) An interspecies scaling factor shall be used to take into account differences between animals and humans. For oral carcinogenic toxicity values this scaling factor shall be based on the assumption that milligrams per surface area is an equivalent dose between species unless the department determines there is clear and convincing scientific data which demonstrates that an alternate procedure is more appropriate. The slope of the dose response curve for the test species shall be multiplied by this scaling factor in order to obtain the carcinogenic potency factor, except where such scaling factors are incorporated into the extrapolation model under (B) of this subsection. The procedure to derive a human equivalent concentration of inhaled particles and gases shall take into account, where available, the respiratory deposition and absorption characteristics of the gases and inhaled particles. Where adequate pharmacokinetic and metabolism studies are

available, data from these studies may be used to adjust the interspecies scaling factor.

(d) ((~~When assessing the potential carcinogenic risk of mixtures of chlorinated dibenzo-p-dioxins (CDD) and chlorinated dibenzofurans (CDF) either of the following methods shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of these methods is inappropriate:~~

~~(i) The entire mixture is assumed to be as toxic as 2, 3, 7, 8 CDD or 2, 3, 7, 8 CDF, as applicable; or~~

~~(ii) The toxicity equivalency factors and methodology described in: EPA. 1989. *"Interim procedures for estimating risks associated with exposure to mixtures of chlorinated dibenzo-p-dioxins and dibenzofurans (CDDs and CDFs) and 1989 update"*, USEPA, Risk Assessment Forum, Washington, D.C., publication number EPA/625/3-89/016.~~)) **Mixtures of dioxins and furans.** When establishing and determining compliance with cleanup levels and remediation levels for mixtures of chlorinated dibenzo-p-dioxins (dioxins) and/or chlorinated dibenzofurans (furans), the following procedures shall be used:

(i) **Assessing as single hazardous substance.** When establishing and determining compliance with cleanup levels and remediation levels, including when determining compliance with the excess cancer risk requirements in this chapter, mixtures of dioxins and/or furans shall be considered a single hazardous substance.

(ii) **Establishing cleanup levels and remediation levels.** The cleanup levels and remediation levels established for 2,3,7,8 tetrachloro dibenzo-p-dioxin (2,3,7,8-TCDD) shall be used, respectively, as the cleanup levels and remediation levels for mixtures of dioxins and/or furans.

(iii) **Determining compliance with cleanup levels and remediation levels.** When determining compliance with the cleanup levels and remediation levels established for mixtures of dioxins and/or furans, the following procedures shall be used:

(A) Calculate the total toxic equivalent concentration of 2,3,7,8-TCDD for each sample of the mixture. The total toxic equivalent concentration shall be calculated using the following method, unless the department determines that there is clear and convincing scientific data which demonstrates that the use of this method is inappropriate:

(I) Analyze samples from the medium of concern to determine the concentration of each dioxin and furan congener listed in Table 708-1;

(II) For each sample analyzed, multiply the measured concentration of each congener in the sample by its corresponding toxicity equivalency factor (TEF) in Table 708-1 to obtain the toxic equivalent concentration of 2,3,7,8-TCDD for that congener; and

(III) For each sample analyzed, add together the toxic equivalent concentrations of all the congeners within the sample to obtain the total toxic equivalent concentration of 2,3,7,8-TCDD for that sample.

(B) After calculating the total toxic equivalent concentration of each sample of the mixture, use the applicable compliance monitoring requirements in WAC 173-340-720 through 173-340-760 to determine whether the total toxic equivalent concentrations of the samples comply with the cleanup level or remediation level for the mixture at the applicable point of compliance.

(iv) **Protecting the quality of other media.** When establishing cleanup levels and remediation levels for mixtures of dioxins and/or furans in a medium of concern that are based on protection of another medium (the receiving medium) (e.g., soil levels protective of ground water quality), the following procedures shall be used:

(A) The cleanup level or remediation level for 2,3,7,8-TCDD in the receiving medium shall be used, respectively, as the cleanup level or remediation level for the receiving medium.

(B) When determining the concentrations in the medium of concern that will achieve the cleanup level or remediation level in the receiving medium, the congener-specific physical and chemical properties shall be considered during that assessment.

(e) ((~~When assessing the potential carcinogenic risk of mixtures of polycyclic aromatic hydrocarbons, either of the following methods shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of these methods is inappropriate:~~

~~(i) The entire mixture is assumed to be as toxic as benzo(a)pyrene; or~~

~~(ii) The toxicity equivalency factors and methodology described in *"CalEPA. 1994. Benzo(a)pyrene as a toxic air contaminant. Part B: Health Assessment."* Published by the Office of Environmental Health Hazard Assessment, California Environmental Protection Agency, Berkeley, CA.~~)) **Mixtures of carcinogenic PAHs.** When establishing and determining compliance with cleanup levels and remediation levels for mixtures of carcinogenic polycyclic aromatic hydrocarbons (carcinogenic PAHs), the following procedures shall be used:

(i) **Assessing as single hazardous substance.** When establishing and determining compliance with cleanup levels and remediation levels, including when determining compliance with the excess cancer risk requirements in this chapter, mixtures of carcinogenic PAHs shall be considered a single hazardous substance.

(ii) **Establishing cleanup levels and remediation levels.** The cleanup levels and remediation levels established for benzo(a)pyrene shall be used, respectively, as the cleanup levels and remediation levels for mixtures of carcinogenic PAHs.

(iii) **Determining compliance with cleanup levels and remediation levels.** When determining compliance with cleanup levels and remediation levels established for mixtures of carcinogenic PAHs, the following procedures shall be used:

(A) Calculate the total toxic equivalent concentration of benzo (a) pyrene for each sample of the mixture. The total toxic equivalent concentration shall be calculated using the following method, unless the department determines that there is clear and convincing scientific data which demonstrates that the use of this method is inappropriate:

(I) Analyze samples from the medium of concern to determine the concentration of each carcinogenic PAH listed in Table 708-2 and, for those carcinogenic PAHs required by

the department under WAC 173-340-708 (8)(e)(iv), in Table 708-3;

(II) For each sample analyzed, multiply the measured concentration of each carcinogenic PAH in the sample by its corresponding toxicity equivalency factor (TEF) in Tables 708-2 and 708-3 to obtain the toxic equivalent concentration of benzo(a)pyrene for that carcinogenic PAH; and

(III) For each sample analyzed, add together the toxic equivalent concentrations of all the carcinogenic PAHs within the sample to obtain the total toxic equivalent concentration of benzo(a)pyrene for that sample.

(B) After calculating the total toxic equivalent concentration of each sample of the mixture, use the applicable compliance monitoring requirements in WAC 173-340-720 through 173-340-760 to determine whether the total toxic equivalent concentrations of the samples comply with the cleanup level or remediation level for the mixture at the applicable point of compliance.

(iv) **Protecting the quality of other media.** When establishing cleanup levels and remediation levels for mixtures of carcinogenic PAHs in a medium of concern that are based on protection of another medium (the receiving medium) (e.g., soil levels protective of ground water quality), the following procedures shall be used:

(A) The cleanup level or remediation level for benzo(a)pyrene in the receiving medium shall be used, respectively, as the cleanup level or remediation level for the receiving medium.

(B) When determining the concentrations in the medium of concern that will achieve the cleanup level or remediation level in the receiving medium, the carcinogenic PAH-specific physical and chemical properties shall be considered during that assessment.

(v) When using this methodology, at a minimum, the ((~~following~~)) compounds in Table 708-2 shall be analyzed for and included in the calculations((~~: Benzo[a]pyrene, Benz[a]anthracene, Benzo[b]fluoranthene, Benzo[k]fluoranthene, Chrysene, Dibenz[a,h]anthracene, Indeno[1,2,3cd]pyrene~~)). The department may require additional compounds ((~~from the CalEPA list~~)) in Table 708-3 to be included in the methodology should site testing data or information from other comparable sites or waste types indicate the additional compounds are potentially present at the site. *NOTE: Many of the polycyclic aromatic hydrocarbons ((~~on the CalEPA list~~)) in Table 708-3 are found primarily in air emissions from combustion sources and may not be present in the soil or water at contaminated sites. Users should consult with the department for information on the need to test for these additional compounds.*

(f) **PCB mixtures.** When establishing and determining compliance with cleanup levels and remediation levels for polychlorinated biphenyls (PCBs) mixtures, the following procedures shall be used:

(i) **Assessing as single hazardous substance.** When establishing and determining compliance with cleanup levels and remediation levels, including when determining compliance with the excess cancer risk requirements in this chapter, PCB mixtures shall be considered a single hazardous substance.

(ii) **Establishing cleanup levels and remediation levels.** When establishing cleanup levels and remediation levels under Methods B and C for PCB mixtures, the following procedures shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of these methods is inappropriate:

(A) Assume the PCB mixture is equally potent and use the appropriate carcinogenic potency factor provided for under WAC 173-340-708 (8)(a) through (c) for the entire mixture; or

(B) Use the toxicity equivalency factors for the dioxin-like PCBs congeners in Table 708-4 and procedures approved by the department. When using toxicity equivalency factors, the department may require that the health effects posed by the dioxin-like PCB congeners and non-dioxin-like PCB congeners be considered in the evaluation.

(iii) **Determining compliance with cleanup levels and remediation levels.** When determining compliance with cleanup levels and remediation levels established for PCB mixtures, the following procedures shall be used:

(A) Analyze compliance monitoring samples for a total PCB concentration and use the applicable compliance monitoring requirements in WAC 173-340-720 through 173-340-760 to determine whether the total PCB concentrations of the samples complies with the cleanup level or remediation level for the mixture at the applicable point of compliance; or

(B) When using toxicity equivalency factors to determine compliance with cleanup or remediation levels for PCB mixtures, use procedures approved by the department.

(g) In estimating a carcinogenic potency factor for a hazardous substance under (c) of this subsection, or approving the use of a toxicity equivalency factor other than that established under (d), (e) or (f) of this subsection, the department shall, as appropriate, consult with the science advisory board, the department of health, and the United States Environmental Protection Agency and may, as appropriate, consult with other qualified persons. Scientific data supporting such a change shall be subject to the requirements under WAC 173-340-702 (14), (15) and (16). Once the department has established a carcinogenic potency factor or approved an alternative toxicity equivalency factor for a hazardous substance under this provision, the department is not required to consult again for the same hazardous substance.

((~~(g)~~)) (h) Where a carcinogenic potency factor other than that established under (a)((~~, (d) and (e)~~)) of this subsection or a toxicity equivalency factor other than that established under (d), (e) or (f) of this subsection is used to establish cleanup levels or remediation levels at individual sites, the department shall summarize the scientific rationale for the use of that value in the cleanup action plan. The department shall provide the opportunity for public review and comment on this value in accordance with the requirements of WAC 173-340-380 and 173-340-600.

(9) **Bioconcentration factors.**

(a) For purposes of establishing cleanup levels and remediation levels for a hazardous substance under WAC 173-340-730, a bioconcentration factor established by the United States Environmental Protection Agency and used to establish the ambient water quality criterion for that substance under section 304 of the Clean Water Act shall be used.

These values shall be used unless the department determines that there is adequate scientific data which demonstrates that the use of an alternate value is more appropriate. If the department determines that a bioconcentration factor is appropriate for a specific hazardous substance and no such factor has been established by USEPA, then other appropriate EPA documents, literature sources or empirical information may be used to determine a bioconcentration factor.

(b) When using a bioconcentration factor other than that used to establish the ambient water quality criterion, the department shall, as appropriate, consult with the science advisory board, the department of health, and the United States Environmental Protection Agency. Scientific data supporting such a value shall be subject to the requirements under WAC 173-340-702 (14), (15) and (16). Once the department has established a bioconcentration factor for a hazardous substance under this provision, the department is not required to consult again for the same hazardous substance.

(c) Where a bioconcentration factor other than that established under (a) of this subsection is used to establish cleanup levels or remediation levels at individual sites, the department shall summarize the scientific rationale for the use of that factor in the draft cleanup action plan. The department shall provide the opportunity for public review and comment on the value in accordance with the requirements of WAC 173-340-380 and 173-340-600.

(10) **Exposure parameters.**

(a) As a matter of policy, the department has defined in WAC 173-340-720 through 173-340-760 the default values for exposure parameters to be used when establishing cleanup levels and remediation levels under this chapter. Except as provided for in (b) and (c) of this subsection and in WAC 173-340-720 through 173-340-760, these default values shall not be changed for individual hazardous substances or sites.

(b) Exposure parameters that are primarily a function of the exposed population characteristics (such as body weight and lifetime) and those that are primarily a function of human behavior that cannot be controlled through an engineered or institutional control (such as: Fish consumption rate; soil ingestion rate; drinking water ingestion rate; and breathing rate) are not expected to vary on a site-by-site basis. The default values for these exposure parameters shall not be changed when calculating cleanup levels except when necessary to establish a more stringent cleanup level to protect human health. For remediation levels the default values for these exposure parameters may only be changed when an alternate reasonable maximum exposure scenario is used, as provided for in WAC 173-340-708 (3)(d), that reflects a different exposed population such as using an adult instead of a child exposure scenario. Other exposure parameters may be changed only as follows:

(i) For calculation of cleanup levels, the types of exposure parameters that may be changed are those that are:

(A) Primarily a function of reliably measurable characteristics of the hazardous substance, soil, hydrologic or hydrogeologic conditions at the site; and

(B) Not dependent on the success of engineered controls or institutional controls for controlling exposure of persons to the hazardous substances at the site.

The default values for these exposure parameters may be changed where there is adequate scientific data to demonstrate that use of an alternative or additional value would be more appropriate for the conditions present at the site. Examples of exposure parameters for which the default values may be changed under this provision are as follows: Contaminant leaching and transport variables (such as the soil organic carbon content, aquifer permeability and soil sorption coefficient); inhalation correction factor; fish bioconcentration factor; soil gastrointestinal absorption fraction; and inhalation absorption percentage.

(ii) For calculation of remediation levels, in addition to the exposure parameters that may be changed under (b)(i) of this subsection, the types of exposure parameters that may be changed from the default values are those where a demonstration can be made that the proposed cleanup action uses engineered controls and/or institutional controls that can be successfully relied on, for the reasonably foreseeable future, to control contaminant mobility and/or exposure to the contamination remaining on the site. In general, exposure parameters that may be changed under this provision are those that define the exposure frequency, exposure duration and exposure time. The default values for these exposure parameters may be changed where there is adequate scientific data to demonstrate that use of an alternative or additional value would be more appropriate for the conditions present at the site. Examples of exposure parameters for which the default value may be changed under this provision are as follows: Infiltration rate; frequency of soil contact; duration of soil exposure; duration of drinking water exposure; duration of air exposure; drinking water fraction; and fish diet fraction.

(c) When the modifications provided for in (b) of this subsection result in significantly higher values for cleanup levels or remediation levels than would be calculated using the default values for exposure parameters, the risk from other potentially relevant pathways of exposure shall be addressed under the procedures provided for in WAC 173-340-720 through 173-340-760. For exposure pathways and parameters for which default values are not specified in this chapter, the framework provided for by this subsection, along with the quality of information requirements in WAC 173-340-702, shall be used to establish appropriate or additional assumptions for these parameters and pathways.

(d) Where the department approves the use of exposure parameters other than those established under WAC 173-340-720 through 173-340-760 to establish cleanup levels or remediation levels at individual sites, the department shall summarize the scientific rationale for the use of those parameters in the cleanup action plan. The department shall provide the opportunity for public review and comment on those values in accordance with the requirements of WAC 173-340-380 and 173-340-600. Scientific data supporting such a change shall be subject to the requirements under WAC 173-340-702 (14), (15) and (16).

(11) **Probabilistic risk assessment.** Probabilistic risk assessment methods may be used under this chapter only on an informational basis for evaluating alternative remedies.

Such methods shall not be used to replace cleanup standards and remediation levels derived using deterministic methods under this chapter until the department has adopted rules describing adequate technical protocols and policies for the use of probabilistic risk assessment under this chapter.

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 8/15/01)

**WAC 173-340-740 Unrestricted land use soil cleanup standards.** (1) **General considerations.**

(a) Presumed exposure scenario soil cleanup levels shall be based on estimates of the reasonable maximum exposure expected to occur under both current and future site use conditions. The department has determined that residential land use is generally the site use requiring the most protective cleanup levels and that exposure to hazardous substances under residential land use conditions represents the reasonable maximum exposure scenario. Unless a site qualifies for use of an industrial soil cleanup level under WAC 173-340-745, soil cleanup levels shall use this presumed exposure scenario and be established in accordance with this section.

(b) In the event of a release of a hazardous substance to the soil at a site, a cleanup action complying with this chapter shall be conducted to address all areas where the concentration of hazardous substances in the soil exceeds cleanup levels at the relevant point of compliance.

(c) The department may require more stringent soil cleanup standards than required by this section where, based on a site-specific evaluation, the department determines that this is necessary to protect human health and the environment. Any imposition of more stringent requirements under this provision shall comply with WAC 173-340-702 and 173-340-708. The following are examples of situations that may require more stringent cleanup levels.

(i) Concentrations that eliminate or substantially reduce the potential for food chain contamination;

(ii) Concentrations that eliminate or substantially reduce the potential for damage to soils or biota in the soils which could impair the use of soils for agricultural or silvicultural purposes;

(iii) Concentrations necessary to address the potential health risk posed by dust at a site;

(iv) Concentrations necessary to protect the ground water at a particular site;

(v) Concentrations necessary to protect nearby surface waters from hazardous substances in runoff from the site; and

(vi) Concentrations that eliminate or minimize the potential for the accumulation of vapors in buildings or other structures.

(d) Relationship between soil cleanup levels and other cleanup standards. Soil cleanup levels shall be established at concentrations that do not directly or indirectly cause violations of ground water, surface water, sediment, or air cleanup standards established under this chapter or applicable state and federal laws. A property that qualifies for a Method C soil cleanup level under WAC 173-340-745 does not necessarily qualify for a Method C cleanup level in other media. Each medium must be evaluated separately using the criteria applicable to that medium.

(2) **Method A soil cleanup levels for unrestricted land use.**

(a) **Applicability.** Method A soil cleanup levels may only be used at sites qualifying under WAC 173-340-704(1).

(b) **General requirements.** Method A soil cleanup levels shall be at least as stringent as all of the following:

(i) Concentrations in Table 740-1 and compliance with the corresponding footnotes;

(ii) Concentrations established under applicable state and federal laws;

(iii) Concentrations that result in no significant adverse effects on the protection and propagation of terrestrial ecological receptors using the procedures specified in WAC 173-340-7490 through 173-340-7493, unless it is demonstrated under those sections that establishing a soil concentration is unnecessary; and

(iv) For a hazardous substance that is deemed an indicator hazardous substance under WAC 173-340-708(2) and for which there is no value in Table 740-1 or applicable state and federal laws, a concentration that does not exceed the natural background concentration or the practical quantification limit, subject to the limitations in this chapter.

(3) **Method B soil cleanup levels for unrestricted land use.**

(a) **Applicability.** Method B soil cleanup levels consist of standard and modified cleanup levels determined using the procedures in this subsection. Either standard or modified Method B soil cleanup levels may be used at any site.

(b) **Standard Method B soil cleanup levels.** Standard Method B cleanup levels for soils shall be at least as stringent as all of the following:

(i) **Applicable state and federal laws.** Concentrations established under applicable state and federal laws;

(ii) **Environmental protection.** Concentrations that result in no significant adverse effects on the protection and propagation of terrestrial ecological receptors established using the procedures specified in WAC 173-340-7490 through 173-340-7494 unless it is demonstrated under those sections that establishing a soil concentration is unnecessary.

(iii) **Human health protection.** For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations that protect human health as determined by evaluating the following exposure pathways:

(A) **Ground water protection.** Concentrations that will not cause contamination of ground water at levels which exceed ground water cleanup levels established under WAC 173-340-720 as determined using the methods described in WAC 173-340-747.

(B) **Soil direct contact.** Concentrations that, due to direct contact with contaminated soil, are estimated to result in no acute or chronic noncarcinogenic toxic effects on human health using a hazard quotient of one (1) and concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in one million ($1 \times 10^{-6}$). Equations 740-1 and 740-2 and the associated default assumptions shall be used to calculate the concentration for direct contact with contaminated soil.

(I) **Noncarcinogens.** For noncarcinogenic toxic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 740-1. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.

[Equation 740-1]

$$\text{Soil Cleanup Level (mg/kg)} = \frac{\text{RfD x ABW x UCF x HQ x AT}}{\text{SIR x AB1 x EF x ED}}$$

Where:

- RfD = Reference dose as defined in WAC 173-340-708(7) (mg/kg-day)
- ABW = Average body weight over the exposure duration (16 kg)
- UCF = Unit conversion factor (1,000,000 mg/kg)
- SIR = Soil ingestion rate (200 mg/day)
- AB1 = Gastrointestinal absorption fraction (1.0) (unitless)
- EF = Exposure frequency (1.0) (unitless)
- HQ = Hazard quotient (1) (unitless)
- AT = Averaging time (6 years)
- ED = Exposure duration (6 years)

(II) **Carcinogens.** For carcinogenic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 740-2. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.

[Equation 740-2]

$$\text{Soil Cleanup Level (mg/kg)} = \frac{\text{RISK x ABW x AT x UCF}}{\text{CPF x SIR x AB1 x ED x EF}}$$

Where:

- RISK = Acceptable cancer risk level (1 in 1,000,000) (unitless)
- ABW = Average body weight over the exposure duration (16 kg)
- AT = Averaging time (75 years)
- UCF = Unit conversion factor (1,000,000 mg/kg)
- CPF = Carcinogenic potency factor as defined in WAC 173-340-708(8) (kg-day/mg)
- SIR = Soil ingestion rate (200 mg/day)
- AB1 = Gastrointestinal absorption fraction (1.0) (unitless). May use 0.6 for mixtures of dioxins and/or furans
- ED = Exposure duration (6 years)
- EF = Exposure frequency (1.0) (unitless)

(III) **Petroleum mixtures.** For noncarcinogenic effects of petroleum mixtures, a total petroleum hydrocarbon cleanup level shall be calculated taking into account the additive effects of the petroleum fractions and volatile organic compounds substances present in the petroleum mixture. Equation 740-3 shall be used for this calculation. This equation takes into account concurrent exposure due to ingestion and dermal contact with petroleum contaminated soils. Cleanup levels for other noncarcinogens and known or suspected carcinogens within the petroleum mixture shall be calculated using Equations 740-4 and 740-5. See Table 830-1 for the analyses required for various petroleum products to use this method.

[Equation 740-3]

$$C_{soil} = \frac{HI \times ABW \times AT}{EF \times ED\left[\left(\frac{SIR \times AB1}{10^6 mg/kg}\sum_{i=1}^{n}\frac{F(i)}{RfDo(i)}\right)+\left(\frac{SA \times AF}{10^6 mg/kg}\sum_{i=1}^{n}\frac{F(i)\times ABS(i)}{RfDd(i)}\right)\right]}$$

Where:

- $C_{soil}$ = TPH soil cleanup level (mg/kg)
- HI = Hazard index (1) (unitless)
- ABW = Average body weight over the exposure duration (16 kg)
- AT = Averaging time (6 years)
- EF = Exposure frequency (1.0) (unitless)
- ED = Exposure duration (6 years)
- SIR = Soil ingestion rate (200 mg/day)
- AB1 = Gastrointestinal absorption fraction (1.0) (unitless)
- F(i) = Fraction (by weight) of petroleum component (i) (unitless)
- SA = Dermal surface area (2,200 $cm^2$)
- AF = Adherence factor (0.2 $mg/cm^2$-day)
- ABS = Dermal absorption fraction for petroleum component (i) (unitless). May use chemical-specific values or the following defaults:
  - 0.0005 for volatile petroleum components with vapor press > = benzene
  - 0.03 for volatile petroleum components with vapor press < benzene
  - 0.1 for other petroleum components
- RfDo(i) = Oral reference dose of petroleum component (i) as defined in WAC 173-340-708(7) (mg/kg-day)
- RfDd(i) = Dermal reference dose for petroleum component (i) (mg/kg-day) derived by RfDo x GI
- GI = Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults:
  - 0.8 for volatile petroleum components
  - 0.5 for other petroleum components
- n = The number of petroleum components (petroleum fractions plus volatile organic compounds with an RfD) present in the petroleum mixture. (See Table 830-1.)

(C) **Soil vapors.** The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:

(I) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(6) using the default assumptions;

(II) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg;

(III) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(4).

See subsection (3)(c)(iv)(B) of this section for methods that may be used to evaluate the soil to vapor pathway.

(c) **Modified Method B soil cleanup levels.**

(i) **General.** Modified Method B soil cleanup levels are standard Method B soil cleanup levels, modified with chemical-specific or site-specific data. When making these modifications, the resultant cleanup levels shall meet applicable state and federal laws, meet health risk levels for standard Method B soil cleanup levels, and be demonstrated to be environmentally protective using the procedures specified in WAC 173-340-7490 through 173-340-7494. Changes to exposure assumptions must comply with WAC 173-340-708(10).

(ii) **Allowable modifications.** The following modifications can be made to the default assumptions in the standard Method B equations to derive modified Method B soil cleanup levels:

(A) For the protection of ground water, see WAC 173-340-747;

(B) For soil ingestion, the gastrointestinal absorption fraction, may be modified if the requirements of WAC 173-340-702 (14), (15), (16), and 173-340-708(10) are met;

(C) For dermal contact, the adherence factor, dermal absorption fraction and gastrointestinal absorption conversion factor may be modified if the requirements of WAC 173-340-702 (14), (15), (16), and 173-340-708(10) are met;

(D) The toxicity equivalent factors((~~, as described~~)) provided in WAC 173-340-708 (8)((~~, may be used for assessing the potential carcinogenic risk of mixtures of chlorinated dibenzo-p-dioxins, chlorinated dibenzofurans and polycyclic aromatic hydrocarbons~~)) (d), (e), and (f), may be modified if the requirements of WAC 173-340-708 (8)(g) and (h) are met;

(E) The reference dose and cancer potency factor may be modified if the requirements in WAC 173-340-708 (7) and (8) are met; and

(F) Other modifications incorporating new science as provided for in WAC 173-340-702 (14), (15) and (16).

(iii) **Dermal contact.** For hazardous substances other than petroleum mixtures, dermal contact with the soil shall be evaluated whenever the proposed changes to Equations 740-1 or 740-2 would result in a significantly higher soil cleanup level than would be calculated without the proposed changes. When conducting this evaluation, the following equations and default assumptions shall be used.

(A) For noncarcinogens use Equation 740-4. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

[Equation 740-4]

$$C_{soil} = \frac{HQ \times ABW \times AT}{EF \times ED\left[\left(\frac{1}{RfDo} \times \frac{SIR \times AB1}{10^6 mg/kg}\right) + \left(\frac{1}{RfDd} \times \frac{SA \times AF \times ABS}{10^6 mg/kg}\right)\right]}$$

Where:

$C_{soil}$ = Soil cleanup level (mg/kg)

HQ = Hazard quotient (unitless)

ABW = Average body weight over the exposure duration (16 kg)

AT = Averaging time (6 years)

EF = Exposure frequency (1.0) (unitless)

ED = Exposure duration (6 years)

SIR = Soil ingestion rate (200 mg/day)

AB1 = Gastrointestinal absorption fraction (1.0) (unitless)

SA = Dermal surface area (2,200 $cm^2$)

AF = Adherence factor (0.2 $mg/cm^2$-day)

ABS = Dermal absorption fraction (unitless).
May use chemical-specific values or the following defaults:

- 0.01 for inorganic hazardous substances
- 0.0005 for volatile organic compounds with vapor press > = benzene
- 0.03 for volatile organic compounds with vapor press < benzene
- 0.1 for other organic hazardous substances

RfDo = Oral reference dose as defined in WAC 173-340-708(7) (mg/kg-day)

RfDd = Dermal reference dose (mg/kg-day) derived by RfDo x GI

GI = Gastrointestinal absorption conversion factor (unitless).
May use chemical specific values or the following defaults:

- 0.2 for inorganic hazardous substances
- 0.8 for volatile organic compounds
- 0.5 for other organic hazardous substances

(B) For carcinogens use Equation 740-5. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

[Equation 740-5]

$$C_{soil} = \frac{RISK \times ABW \times AT}{EF \times ED\left[\left(\frac{SIR \times AB1 \times CPFo}{10^6 mg/kg}\right) + \left(\frac{SA \times AF \times ABS \times CPFd}{10^6 mg/kg}\right)\right]}$$

Where:

$C_{soil}$ = Soil cleanup level (mg/kg)

RISK = Acceptable cancer risk (1 in 1,000,000) (unitless)

ABW = Average body weight over the exposure duration (16 kg)

AT = Averaging time (75 years)

EF = Exposure frequency (1.0) (unitless)

ED = Exposure duration (6 years)

SIR = Soil ingestion rate (200 mg/day)

AB1 = Gastrointestinal absorption fraction (1.0) (unitless). May use 0.6 for mixtures of dioxins and/or furans

CPFo = Oral cancer potency factor as defined in WAC 173-340-708(8) (kg-day/mg)

CPFd = Dermal cancer potency factor (kg-day/mg) derived by CPFo/GI

GI = Gastrointestinal absorption conversion factor (unitless).
May use chemical-specific values or the following defaults:

- 0.2 for inorganic hazardous substances
- 0.8 for volatile organic compounds and for mixtures of dioxins and/or furans
- 0.5 for other organic hazardous substances

SA = Dermal surface area (2,200 $cm^2$)

AF = Adherence factor (0.2 $mg/cm^2$-day)

ABS = Dermal absorption fraction (unitless). May use chemical-specific values or the following defaults:

- 0.01 for inorganic hazardous substances
- 0.0005 for volatile organic compounds with vapor press > = benzene
- 0.03 for volatile organic compounds with vapor press < benzene and for mixtures of dioxins and/or furans
- 0.1 for other organic hazardous substances

(C) Modifications may be made to Equations 740-4 and 740-5 as provided for in subsection (3)(c)(ii) of this section.

(iv) **Soil vapors.**

(A) **Applicability.** The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:

(I) For other than petroleum hydrocarbon mixtures, the proposed changes to the standard Method B equations (Equations 740-1 and 740-2) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;

(II) For petroleum hydrocarbon mixtures, the proposed changes to the standard Method B equations (Equations 740-3, 740-4 and 740-5) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;

(III) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(6) using the default assumptions;

(IV) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg;

(V) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(4).

(B) **Evaluation methods.** Soil cleanup levels that are protective of the indoor and ambient air shall be determined on a site-specific basis. Soil cleanup levels may be evaluated as being protective of air pathways using any of the following methods:

(I) Measurements of the soil vapor concentrations, using methods approved by the department, demonstrating vapors in the soil would not exceed air cleanup levels established under WAC 173-340-750.

(II) Measurements of ambient air concentrations and/or indoor air vapor concentrations throughout buildings, using methods approved by the department, demonstrating air does not exceed cleanup levels established under WAC 173-340-750. Such measurements must be representative of current and future site conditions when vapors are likely to enter and accumulate in structures. Measurement of ambient air may be excluded if it can be shown that indoor air is the most protective point of exposure.

(III) Use of modeling methods approved by the department to demonstrate the air cleanup standards established under WAC 173-340-750 will not be exceeded. When this method is used, the department may require soil vapor and/or air monitoring to be conducted to verify the calculations and compliance with air cleanup standards.

(IV) Other methods as approved by the department demonstrating the air cleanup standards established under WAC 173-340-750 will not be exceeded.

(d) **Using modified Method B to evaluate soil remediation levels.** In addition to the adjustments allowed under subsection (3)(c) of this section, adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC 173-340-355, 173-340-357, and 173-340-708 (3)(d) and (10)(b).

(4) **Method C soil cleanup levels.** This section does not provide procedures for establishing Method C soil cleanup levels. Except for qualifying industrial properties, Method A and Method B, as described in this section, are the only methods available for establishing soil cleanup levels at sites. See WAC 173-340-745 for use of Method C soil cleanup levels at qualifying industrial properties. See also WAC 173-340-357 and 173-340-708 (3)(d) for how land use may be considered when selecting a cleanup action at a site.

(5) **Adjustments to cleanup levels.**

(a) **Total site risk adjustments.** Soil cleanup levels for individual hazardous substances developed in accordance with subsection (3) of this section, including cleanup levels based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand ($1 \times 10^{-5}$). These adjustments shall be made in accordance with the procedures specified in WAC 173-340-708 (5) and (6). In making these adjustments, the hazard index shall not exceed one (1) and the total excess cancer risk shall not exceed one in one hundred thousand ($1 \times 10^{-5}$).

(b) **Adjustments to applicable state and federal laws.** Where a cleanup level developed under subsection (2) or (3) of this section is based on an applicable state or federal law and the level of risk upon which the standard is based exceeds an excess cancer risk of one in one hundred thousand ($1 \times 10^{-5}$) or a hazard index of one (1), the cleanup level must be adjusted downward so that the total excess cancer risk does not exceed one in one hundred thousand ($1 \times 10^{-5}$) and the hazard index does not exceed one (1) at the site.

(c) **Natural background and PQL considerations.** Cleanup levels determined under subsection (2) or (3) of this section, including cleanup levels adjusted under subsection (5)(a) and (b) of this section, shall not be set at levels below the practical quantitation limit or natural background, whichever is higher. See WAC 173-340-707 and 173-340-709 for additional requirements pertaining to practical quantitation limits and natural background.

(6) **Point of compliance.**

(a) The point of compliance is the point or points where the soil cleanup levels established under subsection (2) or (3) of this section shall be attained.

(b) For soil cleanup levels based on the protection of ground water, the point of compliance shall be established in the soils throughout the site.

(c) For soil cleanup levels based on protection from vapors, the point of compliance shall be established in the soils throughout the site from the ground surface to the uppermost ground water saturated zone (e.g., from the ground surface to the uppermost water table).

(d) For soil cleanup levels based on human exposure via direct contact or other exposure pathways where contact with the soil is required to complete the pathway, the point of compliance shall be established in the soils throughout the site from the ground surface to fifteen feet below the ground surface. This represents a reasonable estimate of the depth of soil that could be excavated and distributed at the soil surface as a result of site development activities.

(e) For soil cleanup levels based on ecological considerations, see WAC 173-340-7490 for the point of compliance.

(f) The department recognizes that, for those cleanup actions selected under this chapter that involve containment of hazardous substances, the soil cleanup levels will typically not be met at the points of compliance specified in (b) through (e) of this subsection. In these cases, the cleanup action may be determined to comply with cleanup standards, provided:

(i) The selected remedy is permanent to the maximum extent practicable using the procedures in WAC 173-340-360;

(ii) The cleanup action is protective of human health. The department may require a site-specific human health risk assessment conforming to the requirements of this chapter to demonstrate that the cleanup action is protective of human health;

(iii) The cleanup action is demonstrated to be protective of terrestrial ecological receptors under WAC 173-340-7490 through 173-340-7494;

(iv) Institutional controls are put in place under WAC 173-340-440 that prohibit or limit activities that could interfere with the long-term integrity of the containment system;

(v) Compliance monitoring under WAC 173-340-410 and periodic reviews under WAC 173-340-430 are designed to ensure the long-term integrity of the containment system; and

(vi) The types, levels and amount of hazardous substances remaining on-site and the measures that will be used to prevent migration and contact with those substances are specified in the draft cleanup action plan.

(7) **Compliance monitoring.**

(a) Compliance with soil cleanup levels shall be based on total analyses of the soil fraction less than two millimeters in size. When it is reasonable to expect that larger soil particles could be reduced to two millimeters or less during current or future site use and this reduction could cause an increase in the concentrations of hazardous substances in the soil, soil cleanup levels shall also apply to these larger soil particles. Compliance with soil cleanup levels shall be based on dry weight concentrations. The department may approve the use of alternate procedures for stabilized soils.

(b) When soil levels have been established at a site, sampling of the soil shall be conducted to determine if compliance with the soil cleanup levels has been achieved. Sampling and analytical procedures shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. The sample design shall provide data that are representative of the area where exposure to hazardous substances may occur.

(c) The data analysis and evaluation procedures used to evaluate compliance with soil cleanup levels shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. These procedures shall meet the following general requirements:

(i) Methods of data analysis shall be consistent with the sampling design. Separate methods may be specified for surface soils and deeper soils;

(ii) When cleanup levels are based on requirements specified in applicable state and federal laws, the procedures for evaluating compliance that are specified in those requirements shall be used to evaluate compliance with cleanup levels unless those procedures conflict with the intent of this section;

(iii) Where procedures for evaluating compliance are not specified in an applicable state and federal law, statistical methods shall be appropriate for the distribution of sampling data for each hazardous substance. If the distributions for hazardous substances differ, more than one statistical method may be required; and

(iv) The data analysis plan shall specify which parameters are to be used to determine compliance with soil cleanup levels.

(A) For cleanup levels based on short-term or acute toxic effects on human health or the environment, an upper percentile soil concentration shall be used to evaluate compliance with cleanup levels.

(B) For cleanup levels based on chronic or carcinogenic threats, the true mean soil concentration shall be used to evaluate compliance with cleanup levels.

(d) When data analysis procedures for evaluating compliance are not specified in an applicable state or federal law the following procedures shall be used:

(i) A confidence interval approach that meets the following requirements:

(A) The upper one sided ninety-five percent confidence limit on the true mean soil concentration shall be less than the soil cleanup level. For lognormally distributed data, the upper one-sided ninety-five percent confidence limit shall be calculated using Land's method; and

(B) Data shall be assumed to be lognormally distributed unless this assumption is rejected by a statistical test. If a lognormal distribution is inappropriate, data shall be assumed to be normally distributed unless this assumption is rejected by a statistical test. The W test, D'Agostino's test, or, censored probability plots, as appropriate for the data, shall be the statistical methods used to determine whether the data are lognormally or normally distributed;

(ii) For an evaluation conducted under (c)(iv)(A) of this subsection, a parametric test for percentiles based on toler-

ance intervals to test the proportion of soil samples having concentrations less than the soil cleanup level. When using this method, the true proportion of samples that do not exceed the soil cleanup level shall not be less than ninety percent. Statistical tests shall be performed with a Type I error level of 0.05;

(iii) Direct comparison of soil sample concentrations with cleanup levels may be used to evaluate compliance with cleanup levels where selective sampling of soil can be reliably expected to find suspected soil contamination. There must be documented, reliable information that the soil samples have been taken from the appropriate locations. Persons using this method must demonstrate that the basis used for selecting the soil sample locations provides a high probability that any existing areas of soil contamination have been found; or

(iv) Other statistical methods approved by the department.

(e) All data analysis methods used, including those specified in state and federal law, must meet the following requirements:

(i) No single sample concentration shall be greater than two times the soil cleanup level. Higher exceedances to control false positive error rates at five percent may be approved by the department when the cleanup level is based on background concentrations; and

(ii) Less than ten percent of the sample concentrations shall exceed the soil cleanup level. Higher exceedances to control false positive error rates at five percent may be approved by the department when the cleanup level is based on background concentrations.

(f) When using statistical methods to demonstrate compliance with soil cleanup levels, the following procedures shall be used for measurements below the practical quantitation limit:

(i) Measurements below the method detection limit shall be assigned a value equal to one-half the method detection limit when not more than fifteen percent of the measurements are below the practical quantitation limit.

(ii) Measurements above the method detection limit but below the practical quantitation limit shall be assigned a value equal to the method detection limit when not more than fifteen percent of the measurements are below the practical quantitation limit.

(iii) When between fifteen and fifty percent of the measurements are below the practical quantitation limit and the data are assumed to be lognormally or normally distributed, Cohen's method shall be used to calculate a corrected mean and standard deviation for use in calculating an upper confidence limit on the true mean soil concentration.

(iv) If more than fifty percent of the measurements are below the practical quantitation limit, the largest value in the data set shall be used in place of an upper confidence limit on the true mean soil concentration.

(v) The department may approve alternate statistical procedures for handling nondetected values or values below the practical quantitation limit.

(vi) If a hazardous substance or petroleum fraction has never been detected in any sample at a site and these substances are not suspected of being present at the site based on site history and other knowledge, that hazardous substance or petroleum fraction may be excluded from the statistical analysis.

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

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 8/15/01)

**WAC 173-340-745 Soil cleanup standards for industrial properties.** (1) **Applicability.**

(a) Criteria. This section shall be used to establish soil cleanup levels where the department has determined that industrial land use represents the reasonable maximum exposure. Soil cleanup levels for this presumed exposure scenario shall be established in accordance with this section. To qualify as an industrial land use and to use an industrial soil cleanup level a site must meet the following criteria:

(i) The area of the site where industrial property soil cleanup levels are proposed must meet the definition of an industrial property under WAC 173-340-200;

Industrial soil cleanup levels are based on an adult worker exposure scenario. It is essential to evaluate land uses and zoning for compliance with this definition in the context of this exposure scenario. Local governments use a variety of zoning categories for industrial land uses so a property does not necessarily have to be in a zone called "industrial" to meet the definition of "industrial property." Also, there are land uses allowed in industrial zones that are actually commercial or residential, rather than industrial, land uses. Thus, an evaluation to determine compliance with this definition should include a review of the actual text in the comprehensive plan and zoning ordinance pertaining to the site and a visit to the site to observe land uses in the zone. When evaluating land uses to determine if a property use not specifically listed in the definition is a "traditional industrial use" or to determine if the property is "zoned for industrial use," the following characteristics shall be considered:

(A) People do not normally live on industrial property. The primary potential exposure is to adult employees of businesses located on the industrial property;

(B) Access to industrial property by the general public is generally not allowed. If access is allowed, it is highly limited and controlled due to safety or security considerations;

(C) Food is not normally grown/raised on industrial property. (However, food processing operations are commonly considered industrial facilities);

(D) Operations at industrial properties are often (but not always) characterized by use and storage of chemicals, noise, odors and truck traffic;

(E) The surface of the land at industrial properties is often (but not always) mostly covered by buildings or other structures, paved parking lots, paved access roads and material storage areas—minimizing potential exposure to the soil; and

(F) Industrial properties may have support facilities consisting of offices, restaurants, and other facilities that are commercial in nature but are primarily devoted to administrative functions necessary for the industrial use and/or are pri-

marily intended to serve the industrial facility employees and not the general public.

(ii) The cleanup action provides for appropriate institutional controls implemented in accordance with WAC 173-340-440 to limit potential exposure to residual hazardous substances. This shall include, at a minimum, placement of a covenant on the property restricting use of the area of the site where industrial soil cleanup levels are proposed to industrial property uses; and

(iii) Hazardous substances remaining at the property after remedial action would not pose a threat to human health or the environment at the site or in adjacent nonindustrial areas. In evaluating compliance with this criterion, at a minimum the following factors shall be considered:

(A) The potential for access to the industrial property by the general public, especially children. The proximity of the industrial property to residential areas, schools or childcare facilities shall be considered when evaluating access. In addition, the presence of natural features, manmade structures, arterial streets or intervening land uses that would limit or encourage access to the industrial property shall be considered. Fencing shall not be considered sufficient to limit access to an industrial property since this is insufficient to assure long term protection;

(B) The degree of reduction of potential exposure to residual hazardous substances by the selected remedy. Where the residual hazardous substances are to be capped to reduce exposure, consideration shall be given to the thickness of the cap and the likelihood of future site maintenance activities, utility and drainage work, or building construction reexposing residual hazardous substances;

(C) The potential for transport of residual hazardous substances to off-property areas, especially residential areas, schools and childcare facilities;

(D) The potential for significant adverse effects on wildlife caused by residual hazardous substances using the procedures in WAC 173-340-7490 through 173-340-7494; and

(E) The likelihood that these factors would not change for the foreseeable future.

(b) **Expectations.** In applying the criteria in (a) of this subsection, the department expects the following results:

(i) The department expects that properties zoned for heavy industrial or high intensity industrial use and located within a city or county that has completed a comprehensive plan and adopted implementing zoning regulations under the Growth Management Act (chapter 36.70A RCW) will meet the definition of industrial property. For cities and counties not planning under the Growth Management Act, the department expects that spot zoned industrial properties will not meet the definition of industrial property but that properties that are part of a larger area zoned for heavy industrial or high intensity industrial use will meet the definition of an industrial property;

(ii) For both GMA and non-GMA cities and counties, the department expects that light industrial and commercial zones and uses should meet the definition of industrial property where the land uses are comparable to those cited in the definition of industrial property or the land uses are an integral part of a qualifying industrial use (such as, ancillary or support facilities). This will require a site-by-site evaluation of the zoning text and land uses;

(iii) The department expects that for portions of industrial properties in close proximity to (generally, within a few hundred feet) residential areas, schools or childcare facilities, residential soil cleanup levels will be used unless:

(A) Access to the industrial property is very unlikely or, the hazardous substances that are not treated or removed are contained under a cap of clean soil (or other materials) of substantial thickness so that it is very unlikely the hazardous substances would be disturbed by future site maintenance and construction activities (depths of even shallow footings, utilities and drainage structures in industrial areas are typically three to six feet); and

(B) The hazardous substances are relatively immobile (or have other characteristics) or have been otherwise contained so that subsurface lateral migration or surficial transport via dust or runoff to these nearby areas or facilities is highly unlikely; and

(iv) Note that a change in the reasonable maximum exposure to industrial site use primarily affects the direct contact exposure pathway. Thus, for example, for sites where the soil cleanup level is based primarily on the potential for the hazardous substance to leach and cause ground water contamination, it is the department's expectation that an industrial land use will not affect the soil cleanup level. Similarly, where the soil cleanup level is based primarily on surface water protection or other pathways other than direct human contact, land use is not expected to affect the soil cleanup level.

(2) **General considerations.**

(a) In the event of a release of a hazardous substance at a site qualifying as industrial property, a cleanup action that complies with this chapter shall be conducted to address those soils with hazardous substance concentrations which exceed industrial soil cleanup levels at the relevant point of compliance.

(b) Soil cleanup levels for areas beyond the industrial property boundary that do not qualify for industrial soil cleanup levels under this section (including implementation of institutional controls and a covenant restricting use of the property to industrial property uses) shall be established in accordance with WAC 173-340-740.

(c) Industrial soil cleanup levels shall be established at concentrations that do not directly or indirectly cause violations of ground water, surface water, sediment or air cleanup standards established under this chapter or under applicable state and federal laws. A property that qualifies for an industrial soil cleanup level under this section does not necessarily qualify for a Method C cleanup level in other media. Each medium must be evaluated separately using the criteria applicable to that medium.

(d) The department may require more stringent soil cleanup standards than required by this section when, based on a site-specific evaluation, the department determines that this is necessary to protect human health and the environment, including consideration of the factors in WAC 173-340-740 (1)(c). Any imposition of more stringent requirements under this provision shall comply with WAC 173-340-702 and 173-340-708.

(3) **Method A industrial soil cleanup levels.**

(a) **Applicability.** Method A industrial soil cleanup levels may be used only at any industrial property qualifying under WAC 173-340-704(1).

(b) **General requirements.** Method A industrial soil cleanup levels shall be at least as stringent as all of the following:

(i) Concentrations in Table 745-1 and compliance with the corresponding footnotes;

(ii) Concentrations established under applicable state and federal laws;

(iii) Concentrations that result in no significant adverse effects on the protection and propagation of terrestrial ecological receptors using the procedures specified in WAC 173-340-7490 through 173-340-7493, unless it is demonstrated under those sections that establishing a soil concentration is unnecessary; and

(iv) For a hazardous substance that is deemed an indicator hazardous substance under WAC 173-340-708(2) and for which there is no value in Table 745-1 or applicable state and federal laws, a concentration that does not exceed the natural background concentration or the practical quantification limit, subject to the limitations in this chapter.

(4) **Method B industrial soil cleanup levels.** This section does not provide procedures for establishing Method B industrial soil cleanup levels. Method C is the standard method for establishing soil cleanup levels at industrial sites and its use is conditioned upon the continued use of the site for industrial purposes. The person conducting the cleanup action also has the option of establishing unrestricted land use soil cleanup levels under WAC 173-340-740 for qualifying industrial properties. This option may be desirable when the person wants to avoid restrictions on the future use of the property. When a site does not qualify for a Method A or Method C industrial soil cleanup level under this section, or the user chooses to establish unrestricted land use soil cleanup levels at a site, soil cleanup levels must be established using Methods A or B under WAC 173-340-740.

(5) **Method C industrial soil cleanup levels.**

(a) **Applicability.** Method C industrial soil cleanup levels consist of standard and modified cleanup levels as described in this subsection. Either standard or modified Method C soil cleanup levels may be used at any industrial property qualifying under subsection (1) of this section.

(b) **Standard Method C industrial soil cleanup levels.** Standard Method C industrial soil cleanup levels for industrial properties shall be at least as stringent as all of the following:

(i) **Applicable state and federal laws.** Concentrations established under applicable state and federal laws;

(ii) **Environmental protection.** Concentrations that result in no significant adverse effects on the protection and propagation of wildlife established using the procedures specified in WAC 173-340-7490 through 173-340-7494, unless it is demonstrated under those sections that establishing a soil concentration is unnecessary.

(iii) **Human health protection.** For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations that protect human health as determined by evaluating the following exposure pathways:

(A) **Ground water protection.** Concentrations that will not cause contamination of ground water to concentrations which exceed ground water cleanup levels established under WAC 173-340-720 as determined using the methods described in WAC 173-340-747.

(B) **Soil direct contact.** Concentrations that, due to direct contact with contaminated soil, are estimated to result in no acute or chronic noncarcinogenic toxic effects on human health using a hazardous quotient of one (1) and concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in one hundred thousand ($1 \times 10^{-5}$). Equations 745-1 and 745-2 and the associated default assumptions shall be used to conduct this calculation.

(I) **Noncarcinogens.** For noncarcinogenic toxic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 745-1. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.

[Equation 745-1]

$$\text{Soil Cleanup Level (mg/kg)} = \frac{\text{RfD} \times \text{ABW} \times \text{UCF} \times \text{HQ} \times \text{AT}}{\text{SIR} \times \text{AB1} \times \text{EF} \times \text{ED}}$$

Where:

| | | |
|---|---|---|
| RfD | = | Reference dose as specified in WAC 173-340-708(7) (mg/kg-day) |
| ABW | = | Average body weight over the exposure duration (70 kg) |
| UCF | = | Unit conversion factor (1,000,000 mg/kg) |
| SIR | = | Soil ingestion rate (50 mg/day) |
| AB1 | = | Gastrointestinal absorption fraction (1.0) (unitless) |
| EF | = | Exposure frequency (0.4) (unitless) |
| HQ | = | Hazard quotient (1) (unitless) |
| AT | = | Averaging time (20 years) |
| ED | = | Exposure duration (20 years) |

(II) **Carcinogens.** For carcinogenic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 745-2. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.

[Equation 745-2]

$$\text{Soil Cleanup Level (mg/kg)} = \frac{\text{RISK} \times \text{ABW} \times \text{AT} \times \text{UCF}}{\text{CPF} \times \text{SIR} \times \text{AB1} \times \text{ED} \times \text{EF}}$$

Where:

| | | |
|---|---|---|
| RISK | = | Acceptable cancer risk level (1 in 100,000) (unitless) |
| ABW | = | Average body weight over the exposure duration (70 kg) |
| AT | = | Averaging time (75 years) |
| UCF | = | Unit conversion factor (1,000,000 mg/kg) |
| CPF | = | Carcinogenic Potency Factor as specified in WAC 173-340-708(8) (kg-day/mg) |
| SIR | = | Soil ingestion rate (50 mg/day) |
| AB1 | = | Gastrointestinal absorption fraction (1.0) (unitless). May use 0.6 for mixtures of dioxins and/or furans |
| ED | = | Exposure duration (20 years) |

EF = Exposure frequency (0.4) (unitless)

(III) **Petroleum mixtures.** For noncarcinogenic effects of petroleum mixtures, a total petroleum hydrocarbon cleanup level shall be calculated taking into account the additive effects of the petroleum fractions and volatile organic compounds present in the petroleum mixture. Equation 745-3 shall be used for this calculation. This equation takes into account concurrent exposure due to ingestion and dermal contact with petroleum contaminated soils. Cleanup levels for other noncarcinogens and known or suspected carcinogens within the petroleum mixture shall be calculated using Equations 745-4 and 745-5. See Table 830-1 for the analyses required for various petroleum products to use this method.

[Equation 745-3]

$$C_{soil} = \frac{HI \times ABW \times AT}{EF \times ED \left[ \left( \frac{SIR \times AB1}{10^6 mg/kg} \sum_{i=1}^{n} \frac{F(i)}{RfDo(i)} \right) + \left( \frac{SA \times AF}{10^6 mg/kg} \sum_{i=1}^{n} \frac{F(i) \times ABS(i)}{RfDd(i)} \right) \right]}$$

Where:

$C_{soil}$ = TPH soil cleanup level (mg/kg)

HI = Hazard index (1) (unitless)

ABW = Average body weight over the exposure duration (70 kg)

AT = Averaging time (20 years)

EF = Exposure frequency (0.7) (unitless)

ED = Exposure duration (20 years)

SIR = Soil ingestion rate (50 mg/day)

AB1 = Gastrointestinal absorption fraction (1.0) (unitless)

F(i) = Fraction (by weight) of petroleum component (i) (unitless)

SA = Dermal surface area (2,500 $cm^2$)

AF = Adherence factor (0.2 $mg/cm^2$-day)

ABS = Dermal absorption fraction for petroleum component (i) (unitless). May use chemical-specific values or the following defaults:

- 0.0005 for volatile petroleum components with vapor press > = benzene
- 0.03 for volatile petroleum components with vapor press < benzene
- 0.1 for other petroleum components

RfDo(i) = Oral reference dose of petroleum component (i) as defined in WAC 173-340-708(7) (mg/kg-day)

RfDd(i) = Dermal reference dose for petroleum component (i) (mg/kg-day) derived by RfDo x GI

GI = Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults:

- 0.8 for volatile petroleum components
- 0.5 for other petroleum components

n = The number of petroleum components (petroleum fractions plus volatile organic compounds with an RfD) present in the petroleum mixture. (See Table 830-1.)

(C) **Soil vapors.** The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:

(I) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(6) using the default assumptions;

(II) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg;

(III) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(4).

See subsection (5)(c)(iv)(B) of this section for methods that may be used to evaluate the soil to vapor pathway.

(c) **Modified Method C soil cleanup levels.**

(i) **General.** Modified Method C soil cleanup levels are standard Method C soil cleanup levels modified with chemical-specific or site-specific data. When making these adjustments, the resultant cleanup levels shall meet applicable state and federal laws, meet health risk levels for standard Method C soil cleanup levels, and be demonstrated to be environmentally protective using the procedures specified in WAC 173-340-7490 through 173-340-7494. Changes to exposure assumptions must comply with WAC 173-340-708(10).

(ii) **Allowable modifications.** The following modifications may be made to the default assumptions in the standard Method C equations to derive modified Method C soil cleanup levels:

(A) For the protection of ground water see WAC 173-340-747;

(B) For soil ingestion, the gastrointestinal absorption fraction may be modified if the requirements of WAC 173-340-702 (14), (15), (16), and 173-340-708(10) are met;

(C) For dermal contact, the adherence factor, dermal absorption fraction and gastrointestinal absorption conversion factor may be modified if the requirements of WAC 173-340-702 (14), (15), (16), and 173-340-708(10) are met;

(D) The toxicity equivalent factors((~~, as described~~)) provided in WAC 173-340-708 (8)((~~, may be used for assessing the potential carcinogenic risk of mixtures of chlorinated dibenzo-p-dioxins, chlorinated dibenzofurans and polycyclic aromatic hydrocarbons~~)) (d), (e) and (f), may be modified provided the requirements of WAC 173-340-708 (8)(g) and (h) are met;

(E) The reference dose and cancer potency factor may be modified if the requirements in WAC 173-340-708 (7) and (8) are met; and

(F) Modifications incorporating new science as provided for in WAC 173-340-702 (14), (15) and (16).

(iii) **Dermal contact.** For hazardous substances other than petroleum mixtures, dermal contact with the soil shall be evaluated whenever the proposed changes to Equations 745-1 and 745-2 would result in a significantly higher soil cleanup level than would be calculated without the proposed changes. When conducting this evaluation, the following equations and default assumptions shall be used:

(A) For noncarcinogens use Equation 745-4. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

[Equation 745-4]

$$C_{soil} = \frac{HQ \times ABW \times AT}{EF \times ED \left[ \left( \frac{1}{RfDo} \times \frac{SIR \times AB1}{10^6 mg/kg} \right) + \left( \frac{1}{RfDd} \times \frac{SA \times AF \times ABS}{10^6 mg/kg} \right) \right]}$$

Where:

$C_{soil}$ = Soil cleanup level (mg/kg)

HQ = Hazard quotient (unitless)

ABW = Average body weight over the exposure duration (70 kg)

AT = Averaging time (20 years)

EF = Exposure frequency (0.7) (unitless)

ED = Exposure duration (20 years)

SIR = Soil ingestion rate (50 mg/day)

AB1 = Gastrointestinal absorption fraction (1.0) (unitless)

SA = Dermal surface area (2,500 $mg/cm^2$)

AF = Adherence factor (0.2 $mg/cm^2$-day)

ABS = Dermal absorption fraction (unitless). May use chemical-specific values or the following defaults:

- 0.01 for inorganic hazardous substances
- 0.0005 for volatile organic compounds with vapor press >= benzene
- 0.03 for volatile organic compounds with vapor press < benzene
- 0.1 for other organic hazardous substances

RfDo = Oral reference dose as defined in WAC 173-340-708(7) (mg/kg-day)

RfDd = Dermal reference dose (mg/kg-day) derived by RfDo x GI

GI = Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults:

- 0.2 for inorganic hazardous substances
- 0.8 for volatile organic compounds
- 0.5 for other organic hazardous substances

(B) For carcinogens use Equation 745-5. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

[Equation 745-5]

$$C_{soil} = \frac{RISK \times ABW \times AT}{EF \times ED \left[ \left( \frac{SIR \times AB1 \times CPFo}{10^6 mg/kg} \right) + \left( \frac{SA \times AF \times ABS \times CPFd}{10^6 mg/kg} \right) \right]}$$

Where:

$C_{soil}$ = Soil cleanup level (mg/kg)

RISK = Acceptable cancer risk (1 in 100,000) (unitless)

ABW = Average body weight over the exposure duration (70 kg)

AT = Averaging time (75 years)

EF = Exposure frequency (0.7) (unitless)

ED = Exposure duration (20 years)

SIR = Soil ingestion rate (50 mg/day)

AB1 = Gastrointestinal absorption fraction (1.0) (unitless). May use 0.6 for mixtures of dioxins and/or furans

CPFo = Oral cancer potency factor as defined in WAC 173-340-708(8) (kg-day/mg)

CPFd = Dermal cancer potency factor (kg-day/mg) derived by CPFo/GI

GI = Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults:

- 0.2 for inorganic hazardous substances
- 0.8 for volatile organic compounds and mixtures of dioxins and/or furans
- 0.5 for other organic hazardous substances

SA = Dermal surface area (2,500 $cm^2$)

AF = Adherence factor (0.2 $mg/cm^2$-day)

ABS = Dermal absorption fraction (unitless). May use chemical-specific values or the following defaults:

- 0.01 for inorganic hazardous substances
- 0.0005 for volatile organic compounds with vapor press >= benzene
- 0.03 for volatile organic compounds substances with vapor press < benzene and for mixtures of dioxins and/or furans
- 0.1 for other organic hazardous substances

(C) Modifications may be made to Equations 745-4 and 745-5 as provided for in subsection (5)(c)(ii) of this section.

(iv) **Soil vapors.**

(A) **Applicability.** The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:

(I) For other than petroleum hydrocarbon mixtures, the proposed changes to the standard Method C equations (Equations 745-1 and 745-2) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;

(II) For petroleum hydrocarbon mixtures, the proposed changes to the standard Method C equations (Equations 745-3, 745-4 and 745-5) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;

(III) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(6) using the default assumptions;

(IV) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg;

(V) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(4).

(B) **Evaluation methods.** Soil cleanup levels that are protective of the indoor and ambient air shall be determined on a site-specific basis. Soil cleanup levels may be evaluated as being protective of air pathways using any of the following methods:

(I) Measurements of the soil vapor concentrations, using methods approved by the department, demonstrating vapors

in the soil would not exceed air cleanup levels established under WAC 173-340-750.

(II) Measurements of ambient air concentrations and/or indoor air vapor concentrations throughout buildings, using methods approved by the department, demonstrating air does not exceed cleanup levels established under WAC 173-340-750. Such measurements must be representative of current and future site conditions when vapors are likely to enter and accumulate in structures. Measurement of ambient air may be excluded if it can be shown that indoor air is the most protective point of exposure.

(III) Use of modeling methods approved by the department to demonstrate the air cleanup standards established under WAC 173-340-750 will not be exceeded. When this method is used, the department may require soil vapor and/or air monitoring to be conducted to verify the calculations and compliance with air cleanup standards.

(IV) Other methods as approved by the department demonstrating the air cleanup standards established under WAC 173-340-750 will not be exceeded.

(d) **Using modified Method C to evaluate industrial soil remediation levels.** In addition to the adjustments allowed under subsection (5)(c) of this section, other adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC 173-340-355, 173-340-357, and 173-340-708 (3)(d) and (10)(b).

(6) **Adjustments to industrial soil cleanup levels.**

(a) **Total site risk adjustments.** Soil cleanup levels for individual hazardous substances developed in accordance with subsection (5) of this section, including cleanup levels based on state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand ($1 \times 10^{-5}$). These adjustments shall be made in accordance with the procedures specified in WAC 173-340-708 (5) and (6). In making these adjustments, the hazard index shall not exceed one (1) and the total excess cancer risk shall not exceed one in one hundred thousand ($1 \times 10^{-5}$).

(b) **Adjustments to applicable state and federal laws.** Where a cleanup level developed under subsection (3) or (5) of this section is based on an applicable state or federal law and the level of risk upon which the standard is based exceeds an excess cancer risk of one in one hundred thousand ($1 \times 10^{-5}$) or a hazard index of one (1), the cleanup level shall be adjusted downward so that total excess cancer risk does not exceed one in one hundred thousand ($1 \times 10^{-5}$) and the hazard index does not exceed one (1) at the site.

(c) **Natural background and analytical considerations.** Cleanup levels determined under subsection (3) or (5) of this section, including cleanup levels adjusted under subsection (6)(a) and (b) of this section, shall not be set at levels below the practical quantitation limit or natural background concentration, whichever is higher. See WAC 173-340-707 and 173-340-709 for additional requirements pertaining to practical quantitation limits and natural background.

(7) **Point of compliance.** The point of compliance for industrial property soil cleanup levels shall be established in accordance with WAC 173-340-740(6).

(8) **Compliance monitoring.** Compliance monitoring and data analysis and evaluation for industrial property soil cleanup levels shall be performed in accordance with WAC 173-340-410 and 173-340-740(7).

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

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 8/15/01)

**WAC 173-340-900 Tables.**

**Table 708-1: Toxicity Equivalency Factors for Chlorinated dibenzo-p-dioxins and Chlorinated Dibenzofurans Congeners**

| CAS Number | Hazardous Substance | Toxicity Equivalency Factor (unitless)[1] |
|---|---|---|
| | **Dioxin Congeners** | |
| 1746-01-6 | 2,3,7,8-Tetrachloro dibenzo-p-dioxin | 1 |
| 40321-76-4 | 1,2,3,7,8-Pentachloro dibenzo-p-dioxin | 1 |
| 39227-28-6 | 1,2,3,4,7,8-Hexachloro dibenzo-p-dioxin | 0.1 |
| 57653-85-7 | 1,2,3,6,7,8-Hexachloro dibenzo-p-dioxin | 0.1 |
| 19408-74-3 | 1,2,3,7,8,9-Hexachloro dibenzo-p-dioxin | 0.1 |
| 35822-46-9 | 1,2,3,4,6,7,8-Heptachloro dibenzo-p-dioxin | 0.01 |
| 3268-87-9 | 1,2,3,4,6,7,8,9-Octachloro dibenzo-p-dioxin | 0.0003 |
| | **Furan Congeners** | |
| 51207-31-9 | 2,3,7,8-Tetrachloro dibenzofuran | 0.1 |
| 57117-41-6 | 1,2,3,7,8-Pentachloro dibenzofuran | 0.03 |
| 57117-31-4 | 2,3,4,7,8-Pentachloro dibenzofuran | 0.3 |

**Table 708-1: Toxicity Equivalency Factors for Chlorinated dibenzo-p-dioxins and Chlorinated Dibenzofurans Congeners**

| CAS Number | Hazardous Substance | Toxicity Equivalency Factor (unitless)[1] |
|---|---|---|
| 70648-26-9 | 1,2,3,4,7,8-Hexachloro dibenzofuran | 0.1 |
| 57117-44-9 | 1,2,3,6,7,8-Hexachloro dibenzofuran | 0.1 |
| 72918-21-9 | 1,2,3,7,8,9-Hexachloro dibenzofuran | 0.1 |
| 60851-34-5 | 2,3,4,6,7,8-Hexachloro dibenzofuran | 0.1 |
| 67562-39-4 | 1,2,3,4,6,7,8-Heptachloro dibenzofuran | 0.01 |
| 55673-89-7 | 1,2,3,4,7,8,9-Heptachloro dibenzofuran | 0.01 |
| 39001-02-0 | 1,2,3,4,6,7,8,9-Octachloro dibenzofuran | 0.0003 |

[1] Source: Van den Berg et al. 2006. The 2005 World Health Organization Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds.
Toxicological Sciences 2006 93(2):223-241; doi:10.1093/toxsci/kfl055.

**Table 708-2: Toxicity Equivalency Factors for Minimum Required Carcinogenic Polyaromatic Hydrocarbons (cPAHs) under WAC 173-340-708(e)**

| CAS Number | Hazardous Substance | TEF (unitless)[1] |
|---|---|---|
| 50-32-08 | benzo[a]pyrene | 1 |
| 56-55-3 | benzo[a]anthracene | 0.1 |
| 205-99-2 | benzo[b]fluoranthene | 0.1 |
| 207-08-9 | benzo[k]fluoranthene | 0.1 |
| 218-01-9 | chrysene | 0.01 |
| 53-70-3 | dibenz[a, h]anthracene | 0.1 |
| 193-39-5 | indeno[1,2,3-cd]pyrene | 0.1 |

[1] Source: Cal-EPA, 2005. Air Toxics Hot Spots Program Risk Assessment Guidelines, Part II Technical Support Document for Describing Available Cancer Potency Factors. Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. May 2005.

**Table 708-3: Toxicity Equivalency Factors for Carcinogenic Polyaromatic Hydrocarbons (cPAHs) that May be Required under WAC 173-340-708 (8)(e)(v)**

| CAS Number | Hazardous Substance | TEF (unitless)[1] |
|---|---|---|
| 205-82-3 | benzo(j)fluoranthene | 0.1 |
| 224-42-0 | dibenz[a, j]acridine | 0.1 |
| 226-36-8 | dibenz[a, h]acridine | 0.1 |
| 194-59-2 | 7H-dibenzo[c, g]carbazole | 1 |
| 192-65-4 | dibenzo[a, e]pyrene | 1 |
| 189-64-0 | dibenzo[a, h]pyrene | 10 |
| 189-55-9 | dibenzo[a, i]pyrene | 10 |
| 191-30-0 | dibenzo[a, l]pyrene | 10 |
| 3351-31-3 | 5-methylchrysene | 1 |
| 5522-43-0 | 1-nitropyrene | 0.1 |
| 57835-92-4 | 4-nitropyrene | 0.1 |
| 42397-64-8 | 1,6-dinitropyrene | 10 |
| 42397-65-9 | 1,8-dinitropyrene | 1 |
| 7496-02-8 | 6-nitrochrysene | 10 |

**Table 708-3: Toxicity Equivalency Factors for Carcinogenic Polyaromatic Hydrocarbons (cPAHs) that May be Required under WAC 173-340-708 (8)(e)(v)**

| CAS Number | Hazardous Substance | TEF (unitless)[1] |
|---|---|---|
| 607-57-8 | 2-nitrofluorene | 0.01 |
| 57-97-6 | 7,12-dimethylbenzan-thracene | 10 |
| 56-49-5 | 3-methylcholanthrene | 1 |
| 602-87-9 | 5-nitroacenaphthene | 0.01 |

[1] Source: Cal-EPA, 2005. Air Toxics Hot Spots Program Risk Assessment Guidelines, Part II Technical Support Document for Describing Available Cancer Potency Factors. Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. May 2005.

**Table 708-4: Toxicity Equivalency Factors for Dioxin-Like Polychlorinated Biphenyls (PCBs)**

| CAS Number | Hazardous Substance | TEF (unitless)[1] |
|---|---|---|
| | **Dioxin-Like PCBs** | |
| 32598-13-3 | 3,3',4,4'-Tetrachlorobiphenyl (PCB 77) | 0.0001 |
| 70362-50-4 | 3,4,4',5- Tetrachlorobiphenyl (PCB 81) | 0.0003 |
| 32598-14-4 | 2,3,3',4,4'-Pentachlorobiphenyl (PCB 105) | 0.00003 |
| 74472-37-0 | 2,3,4,4',5-Pentachlorobiphenyl (PCB 114) | 0.00003 |
| 31508-00-6 | 2,3',4,4',5-Pentachlorobiphenyl (PCB 118) | 0.00003 |
| 65510-44-3 | 2',3,4,4',5-Pentachlorobiphenyl (PCB 123) | 0.00003 |
| 57465-28-8 | 3,3',4,4',5-Pentachlorobiphenyl (PCB 126) | 0.1 |
| 38380-08-4 | 2,3,3',4,4',5-Hexachlorobiphenyl (PCB 156) | 0.00003 |
| 69782-90-7 | 2,3,3',4,4',5'-Hexachlorobiphenyl (PCB 157) | 0.00003 |
| 52663-72-6 | 2,3',4,4',5,5'-Hexachlorobiphenyl (PCB 167) | 0.00003 |
| 32774-16-6 | 3,3',4,4',5,5'-Hexachlorobiphenyl (PCB 169) | 0.03 |

## Table 708-4: Toxicity Equivalency Factors for Dioxin-Like Polychlorinated Biphenyls (PCBs)

| CAS Number | Hazardous Substance | TEF (unitless)[1] |
|---|---|---|
| 39635-31-9 | 2,3,3',4,4',5,5'-Heptachlorobiphenyl (PCB 189) | 0.00003 |

[1]Source: Van den Berg et al. 2006. The 2005 World Health Organization Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds. Toxicological Sciences 2006 93(2):223-241; doi:10.1093/toxsci/kfl055.

## Table 720-1
## Method A Cleanup Levels for Ground Water.[a]

| Hazardous Substance | CAS Number | Cleanup Level |
|---|---|---|
| Arsenic | 7440-38-2 | 5 ug/liter[b] |
| Benzene | 71-43-2 | 5 ug/liter[c] |
| Benzo(a)pyrene | 50-32-8 | 0.1 ug/liter[d] |
| Cadmium | 7440-43-9 | 5 ug/liter[e] |
| Chromium (Total) | 7440-47-3 | 50 ug/liter[f] |
| DDT | 50-29-3 | 0.3 ug/liter[g] |
| 1,2 Dichloroethane (EDC) | 107-06-2 | 5 ug/liter[h] |
| Ethylbenzene | 100-41-4 | 700 ug/liter[i] |
| Ethylene dibromide (EDB) | 106-93-4 | 0.01 ug/liter[j] |
| Gross Alpha Particle Activity | | 15 pCi/liter[k] |
| Gross Beta Particle Activity | | 4 mrem/yr[l] |
| Lead | 7439-92-1 | 15 ug/liter[m] |
| Lindane | 58-89-9 | 0.2 ug/liter[n] |
| Methylene chloride | 75-09-2 | 5 ug/liter[o] |
| Mercury | 7439-97-6 | 2 ug/liter[p] |
| MTBE | 1634-04-4 | 20 ug/liter[q] |
| Naphthalenes | 91-20-3 | 160 ug/liter[r] |
| PAHs (carcinogenic) | | See benzo(a)pyrene[d] |
| PCB mixtures | | 0.1 ug/liter[s] |
| Radium 226 and 228 | | 5 pCi/liter[t] |
| Radium 226 | | 3 pCi/liter[u] |
| Tetrachloroethylene | 127-18-4 | 5 ug/liter[v] |
| Toluene | 108-88-3 | 1,000 ug/liter[w] |
| Total Petroleum Hydrocarbons[x] | | |
| [Note: Must also test for and meet cleanup levels for other petroleum components—see footnotes!] | | |
| Gasoline Range Organics | | |
| Benzene present in ground water | | 800 ug/liter |
| No detectable benzene in ground water | | 1,000 ug/liter |
| Diesel Range Organics | | 500 ug/liter |
| Heavy Oils | | 500 ug/liter |
| Mineral Oil | | 500 ug/liter |
| 1,1,1 Trichloroethane | 71-55-6 | 200 ug/liter[y] |
| Trichloroethylene | 79-01-6 | 5 ug/liter[z] |
| Vinyl chloride | 75-01-4 | 0.2 ug/liter[aa] |
| Xylenes | 1330-20-7 | 1,000 ug/liter[bb] |

Footnotes:

**a** **Caution on misusing this table.** This table has been developed for specific purposes. It is intended to provide conservative cleanup levels for drinking water beneficial uses at sites undergoing routine cleanup actions or those sites with relatively few hazardous substances. This table may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in this table should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in this table do not necessarily mean the ground water must be restored to those levels at all sites. The level of restoration depends on the remedy selected under WAC 173-340-350 through 173-340-390.

**b** **Arsenic.** Cleanup level based on background concentrations for state of Washington.

**c** **Benzene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

**d** **Benzo(a)pyrene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61), adjusted to a 1 x $10^{-5}$ risk. If other carcinogenic PAHs are suspected of being present at the site, test for them and use this value as the total concentration that all carcinogenic PAHs must meet using the toxicity equivalency methodology in WAC 173-340-708(8).

**e** **Cadmium.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.62).

**f** **Chromium (Total).** Cleanup level based on concentration derived using Equation 720-1 for hexavalent chromium. This is a total value for chromium III and chromium VI. If just chromium III is present at the site, a cleanup level of 100 ug/l may be used (based on WAC 246-290-310 and 40 C.F.R. 141.62).

**g** **DDT (dichlorodiphenyltrichloroethane).** Cleanup levels based on concentration derived using Equation 720-2.

**h** **1,2 Dichloroethane (ethylene dichloride or EDC).** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

**i** **Ethylbenzene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

**j** **Ethylene dibromide (1,2 dibromoethane or EDB).** Cleanup level based on concentration derived using Equation 720-2, adjusted for the practical quantitation limit.

**k** **Gross Alpha Particle Activity, excluding uranium.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.15).

**l** **Gross Beta Particle Activity, including gamma activity.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.15).

**m** **Lead.** Cleanup level based on applicable state and federal law (40 C.F.R. 141.80).

**n** **Lindane.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

**o** **Methylene chloride (dichloromethane).** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

**p** **Mercury.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.62).

**q** **Methyl tertiary-butyl ether (MTBE).** Cleanup level based on federal drinking water advisory level (EPA-822-F-97-009, December 1997).

**r** **Naphthalenes.** Cleanup level based on concentration derived using Equation 720-1. This is a total value for naphthalene, 1-methyl naphthalene and 2-methyl naphthalene.

**s** **PCB mixtures.** Cleanup level based on concentration derived using Equation 720-2, adjusted for the practical quantitation limit. This cleanup level is a total value for all PCBs.

**t** **Radium 226 and 228.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.15).

**u** **Radium 226.** Cleanup level based on applicable state law (WAC 246-290-310).

**v** **Tetrachloroethylene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

**w** **Toluene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

**x** **Total Petroleum Hydrocarbons (TPH).** TPH cleanup values have been provided for the most common petroleum products encountered at contaminated sites. Where there is a mixture of products or the product composition is unknown, samples must be tested using both the NWTPH-Gx and NWTPH-Dx methods and the lowest applicable TPH cleanup level must be met.

- **Gasoline range organics** means organic compounds measured using method NWTPH-Gx. Examples are aviation and automotive gasoline. The cleanup level is based on protection of ground water for noncarcinogenic effects during drinking water use. Two cleanup levels are provided. The higher value is based on the assumption that no benzene is present in the ground water sample. If any detectable amount of benzene is present in the ground water sample, then the lower TPH cleanup level must be used. No interpolation between these cleanup levels is allowed. The ground water cleanup level for any carcinogenic components of the petroleum [such as benzene, EDB and EDC] and any noncarcinogenic components [such as ethylbenzene, toluene, xylenes and MTBE], if present at the site, must also be met. See Table 830-1 for the minimum testing requirements for gasoline releases.
- **Diesel range organics** means organic compounds measured using NWTPH-Dx. Examples are diesel, kerosene, and #1 and #2 heating oil. The cleanup level is based on protection from noncarcinogenic effects during drinking water use. The ground water cleanup level for any carcinogenic components of the petroleum [such as benzene and PAHs] and any noncarcinogenic components [such as ethylbenzene, toluene, xylenes and naphthalenes], if present at the site, must also be met. See Table 830-1 for the minimum testing requirements for diesel releases.
- **Heavy oils** means organic compounds measured using NWTPH-Dx. Examples are #6 fuel oil, bunker C oil, hydraulic oil and waste oil. The cleanup level is based on protection from noncarcinogenic effects during drinking water use, assuming a product composition similar to diesel fuel. The ground water cleanup level for any carcinogenic components of the petroleum [such as benzene, PAHs and PCBs] and any noncarcinogenic components [such as ethylbenzene, toluene, xylenes and naphthalenes], if present at the site, must also be met. See Table 830-1 for the minimum testing requirements for heavy oil releases.
- **Mineral oil** means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors measured using NWTPH-Dx. The cleanup level is based on protection from noncarcinogenic effects during drinking water use. Sites using this cleanup level must analyze ground water samples for PCBs and meet the PCB cleanup level in this table unless it can be demonstrated that: (1) The release originated from an electrical device manufactured after July 1, 1979; or (2) oil containing PCBs was never used in the equipment suspected as the source of the release; or (3) it can be documented that the oil released was recently tested and did not contain PCBs. Method B (or Method C, if applicable) must be used for releases of oils containing greater than 50 ppm PCBs. See Table 830-1 for the minimum testing requirements for mineral oil releases.

**y** **1,1,1 Trichloroethane.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

**z** **Trichloroethylene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

**aa** **Vinyl chloride.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61), adjusted to a 1 x $10^{-5}$ risk.

**bb** **Xylenes.** Cleanup level based on xylene not exceeding the maximum allowed cleanup level in this table for total petroleum hydrocarbons and on prevention of adverse aesthetic characteristics. This is a total value for all xylenes.

**Table 740-1**
**Method A Soil Cleanup Levels for Unrestricted Land Uses.[a]**

| Hazardous Substance | CAS Number | Cleanup Level |
|---|---|---|
| Arsenic | 7440-38-2 | 20 mg/kg[b] |
| Benzene | 71-43-2 | 0.03 mg/kg[c] |
| Benzo(a)pyrene | 50-32-8 | 0.1 mg/kg[d] |
| Cadmium | 7440-43-9 | 2 mg/kg[e] |
| Chromium | | |
| Chromium VI | 18540-29-9 | 19 mg/kg[f1] |
| Chromium III | 16065-83-1 | 2,000 mg/kg[f2] |
| DDT | 50-29-3 | 3 mg/kg[g] |
| Ethylbenzene | 100-41-4 | 6 mg/kg[h] |
| Ethylene dibromide (EDB) | 106-93-4 | 0.005 mg/kg[i] |
| Lead | 7439-92-1 | 250 mg/kg[j] |
| Lindane | 58-89-9 | 0.01 mg/kg[k] |
| Methylene chloride | 75-09-2 | 0.02 mg/kg[l] |
| Mercury (inorganic) | 7439-97-6 | 2 mg/kg[m] |
| MTBE | 1634-04-4 | 0.1 mg/kg[n] |
| Naphthalenes | 91-20-3 | 5 mg/kg[o] |
| PAHs (carcinogenic) | | See benzo(a)pyrene[d] |
| PCB Mixtures | | 1 mg/kg[p] |
| Tetrachloroethylene | 127-18-4 | 0.05 mg/kg[q] |
| Toluene | 108-88-3 | 7 mg/kg[r] |
| Total Petroleum Hydrocarbons[s] | | |
| [Note: Must also test for and meet cleanup levels for other petroleum components—see footnotes!] | | |
| Gasoline Range Organics | | |
| Gasoline mixtures without benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture | | 100 mg/kg |
| All other gasoline mixtures | | 30 mg/kg |
| Diesel Range Organics | | 2,000 mg/kg |
| Heavy Oils | | 2,000 mg/kg |
| Mineral Oil | | 4,000 mg/kg |
| 1,1,1 Trichloroethane | 71-55-6 | 2 mg/kg[t] |
| Trichloroethylene | 79-01-6 | 0.03 mg/kg[u] |
| Xylenes | 1330-20-7 | 9 mg/kg[v] |

Footnotes:

**a** **Caution on misusing this table.** This table has been developed for specific purposes. It is intended to provide conservative cleanup levels for sites undergoing routine cleanup actions or for sites with relatively few hazardous substances, and the site qualifies under WAC 173-340-7491 for an exclusion from conducting a simplified or site-specific terrestrial ecological evaluation, or it can be demonstrated using a terrestrial ecological evaluation under WAC 173-340-7492 or 173-340-7493 that the values in this table are ecologically protective for the site. This table may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in this table should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in this table do not necessarily mean the soil must be restored to these levels at a site. The

level of restoration depends on the remedy selected under WAC 173-340-350 through 173-340-390.

b **Arsenic.** Cleanup level based on direct contact using Equation 740-2 and protection of ground water for drinking water use using the procedures in WAC 173-340-747(4), adjusted for natural background for soil.

c **Benzene.** Cleanup level based on protection of ground water for drinking water use, using the procedures in WAC 173-340-747 (4) and (6).

d **Benzo(a)pyrene.** Cleanup level based on direct contact using Equation 740-2. If other carcinogenic PAHs are suspected of being present at the site, test for them and use this value as the total concentration that all carcinogenic PAHs must meet using the toxicity equivalency methodology in WAC 173-340-708(8).

e **Cadmium.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit for soil.

f1 **Chromium VI.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

f2 **Chromium III.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). Chromium VI must also be tested for and the cleanup level met when present at a site.

g **DDT (dichlorodiphenyltrichloroethane).** Cleanup level based on direct contact using Equation 740-2.

h **Ethylbenzene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

i **Ethylene dibromide (1,2 dibromoethane or EDB).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit for soil.

j **Lead.** Cleanup level based on preventing unacceptable blood lead levels.

k **Lindane.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit.

l **Methylene chloride (dichloromethane).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

m **Mercury.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

n **Methyl tertiary-butyl ether (MTBE).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

o **Naphthalenes.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). This is a total value for naphthalene, 1-methyl naphthalene and 2-methyl naphthalene.

p **PCB Mixtures.** Cleanup level based on applicable federal law (40 C.F.R. 761.61). This is a total value for all PCBs.

q **Tetrachloroethylene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

r **Toluene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

s **Total Petroleum Hydrocarbons (TPH).** TPH cleanup values have been provided for the most common petroleum products encountered at contaminated sites. Where there is a mixture of products or the product composition is unknown, samples must be tested using both the NWTPH-Gx and NWTPH-Dx methods and the lowest applicable TPH cleanup level must be met.

- **Gasoline range organics** means organic compounds measured using method NWTPH-Gx. Examples are aviation and automotive gasoline. The cleanup level is based on protection of ground water for noncarcinogenic effects during drinking water use using the procedures described in WAC 173-340-747(6). Two cleanup levels are provided. The lower value of 30 mg/kg can be used at any site. When using this lower value, the soil must also be tested for and meet the benzene soil cleanup level. The higher value of 100 mg/kg can only be used if the soil is tested and found to contain no benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture. No interpolation between these cleanup levels is allowed. In both cases, the soil cleanup level for any other carcinogenic components of the petroleum [such as EDB and EDC], if present at the site, must also be met. Also, in both cases, soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes, naphthalene, and MTBE], also must be met if these substances are found to exceed ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for gasoline releases.
- **Diesel range organics** means organic compounds measured using method NWTPH-Dx. Examples are diesel, kerosene, and #1 and #2 heating oil. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10). The soil cleanup level for any carcinogenic components of the petroleum [such as benzene and PAHs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if these substances are found to exceed the ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for diesel releases.
- **Heavy oils** means organic compounds measured using NWTPH-Dx. Examples are #6 fuel oil, bunker C oil, hydraulic oil and waste oil. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10) and assuming a product composition similar to diesel fuel. The soil cleanup level for any carcinogenic components of the petroleum [such as benzene, PAHs and PCBs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if found to exceed the ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for heavy oil releases.
- **Mineral oil** means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors, measured using NWTPH-Dx. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10). Sites using this cleanup level must also analyze soil samples and meet the soil cleanup level for PCBs, unless it can be demonstrated that: (1) The release originated from an electrical device that was manufactured after July 1, 1979; or (2) oil containing PCBs was never used in the equipment suspected as the source of the release; or (3) it can be documented that the oil released was recently tested and did not contain PCBs. Method B must be used for releases of oils containing greater than 50 ppm PCBs. See Table 830-1 for the minimum testing requirements for mineral oil releases.

t **1,1,1 Trichloroethane.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

u **Trichloroethylene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

v **Xylenes.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). This is a total value for all xylenes.

## Table 745-1
## Method A Soil Cleanup Levels for Industrial Properties.[a]

| Hazardous Substance | CAS Number | Cleanup Level |
|---|---|---|
| Arsenic | 7440-38-2 | 20 mg/kg[b] |
| Benzene | 71-43-2 | 0.03 mg/kg[c] |
| Benzo(a)pyrene | 50-32-8 | 2 mg/kg[d] |
| Cadmium | 7440-43-9 | 2 mg/kg[e] |
| Chromium | | |
| Chromium VI | 18540-29-9 | 19 mg/kg[f1] |

| Hazardous Substance | CAS Number | Cleanup Level |
|---|---|---|
| Chromium III | 16065-83-1 | 2,000 mg/kg[f2] |
| DDT | 50-29-3 | 4 mg/kg[g] |
| Ethylbenzene | 100-41-4 | 6 mg/kg[h] |
| Ethylene dibromide (EDB) | 106-93-4 | 0.005 mg/kg[i] |
| Lead | 7439-92-1 | 1,000 mg/kg[j] |
| Lindane | 58-89-9 | 0.01 mg/kg[k] |
| Methylene chloride | 75-09-2 | 0.02 mg/kg[l] |
| Mercury (inorganic) | 7439-97-6 | 2 mg/kg[m] |
| MTBE | 1634-04-4 | 0.1 mg/kg[n] |
| Naphthalene | 91-20-3 | 5 mg/kg[o] |
| PAHs (carcinogenic) | | See benzo(a)pyrene[d] |
| PCB Mixtures | | 10 mg/kg[p] |
| Tetrachloroethylene | 127-18-4 | 0.05 mg/kg[q] |
| Toluene | 108-88-3 | 7 mg/kg[r] |
| Total Petroleum Hydrocarbons[s] | | |
| [Note: Must also test for and meet cleanup levels for other petroleum components—see footnotes!] | | |
| Gasoline Range Organics | | |
| Gasoline mixtures without benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture | | 100 mg/kg |
| All other gasoline mixtures | | 30 mg/kg |
| Diesel Range Organics | | 2,000 mg/kg |
| Heavy Oils | | 2,000 mg/kg |
| Mineral Oil | | 4,000 mg/kg |
| 1,1,1 Trichloroethane | 71-55-6 | 2 mg/kg[t] |
| Trichloroethylene | 79-01-6 | 0.03 mg/kg[u] |
| Xylenes | 1330-20-7 | 9 mg/kg[v] |

Footnotes:

**a** **Caution on misusing this table.** This table has been developed for specific purposes. It is intended to provide conservative cleanup levels for sites undergoing routine cleanup actions or for industrial properties with relatively few hazardous substances, and the site qualifies under WAC 173-340-7491 for an exclusion from conducting a simplified or site-specific terrestrial ecological evaluation, or it can be demonstrated using a terrestrial ecological evaluation under WAC 173-340-7492 or 173-340-7493 that the values in this table are ecologically protective for the site. This table may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in this table should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in this table do not necessarily mean the soil must be restored to these levels at a site. The level of restoration depends on the remedy selected under WAC 173-340-350 through 173-340-390.

**b** **Arsenic.** Cleanup level based on protection of ground water for drinking water use, using the procedures in WAC 173-340-747(4), adjusted for natural background for soil.

**c** **Benzene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747 (4) and (6).

**d** **Benzo(a)pyrene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). If other carcinogenic PAHs are suspected of being present at the site, test for them and use this value as the total concentration that all carcinogenic PAHs must meet using the toxicity equivalency methodology in WAC 173-340-708(8).

**e** **Cadmium.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit for soil.

**f1** **Chromium VI.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

**f2** **Chromium III.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). Chromium VI must also be tested for and the cleanup level met when present at a site.

**g** **DDT (dichlorodiphenyltrichloroethane).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

**h** **Ethylbenzene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

**i** **Ethylene dibromide (1,2 dibromoethane or EDB).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit for soil.

**j** **Lead.** Cleanup level based on direct contact.

**k** **Lindane.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit.

**l** **Methylene chloride (dichloromethane).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

**m** **Mercury.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

**n** **Methyl tertiary-butyl ether (MTBE).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

**o** **Naphthalenes.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). This is a total value for naphthalene, 1-methyl naphthalene and 2-methyl naphthalene.

**p** **PCB Mixtures.** Cleanup level based on applicable federal law (40 C.F.R. 761.61). This is a total value for all PCBs. This value may be used only if the PCB contaminated soils are capped and the cap maintained as required by 40 C.F.R. 761.61. If this condition cannot be met, the value in Table 740-1 must be used.

**q** **Tetrachloroethylene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

**r** **Toluene.** Cleanup level based on protection of ground water for drinking water use, using the procedure described in WAC 173-340-747(4).

**s** **Total Petroleum Hydrocarbons (TPH).** TPH cleanup values have been provided for the most common petroleum products encountered at contaminated sites. Where there is a mixture of products or the product composition is unknown, samples must be tested using both the NWTPH-Gx and NWTPH-Dx methods and the lowest applicable TPH cleanup level must be met.

- **Gasoline range organics** means organic compounds measured using method NWTPH-Gx. Examples are aviation and automotive gasoline. The cleanup level is based on protection of ground water for noncarcinogenic effects during drinking water use using the procedures described in WAC 173-340-747(6). Two cleanup levels are provided. The lower value of 30 mg/kg can be used at any site. When using this lower value, the soil must also be tested for and meet the benzene soil cleanup level. The higher value of 100 mg/kg can only be used if the soil is tested and found to contain no benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture. No interpolation between these cleanup levels is allowed. In both cases, the soil cleanup level for any other carcinogenic components of the petroleum [such as EDB and EDC], if present at the site, must also be met. Also, in both cases, soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes, naphthalene, and MTBE], also must be met if these substances are

found to exceed ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for gasoline releases.

- **Diesel range organics** means organic compounds measured using method NWTPH-Dx. Examples are diesel, kerosene, and #1 and #2 heating oil. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10). The soil cleanup level for any carcinogenic components of the petroleum [such as benzene, and PAHs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if these substances are found to exceed the ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for diesel releases.
- **Heavy oils** means organic compounds measured using NWTPH-Dx. Examples are #6 fuel oil, bunker C oil, hydraulic oil and waste oil. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10) and assuming a product composition similar to diesel fuel. The soil cleanup level for any carcinogenic components of the petroleum [such as benzene, PAHs and PCBs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if found to exceed the ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for heavy oil releases.
- **Mineral oil** means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors, measured using NWTPH-Dx. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10). Sites using this cleanup level must also analyze soil samples and meet the soil cleanup level for PCBs, unless it can be demonstrated that: (1) The release originated from an electrical device that was manufactured after July 1, 1979; or (2) oil containing PCBs was never used in the equipment suspected as the source of the release; or (3) it can be documented that the oil released was recently tested and did not contain PCBs. Method B or C must be used for releases of oils containing greater than 50 ppm PCBs. See Table 830-1 for the minimum testing requirements for mineral oil releases.

**t** **1,1,1 Trichloroethane.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

**u** **Trichloroethylene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

**v** **Xylenes.** Cleanup level based on protection of ground water for drinking water use, using the procedure in WAC 173-340-747(4). This is a total value for all xylenes.

## Table 747-1
## Soil Organic Carbon-Water Partitioning Coefficient ($K_{oc}$) Values: Nonionizing Organics.

| Hazardous Substance | $K_{oc}$ (ml/g) |
|---|---|
| ACENAPHTHENE | 4,898 |
| ALDRIN | 48,685 |
| ANTHRACENE | 23,493 |
| BENZ(a)ANTHRACENE | 357,537 |
| BENZENE | 62 |
| BENZO(a)PYRENE | 968,774 |
| BIS(2-CHLOROETHYL)ETHER | 76 |
| BIS(2-ETHYLHEXYL)PHTHALATE | 111,123 |
| BROMOFORM | 126 |
| BUTYL BENZYL PHTHALATE | 13,746 |
| CARBON TETRACHLORIDE | 152 |
| CHLORDANE | 51,310 |
| CHLOROBENZENE | 224 |
| CHLOROFORM | 53 |
| DDD | 45,800 |
| DDE | 86,405 |
| DDT | 677,934 |
| DIBENZO(a,h)ANTHRACENE | 1,789,101 |
| 1,2-DICHLOROBENZENE (o) | 379 |
| 1,4-DICHLOROBENZENE (p) | 616 |
| DICHLOROETHANE-1,1 | 53 |
| DICHLOROETHANE-1,2 | 38 |
| DICHLOROETHYLENE-1,1 | 65 |
| trans-1,2 DICHLOROETHYLENE | 38 |
| DICHLOROPROPANE-1,2 | 47 |
| DICHLOROPROPENE-1,3 | 27 |
| DIELDRIN | 25,546 |
| DIETHYL PHTHALATE | 82 |
| DI-N-BUTYLPHTHALATE | 1,567 |
| EDB | 66 |
| ENDRIN | 10,811 |
| ENDOSULFAN | 2,040 |
| ETHYL BENZENE | 204 |
| FLUORANTHENE | 49,096 |
| FLUORENE | 7,707 |
| HEPTACHLOR | 9,528 |
| HEXACHLOROBENZENE | 80,000 |
| α-HCH (α-BHC) | 1,762 |
| β-HCH (β-BHC) | 2,139 |
| γ-HCH (LINDANE) | 1,352 |
| MTBE | 11 |
| METHOXYCHLOR | 80,000 |
| METHYL BROMIDE | 9 |
| METHYL CHLORIDE | 6 |
| METHYLENE CHLORIDE | 10 |
| NAPHTHALENE | 1,191 |
| NITROBENZENE | 119 |
| PCB-Arochlor 1016 | 107,285 |
| PCB-Arochlor 1260 | 822,422 |
| PENTACHLOROBENZENE | 32,148 |
| PYRENE | 67,992 |
| STYRENE | 912 |
| 1,1,2,2,-TETRACHLOROETHANE | 79 |
| TETRACHLOROETHYLENE | 265 |
| TOLUENE | 140 |
| TOXAPHENE | 95,816 |
| 1,2,4-TRICHLOROBENZENE | 1,659 |
| TRICHLOROETHANE -1,1,1 | 135 |

| Hazardous Substance | $K_{oc}$ (ml/g) |
|---|---|
| TRICHLOROETHANE-1,1,2 | 75 |
| TRICHLOROETHYLENE | 94 |
| o-XYLENE | 241 |
| m-XYLENE | 196 |
| p-XYLENE | 311 |

**Sources:** Except as noted below, the source of the $K_{oc}$ values is the 1996 *EPA Soil Screening Guidance: Technical Background Document*. The values obtained from this document represent the geometric mean of a survey of values published in the scientific literature. Sample populations ranged from 1-65. EDB value from *ATSDR Toxicological Profile* (TP 91/13). MTBE value from *USGS Final Draft Report on Fuel Oxygenates* (March 1996). PCB-Arochlor values from 1994 *EPA Draft Soil Screening Guidance*.

**Table 747-2**
**Predicted Soil Organic Carbon-Water Partitioning Coefficient ($K_{oc}$) as a Function of pH: Ionizing Organics.**

| Hazardous Substance | $K_{oc}$ Value (ml/g) | | |
|---|---|---|---|
| | pH = 4.9 | pH = 6.8 | pH = 8.0 |
| Benzoic acid | 5.5 | 0.6 | 0.5 |
| 2-Chlorophenol | 398 | 388 | 286 |
| 2-4-Dichlorophenol | 159 | 147 | 72 |
| 2-4-Dinitrophenol | 0.03 | 0.01 | 0.01 |
| Pentachlorophenol | 9,055 | 592 | 410 |
| 2,3,4,5-Tetrachlorophenol | 17,304 | 4,742 | 458 |
| 2,3,4,6-Tetrachlorophenol | 4,454 | 280 | 105 |

**Table 747-2**
**Predicted Soil Organic Carbon-Water Partitioning Coefficient ($K_{oc}$) as a Function of pH: Ionizing Organics.**

| Hazardous Substance | $K_{oc}$ Value (ml/g) | | |
|---|---|---|---|
| 2,4,5-Trichlorophenol | 2,385 | 1,597 | 298 |
| 2,4,6-Trichlorophenol | 1,040 | 381 | 131 |

**Source:** 1996 *EPA Soil Screening Guidance: Technical Background Document*. The predicted $K_{oc}$ values in this table were derived using a relationship from thermodynamic equilibrium considerations to predict the total sorption of an ionizable organic compound from the partitioning of its ionized and neutral forms.

**Table 747-3**
**Metals Distribution Coefficients ($K_d$).**

| Hazardous Substance | $K_d$ (L/kg) |
|---|---|
| Arsenic | 29 |
| Cadmium | 6.7 |
| Total Chromium | 1,000 |
| Chromium VI | 19 |
| Copper | 22 |
| Mercury | 52 |
| Nickel | 65 |
| Lead | 10,000 |
| Selenium | 5 |
| Zinc | 62 |

**Source:** Multiple sources compiled by the department of ecology.

**Table 747-4**
**Petroleum EC Fraction Physical/Chemical Values.**

| Fuel Fraction | Equivalent Carbon Number[1] | Water Solubility[2] (mg/L) | Mol. Wt.[3] (g/mol) | Henry's Constant[4] (cc/cc) | GFW[5] (mg/mol) | Density[6] (mg/l) | Soil Organic Carbon-Water Partitioning Coefficient $K_{oc}$[7] (L/kg) |
|---|---|---|---|---|---|---|---|
| **ALIPHATICS** | | | | | | | |
| **EC 5 - 6** | 5.5 | 36.0 | 81.0 | 33.0 | 81,000 | 670,000 | 800 |
| **EC > 6 - 8** | 7.0 | 5.4 | 100.0 | 50.0 | 100,000 | 700,000 | 3,800 |
| **EC > 8 - 10** | 9.0 | 0.43 | 130.0 | 80.0 | 130,000 | 730,000 | 30,200 |
| **EC > 10 - 12** | 11.0 | 0.034 | 160.0 | 120.0 | 160,000 | 750,000 | 234,000 |
| **EC > 12 - 16** | 14.0 | 7.6E-04 | 200.0 | 520.0 | 200,000 | 770,000 | 5.37E+06 |
| **EC > 16 - 21** | 19.0 | 1.3E-06 | 270.0 | 4,900 | 270,000 | 780,000 | 9.55E+09 |
| **EC > 21 - 34** | 28.0 | 1.5E-11 | 400.0 | 100,000 | 400,000 | 790,000 | 1.07E+10 |
| **AROMATICS** | | | | | | | |
| **EC > 8 - 10** | 9.0 | 65.0 | 120.0 | 0.48 | 120,000 | 870,000 | 1,580 |
| **EC > 10 - 12** | 11.0 | 25.0 | 130.0 | 0.14 | 130,000 | 900,000 | 2,510 |
| **EC > 12 - 16** | 14.0 | 5.8 | 150.0 | 0.053 | 150,000 | 1,000,000 | 5,010 |
| **EC > 16 - 21** | 19.0 | 0.51 | 190.0 | 0.013 | 190,000 | 1,160,000 | 15,800 |
| **EC > 21 - 34** | 28.0 | 6.6E-03 | 240.0 | 6.7E-04 | 240,000 | 1,300,000 | 126,000 |
| **TPH COMPONENTS** | | | | | | | |
| **Benzene** | 6.5 | 1,750 | 78.0 | 0.228 | 78,000 | 876,500 | 62.0 |
| **Toluene** | 7.6 | 526.0 | 92.0 | 0.272 | 92,000 | 866,900 | 140.0 |
| **Ethylbenzene** | 8.5 | 169.0 | 106.0 | 0.323 | 106,000 | 867,000 | 204.0 |
| **Total Xylenes[8] (average of 3)** | 8.67 | 171.0 | 106.0 | 0.279 | 106,000 | 875,170 | 233.0 |
| **n-Hexane[9]** | 6.0 | 9.5 | 86.0 | 74.0 | 86,000 | 659,370 | 3,410 |

| Fuel Fraction | Equivalent Carbon Number[1] | Water Solubility[2] (mg/L) | Mol. Wt.[3] (g/mol) | Henry's Constant[4] (cc/cc) | GFW[5] (mg/mol) | Density[6] (mg/l) | Soil Organic Carbon-Water Partitioning Coefficient $K_{oc}$[7] (L/kg) |
|---|---|---|---|---|---|---|---|
| **MTBE[10]** | | 50,000 | 88.0 | 0.018 | 88,000 | 744,000 | 10.9 |
| **Naphthalenes** | 11.69 | 31.0 | 128.0 | 0.0198 | 128,000 | 1,145,000 | 1,191 |

**Sources:**

**1** **Equivalent Carbon Number.** Gustafson, J.B. et al., *Selection of Representative TPH Fractions Based on Fate and Transport Considerations. Total Petroleum Hydrocarbon Criteria Working Group Series*, Volume 3 (1997) [hereinafter *Criteria Working Group*].

**2** **Water Solubility.** For aliphatics and aromatics EC groups, *Criteria Working Group.* For TPH components except n-hexane and MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document*.

**3** **Molecular Weight.** *Criteria Working Group.*

**4** **Henry's Constant.** For aliphatics and aromatics EC groups, *Criteria Working Group.* For TPH components except n-hexane and MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document*.

**5** **Gram Formula Weight (GFW).** Based on 1000 x Molecular Weight.

**6** **Density.** For aliphatics and aromatics EC groups, based on correlation between equivalent carbon number and data on densities of individual hazardous substances provided in *Criteria Working Group.* For TPH components except n-hexane and MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document.*

**7** **Soil Organic Carbon-Water Partitioning Coefficient.** For aliphatics and aromatics EC groups, *Criteria Working Group.* For TPH components except n-hexane and MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document.*

**8** **Total Xylenes.** Values for total xylenes are a weighted average of m, o and p xylene based on gasoline composition data from the *Criteria Working Group* (m= 51% of total xylene; o= 28% of total xylene; and p=21% of total xylene).

**9** **n-Hexane.** For values other than density, *Criteria Working Group*. For the density value, *Hawley's Condensed Chemical Dictionary,* 11th ed., revised by N. Irving Sax and Richard J. Lewis (1987).

**10** **MTBE.** *USGS Final Report on Fuel Oxygenates* (March 1996).

### Table 747-5
### Residual Saturation Screening Levels for TPH.

| Fuel | Screening Level (mg/kg) |
|---|---|
| Weathered Gasoline | 1,000 |
| Middle Distillates (e.g., Diesel No. 2 Fuel Oil) | 2,000 |
| Heavy Fuel Oils (e.g., No. 6 Fuel Oil) | 2,000 |
| Mineral Oil | 4,000 |
| Unknown Composition or Type | 1,000 |

**Note:** The residual saturation screening levels for petroleum hydrocarbons specified in Table 747-5 are based on coarse sand and gravelly soils; however, they may be used for any soil type. Screening levels are based on the presumption that there are no preferential pathways for NAPL to flow downward to ground water. If such pathways exist, more stringent residual saturation screening levels may need to be established.

### Table 749-1
### Simplified Terrestrial Ecological Evaluation - Exposure Analysis Procedure under WAC 173-340-7492 (2)(a)(ii).[a]

Estimate the area of contiguous (connected) undeveloped land on the site or within 500 feet of any area of the site to the nearest 1/2 acre (1/4 acre if the area is less than 0.5 acre). "Undeveloped land" means land that is not covered by existing buildings, roads, paved areas or other barriers that will prevent wildlife from feeding on plants, earthworms, insects or other food in or on the soil.

| | |
|---|---|
| 1) From the table below, find the number of points corresponding to the area and enter this number in the box to the right. | |
| Area (acres) — Points<br>0.25 or less — 4<br>0.5 — 5<br>1.0 — 6<br>1.5 — 7<br>2.0 — 8<br>2.5 — 9<br>3.0 — 10<br>3.5 — 11<br>4.0 or more — 12 | |
| 2) Is this an industrial or commercial property? See WAC 173-340-7490 (3)(c). If yes, enter a score of 3 in the box to the right. If no, enter a score of 1. | |
| 3) Enter a score in the box to the right for the habitat quality of the site, using the rating system shown below[b]. (High = 1, Intermediate = 2, Low = 3) | |
| 4) Is the undeveloped land likely to attract wildlife? If yes, enter a score of 1 in the box to the right. If no, enter a score of 2. See footnote c. | |
| 5) Are there any of the following soil contaminants present:<br>Chlorinated dibenzo-p-dioxins/dibenzofurans, PCB mixtures, DDT, DDE, DDD, aldrin, chlordane, dieldrin, endosulfan, endrin, heptachlor, benzene hexachloride, toxaphene, hexachlorobenzene, pentachlorophenol, pentachlorobenzene? If yes, enter a score of 1 in the box to the right. If no, enter a score of 4. | |

| | |
|---|---|
| 6) Add the numbers in the boxes on lines 2 through 5 and enter this number in the box to the right. If this number is larger than the number in the box on line 1, the simplified terrestrial ecological evaluation may be ended under WAC 173-340-7492 (2)(a)(ii). | |

**Footnotes:**

**a** It is expected that this habitat evaluation will be undertaken by an experienced field biologist. If this is not the case, enter a conservative score (1) for questions 3 and 4.

**b** Habitat rating system. Rate the quality of the habitat as high, intermediate or low based on your professional judgment as a field biologist. The following are suggested factors to consider in making this evaluation:

Low: Early successional vegetative stands; vegetation predominantly noxious, nonnative, exotic plant species or weeds. Areas severely disturbed by human activity, including intensively cultivated croplands. Areas isolated from other habitat used by wildlife.

High: Area is ecologically significant for one or more of the following reasons: Late-successional native plant communities present; relatively high species diversity; used by an uncommon or rare species; priority habitat (as defined by the Washington department of fish and wildlife); part of a larger area of habitat where size or fragmentation may be important for the retention of some species.

Intermediate: Area does not rate as either high or low.

**c** Indicate "yes" if the area attracts wildlife or is likely to do so. Examples: Birds frequently visit the area to feed; evidence of high use by mammals (tracks, scat, etc.); habitat "island" in an industrial area; unusual features of an area that make it important for feeding animals; heavy use during seasonal migrations.

## Table 749-2
## Priority Contaminants of Ecological Concern for Sites that Qualify for the Simplified Terrestrial Ecological Evaluation Procedure.[a]

| Priority contaminant | Soil concentration (mg/kg) | |
|---|---|---|
| | Unrestricted land use[b] | Industrial or commercial site |
| **METALS[c]** | | |
| Antimony | See note d | See note d |
| Arsenic III | 20 mg/kg | 20 mg/kg |
| Arsenic V | 95 mg/kg | 260 mg/kg |
| Barium | 1,250 mg/kg | 1,320 mg/kg |
| Beryllium | 25 mg/kg | See note d |
| Cadmium | 25 mg/kg | 36 mg/kg |
| Chromium (total) | 42 mg/kg | 135 mg/kg |
| Cobalt | See note d | See note d |
| Copper | 100 mg/kg | 550 mg/kg |
| Lead | 220 mg/kg | 220 mg/kg |
| Magnesium | See note d | See note d |
| Manganese | See note d | 23,500 mg/kg |
| Mercury, inorganic | 9 mg/kg | 9 mg/kg |
| Mercury, organic | 0.7 mg/kg | 0.7 mg/kg |
| Molybdenum | See note d | 71 mg/kg |
| Nickel | 100 mg/kg | 1,850 mg/kg |
| Selenium | 0.8 mg/kg | 0.8 mg/kg |
| Silver | See note d | See note d |
| Tin | 275 mg/kg | See note d |
| Vanadium | 26 mg/kg | See note d |
| Zinc | 270 mg/kg | 570 mg/kg |
| **PESTICIDES** | | |
| Aldicarb/aldicarb sulfone (total) | See note d | See note d |
| Aldrin | 0.17 mg/kg | 0.17 mg/kg |
| Benzene hexachloride (including lindane) | 10 mg/kg | 10 mg/kg |
| Carbofuran | See note d | See note d |
| Chlordane | 1 mg/kg | 7 mg/kg |
| Chlorpyrifos/chlorpyrifos-methyl (total) | See note d | See note d |
| DDT/DDD/DDE (total) | 1 mg/kg | 1 mg/kg |
| Dieldrin | 0.17 mg/kg | 0.17 mg/kg |
| Endosulfan | See note d | See note d |
| Endrin | 0.4 mg/kg | 0.4 mg/kg |
| Heptachlor/heptachlor epoxide (total) | 0.6 mg/kg | 0.6 mg/kg |
| Hexachlorobenzene | 31 mg/kg | 31 mg/kg |
| Parathion/methyl parathion (total) | See note d | See note d |
| Pentachlorophenol | 11 mg/kg | 11 mg/kg |
| Toxaphene | See note d | See note d |
| **OTHER CHLORINATED ORGANICS** | | |
| Chlorinated dibenzofurans (total) | 3E-06 mg/kg | 3E-06 mg/kg |
| Chlorinated dibenzo-p-dioxins (total) | 5E-06 mg/kg | 5E-06 mg/kg |
| Hexachlorophene | See note d | See note d |
| PCB mixtures (total) | 2 mg/kg | 2 mg/kg |
| Pentachlorobenzene | 168 mg/kg | See note d |
| **OTHER NONCHLORINATED ORGANICS** | | |
| Acenaphthene | See note d | See note d |
| Benzo(a)pyrene | 30 mg/kg | 300 mg/kg |
| Bis (2-ethylhexyl) phthalate | See note d | See note d |
| Di-n-butyl phthalate | 200 mg/kg | See note d |
| **PETROLEUM** | | |
| Gasoline Range Organics | 200 mg/kg | 12,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface. |
| Diesel Range Organics | 460 mg/kg | 15,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface. |

**Footnotes:**

**a** Caution on misusing these chemical concentration numbers. These values have been developed for use at sites where a site-specific terrestrial ecological evaluation is not required. They are not intended to be protective of terrestrial ecological receptors at every site. Exceedances of the values in this table do not necessarily trigger requirements for cleanup action under this chapter. The table is not intended for purposes such as evaluating sludges or wastes.

This list does not imply that sampling must be conducted for each of these chemicals at every site. Sampling should be conducted for those chemicals that might be present based on available information, such as current and past uses of chemicals at the site.

**b** Applies to any site that does not meet the definition of industrial or commercial.

**c** For arsenic, use the valence state most likely to be appropriate for site conditions, unless laboratory information is available. Where soil conditions alternate between saturated, anaerobic and unsaturated, aerobic states, resulting in the alternating presence of arsenic III and arsenic V, the arsenic III concentrations shall apply.

**d** Safe concentration has not yet been established. See WAC 173-340-7492 (2)(c).

## Table 749-3

**Ecological Indicator Soil Concentrations (mg/kg) for Protection of Terrestrial Plants and Animals[a].** For chemicals where a value is not provided, see footnote b.

**Note:** These values represent soil concentrations that are expected to be protective at any MTCA site and are provided for use in eliminating hazardous substances from further consideration under WAC 173-340-7493 (2)(a)(i). Where these values are exceeded, various options are provided for demonstrating that the hazardous substance does not pose a threat to ecological receptors at a site, or for developing site-specific remedial standards for eliminating threats to ecological receptors. See WAC 173-340-7493 (1)(b)(i), 173-340-7493 (2)(a)(ii) and 173-340-7493(3).

| Hazardous Substance[b] | Plants[c] | Soil biota[d] | Wildlife[e] |
|---|---|---|---|
| METALS[f]: | | | |
| Aluminum (soluble salts) | 50 | | |
| Antimony | 5 | | |
| Arsenic III | | | 7 |
| Arsenic V | 10 | 60 | 132 |
| Barium | 500 | | 102 |
| Beryllium | 10 | | |
| Boron | 0.5 | | |
| Bromine | 10 | | |
| Cadmium | 4 | 20 | 14 |
| Chromium (total) | 42[g] | 42[g] | 67 |
| Cobalt | 20 | | |
| Copper | 100 | 50 | 217 |
| Fluorine | 200 | | |
| Iodine | 4 | | |
| Lead | 50 | 500 | 118 |
| Lithium | 35[g] | | |
| Manganese | 1,100[g] | | 1,500 |
| Mercury, inorganic | 0.3 | 0.1 | 5.5 |
| Mercury, organic | | | 0.4 |
| Molybdenum | 2 | | 7 |
| Nickel | 30 | 200 | 980 |
| Selenium | 1 | 70 | 0.3 |
| Silver | 2 | | |
| Technetium | 0.2 | | |
| Thallium | 1 | | |
| Tin | 50 | | |
| Uranium | 5 | | |
| Vanadium | 2 | | |
| Zinc | 86[g] | 200 | 360 |
| PESTICIDES: | | | |
| Aldrin | | | 0.1 |
| Benzene hexachloride (including lindane) | | | 6 |
| Chlordane | | 1 | 2.7 |
| DDT/DDD/DDE (total) | | | 0.75 |
| Dieldrin | | | 0.07 |
| Endrin | | | 0.2 |
| Hexachlorobenzene | | | 17 |
| Heptachlor/heptachlor epoxide (total) | | | 0.4 |
| Pentachlorophenol | 3 | 6 | 4.5 |
| OTHER CHLORINATED ORGANICS: | | | |
| 1,2,3,4-Tetrachlorobenzene | | 10 | |
| 1,2,3-Trichlorobenzene | | 20 | |
| 1,2,4-Trichlorobenzene | | 20 | |
| 1,2-Dichloropropane | | 700 | |
| 1,4-Dichlorobenzene | | 20 | |
| 2,3,4,5-Tetrachlorophenol | | 20 | |
| 2,3,5,6-Tetrachloroaniline | 20 | 20 | |
| 2,4,5-Trichloroaniline | 20 | 20 | |
| 2,4,5-Trichlorophenol | 4 | 9 | |
| 2,4,6-Trichlorophenol | | 10 | |
| 2,4-Dichloroaniline | | 100 | |
| 3,4-Dichloroaniline | | 20 | |
| 3,4-Dichlorophenol | 20 | 20 | |
| 3-Chloroaniline | 20 | 30 | |
| 3-Chlorophenol | 7 | 10 | |
| Chlorinated dibenzofurans (total) | | | 2E-06 |
| Chloroacetamide | | 2 | |
| Chlorobenzene | | 40 | |
| Chlorinated dibenzo-p-dioxins (total) | | | 2E-06 |
| Hexachlorocyclopentadiene | 10 | | |
| PCB mixtures (total) | 40 | | 0.65 |
| Pentachloroaniline | | 100 | |
| Pentachlorobenzene | | 20 | |
| OTHER NONCHLORINATED ORGANICS: | | | |
| 2,4-Dinitrophenol | 20 | | |
| 4-Nitrophenol | | 7 | |
| Acenaphthene | 20 | | |
| Benzo(a)pyrene | | | 12 |
| Biphenyl | 60 | | |
| Diethylphthalate | 100 | | |
| Dimethylphthalate | | 200 | |
| Di-n-butyl phthalate | 200 | | |
| Fluorene | | 30 | |
| Furan | 600 | | |
| Nitrobenzene | | 40 | |
| N-nitrosodiphenylamine | | 20 | |
| Phenol | 70 | 30 | |
| Styrene | 300 | | |

| Hazardous Substance[b] | Plants[c] | Soil biota[d] | Wildlife[e] |
|---|---|---|---|
| Toluene | 200 | | |
| **PETROLEUM:** | | | |
| Gasoline Range Organics | | 100 | 5,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface. |
| Diesel Range Organics | | 200 | 6,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface. |

**Footnotes:**

**a** Caution on misusing ecological indicator concentrations. Exceedances of the values in this table do not necessarily trigger requirements for cleanup action under this chapter. Natural background concentrations may be substituted for ecological indicator concentrations provided in this table. The table is not intended for purposes such as evaluating sludges or wastes.
This list does not imply that sampling must be conducted for each of these chemicals at every site. Sampling should be conducted for those chemicals that might be present based on available information, such as current and past uses of chemicals at the site.

**b** For hazardous substances where a value is not provided, plant and soil biota indicator concentrations shall be based on a literature survey conducted in accordance with WAC 173-340-7493(4) and calculated using methods described in the publications listed below in footnotes c and d. Methods to be used for developing wildlife indicator concentrations are described in Tables 749-4 and 749-5.

**c** Based on benchmarks published in *Toxicological Benchmarks for Screening Potential Contaminants of Concern for Effects on Terrestrial Plants: 1997 Revision*, Oak Ridge National Laboratory, 1997.

**d** Based on benchmarks published in *Toxicological Benchmarks for Potential Contaminants of Concern for Effects on Soil and Litter Invertebrates and Heterotrophic Process*, Oak Ridge National Laboratory, 1997.

**e** Calculated using the exposure model provided in Table 749-4 and chemical-specific values provided in Table 749-5. Where both avian and mammalian values are available, the wildlife value is the lower of the two.

**f** For arsenic, use the valence state most likely to be appropriate for site conditions, unless laboratory information is available. Where soil conditions alternate between saturated, anaerobic and unsaturated, aerobic states, resulting in the alternating presence of arsenic III and arsenic V, the arsenic III concentrations shall apply.

**g** Benchmark replaced by Washington state natural background concentration.

## Table 749-4
## Wildlife Exposure Model for Site-specific Evaluations.[a]

| | |
|---|---|
| **Plant** | |
| $K_{Plant}$ | Plant uptake coefficient (dry weight basis) |
| | Units: mg/kg plant/mg/kg soil |
| | Value: chemical-specific (see Table 749-5) |
| **Soil biota** Surrogate receptor: Earthworm | |
| $BAF_{Worm}$ | Earthworm bioaccumulation factor (dry weight basis) |
| | Units: mg/kg worm/mg/kg soil |
| | Value: chemical-specific (see Table 749-5) |
| **Mammalian predator** Surrogate receptor: Shrew (*Sorex*) | |
| $P_{SB\ (shrew)}$ | Proportion of contaminated food (earthworms) in shrew diet |
| | Units: unitless |
| | Value: 0.50 |
| $FIR_{Shrew,DW}$ | Food ingestion rate (dry weight basis) |
| | Units: kg dry food/kg body weight - day |
| | Value: 0.45 |
| $SIR_{Shrew,DW}$ | Soil ingestion rate (dry weight basis) |
| | Units: kg dry soil/kg body weight - day |
| | Value: 0.0045 |
| $RGAF_{Soil,\ shrew}$ | Gut absorption factor for a hazardous substance in soil expressed relative to the gut absorption factor for the hazardous substance in food. |
| | Units: unitless |
| | Value: chemical-specific (see Table 749-5) |

| | |
|---|---|
| $T_{Shrew}$ | Toxicity reference value for shrew |
| | Units: mg/kg - day |
| | Value: chemical-specific (see Table 749-5) |
| Home range | 0.1 Acres |
| **Avian predator**<br>Surrogate receptor: American robin (*Turdus migratorius*) | |
| $P_{SB\ (Robin)}$ | Proportion of contaminated food (soil biota) in robin diet |
| | Unit: unitless |
| | Value: 0.52 |
| $FIR_{Robin,DW}$ | Food ingestion rate (dry weight basis) |
| | Units: kg dry food/kg body weight - day |
| | Value: 0.207 |
| $SIR_{Robin,DW}$ | Soil ingestion rate (dry weight basis) |
| | Units: kg dry soil/kg body weight - day |
| | Value: 0.0215 |
| $RGAF_{Soil,\ robin}$ | Gut absorption factor for a hazardous substance in soil expressed relative to the gut absorption factor for the hazardous substance in food. |
| | Units: unitless |
| | Value: chemical-specific (see Table 749-5) |
| $T_{Robin}$ | Toxicity reference value for robin |
| | Units: mg/kg - day |
| | Value: chemical-specific (see Table 749-5) |
| Home range | 0.6 Acres |
| **Mammalian herbivore**<br>Surrogate receptor: Vole (*Microtus*) | |
| $P_{Plant,\ vole}$ | Proportion of contaminated food (plants) in vole diet |
| | Units: unitless |
| | Value: 1.0 |
| $FIR_{Vole,DW}$ | Food ingestion rate (dry weight basis) |
| | Units: kg dry food/kg body weight - day |
| | Value: 0.315 |
| $SIR_{Vole,DW}$ | Soil ingestion rate (dry weight basis) |
| | Units: kg dry soil/kg body weight - day |
| | Value: 0.0079 |
| $RGAF_{Soil,\ vole}$ | Gut absorption factor for a hazardous substance in soil expressed relative to the gut absorption factor for the hazardous substance in food. |
| | Units: unitless |
| | Value: chemical-specific (see Table 749-5) |
| $T_{Vole}$ | Toxicity reference value for vole |
| | Units: mg/kg - day |
| | Value: chemical-specific (see Table 749-5) |
| Home range | 0.08 Acres |
| **Soil concentrations for wildlife protection**[b] | |
| (1) Mammalian predator:<br>$SC_{MP} = (T_{Shrew})/[(FIR_{Shrew,DW} \times P_{SB\ (shrew)} \times BAF_{Worm}) + (SIR_{Shrew,DW} \times RGAF_{Soil,\ shrew})]$ | |
| (2) Avian predator:<br>$SC_{AP} = (T_{Robin})/[(FIR_{Robin,DW} \times P_{SB\ (Robin)} \times BAF_{Worm}) + (SIR_{Robin,DW} \times RGAF_{Soil,\ robin})]$ | |

(3) Mammalian herbivore:

$SC_{MH} = (T_{Vole})/[(FIR_{Vole,DW} \times P_{Plant,\ vole} \times K_{Plant}) + (SIR_{Vole,DW} \times RGAF_{Soil,\ vole})]$

**Footnotes:**

**a** Substitutions for default receptors may be made as provided for in WAC 173-340-7493(7). If a substitute species is used, the values for food and soil ingestion rates, and proportion of contaminated food in the diet, may be modified to reasonable maximum exposure estimates for the substitute species based on a literature search conducted in accordance with WAC 173-340-7493(4).
Additional species may be added on a site-specific basis as provided in WAC 173-340-7493 (2)(a).
The department shall consider proposals for modifications to default values provided in this table based on new scientific information in accordance with WAC 173-340-702(14).

**b** Use the lowest of the three concentrations calculated as the wildlife value.

**Table 749-5**
**Default Values for Selected Hazardous Substances for use with the Wildlife Exposure Model in Table 749-4.[a]**

| | Toxicity reference value (mg/kg - d) | | | | |
|---|---|---|---|---|---|
| **Hazardous Substance** | **$BAF_{Worm}$** | **$K_{Plant}$** | **Shrew** | **Vole** | **Robin** |
| **METALS:** | | | | | |
| Arsenic III | 1.16 | 0.06 | 1.89 | 1.15 | |
| Arsenic V | 1.16 | 0.06 | 35 | 35 | 22 |
| Barium | 0.36 | | 43.5 | 33.3 | |
| Cadmium | 4.6 | 0.14 | 15 | 15 | 20 |
| Chromium | 0.49 | | 35.2 | 29.6 | 5 |
| Copper | 0.88 | 0.020 | 44 | 33.6 | 61.7 |
| Lead | 0.69 | 0.0047 | 20 | 20 | 11.3 |
| Manganese | 0.29 | | 624 | 477 | |
| Mercury, inorganic | 1.32 | 0.0854 | 2.86 | 2.18 | 0.9 |
| Mercury, organic | 1.32 | | 0.352 | 0.27 | 0.064 |
| Molybdenum | 0.48 | 1.01 | 3.09 | 2.36 | 35.3 |
| Nickel | 0.78 | 0.047 | 175.8 | 134.4 | 107 |
| Selenium | 10.5 | 0.0065 | 0.725 | 0.55 | 1 |
| Zinc | 3.19 | 0.095 | 703.3 | 537.4 | 131 |
| **PESTICIDES:** | | | | | |
| Aldrine | 4.77 | 0.007[b] | 2.198 | 1.68 | 0.06 |
| Benzene hexachloride (including lindane) | 10.1 | | | | 7 |
| Chlordane | 17.8 | 0.011[b] | 10.9 | 8.36 | 10.7 |
| DDT/DDD/DDE | 10.6 | 0.004[b] | 8.79 | 6.72 | 0.87 |
| Dieldrin | 28.8 | 0.029[b] | 0.44 | 0.34 | 4.37 |
| Endrin | 3.6 | 0.038[b] | 1.094 | 0.836 | 0.1 |
| Heptachlor/heptachlor epoxide | 10.9 | 0.027[b] | 2.857 | 2.18 | 0.48 |
| Hexachlorobenzene | 1.08 | | | | 2.4 |
| Pentachlorophenol | 5.18 | 0.043[b] | 5.275 | 4.03 | |
| **OTHER CHLORINATED ORGANICS:** | | | | | |
| Chlorinated dibenzofurans | 48 | | | | 1.0E-05 |
| Chlorinated dibenzo-p-dioxins | 48 | 0.005[b] | 2.2E-05 | 1.7E-05 | 1.4E-04 |
| PCB mixtures | 4.58 | 0.087[b] | 0.668 | 0.51 | 1.8 |
| **OTHER NONCHLORINATED ORGANICS:** | | | | | |
| Benzo(a)pyrene | 0.43 | 0.011 | 1.19 | 0.91 | |

**Footnotes:**

**a** For hazardous substances not shown in this table, use the following default values. Alternatively, use values established from a literature survey conducted in accordance with WAC 173-340-7493(4) and approved by the department.

**$K_{Plant}$:** Metals (including metalloid elements): 1.01

Organic chemicals: $K_{Plant}=10^{(1.588-(0.578\log Kow))}$,

where log $K_{ow}$ is the logarithm of the octanol-water partition coefficient.

**$BAF_{Worm}$:** Metals (including metalloid elements): 4.6
Nonchlorinated organic chemicals:
log $K_{ow}$ < 5: 0.7
log $K_{ow}$ > 5: 0.9
Chlorinated organic chemicals:
log $K_{ow}$ < 5: 4.7
log $K_{ow}$ > 5: 11.8

**$RGAF_{Soil}$** (all receptors): 1.0
Toxicity reference values (all receptors): Values established from a literature survey conducted in accordance with WAC 173-340-7493(4).
Site-specific values may be substituted for default values, as described below:

**$K_{Plant}$** Value from a literature survey conducted in accordance with WAC 173-340-7493(4) or from empirical studies at the site.

**$BAF_{Worm}$** Value from a literature survey conducted in accordance with WAC 173-340-7493(4) or from empirical studies at the site.

**$RGAF_{Soil}$** (all receptors): Value established from a literature survey conducted in accordance with WAC 173-340-7493(4).
Toxicity reference values (all receptors): Default toxicity reference values provided in this table may be replaced by a value established from a literature survey conducted in accordance with WAC 173-340-7493(4).

**b** Calculated from log $K_{ow}$ using formula in footnote a.

**Table 830-1**
**Required Testing for Petroleum Releases.**

| | Gasoline Range Organics (GRO) (1) | Diesel Range Organics (DRO) (2) | Heavy Oils (DRO) (3) | Mineral Oils (4) | Waste Oils and Unknown Oils (5) |
|---|---|---|---|---|---|
| **Volatile Petroleum Compounds** | | | | | |
| Benzene | X (6) | X (7) | | | X (8) |
| Toluene | X (6) | X (7) | | | X (8) |
| Ethyl benzene | X (6) | X (7) | | | X (8) |
| Xylenes | X (6) | X (7) | | | X (8) |
| n-Hexane | X (9) | | | | |
| **Fuel Additives and Blending Compounds** | | | | | |
| Dibromoethane, 1-2 (EDB); and Dichloroethane, 1-2 (EDC) | X (10) | | | | X (8) |
| Methyl tertiary-butyl ether (MTBE) | X (11) | | | | X (8) |
| Total lead &other additives | X (12) | | | | X (8) |
| **Other Petroleum Components** | | | | | |
| Carcinogenic PAHs | | X (13) | X (13) | | X (8) |
| Naphthalenes | X (14) | X (14) | X (14) | | X (14) |
| **Other Compounds** | | | | | |
| Polychlorinated Biphenyls (PCBs) | | | X (15) | X (15) | X (8) |
| Halogenated Volatile Organic Compounds (VOCs) | | | | | X (8) |
| Other | X (16) | X (16) | X (16) | X (16) | X (16) |
| **Total Petroleum Hydrocarbons Methods** | | | | | |
| TPH Analytical Method for Total TPH (Method A Cleanup Levels) (17) | NWTPH-Gx | NWTPH-Dx | NWTPH-Dx | NWTPH-Dx | NWTPH-Gx & NWTPH-Dx |
| TPH Analytical Methods for TPH fractions (Methods B or C) (17) | VPH | EPH | EPH | EPH | VPH and EPH |

**Use of Table 830-1:** An "X" in the box means that the testing requirement applies to ground water and soil if a release is known or suspected to have occurred to that medium, unless otherwise specified in the footnotes. A box with no "X" indicates (except in the last two rows) that, for the type of petroleum product release indicated in the top row, analyses for the hazardous substance(s) named in the far-left column corresponding to the empty box are not typically required as part of the testing for petroleum releases. However, such analyses may be required based on other site-specific information. Note that testing for Total Petroleum Hydrocarbons (TPH) is required for every type of petroleum release, as indicated in the bottom two rows of the table. The testing method for TPH depends on the type of petroleum product released and whether Method A or Method B or C is being used to determine TPH cleanup levels. See WAC 173-340-830 for analytical procedures. **The footnotes to this table are important for understanding the specific analytical requirements for petroleum releases.**

Footnotes:

(1) The following petroleum products are common examples of GRO: automotive and aviation gasolines, mineral spirits, stoddard solvents, and naphtha. To be in this range, 90 percent of the petroleum components need to be quantifiable using the NWTPH-Gx; if NWTPH-HCID results are used for this determination, then 90 percent of the "area under the TPH curve" must be quantifiable using NWTPH-Gx. Products such as jet fuel, diesel No. 1, kerosene, and heating oil may require analysis as both GRO and DRO depending on the range of petroleum components present (range can be measured by NWTPH-HCID). (See footnote 17 on analytical methods.)

(2) The following petroleum products are common examples of DRO: Diesel No. 2, fuel oil No. 2, light oil (including some bunker oils). To be in this range, 90 percent of the petroleum components need to be quantifiable using the NWTPH-Dx quantified against a diesel standard. Products such as jet fuel, diesel No. 1, kerosene, and heating oil may require analysis as both GRO and DRO depending on the range of petroleum components present as measured in NWTPH-HCID.

(3) The following petroleum products are common examples of the heavy oil group: Motor oils, lube oils, hydraulic fluids, etc. Heavier oils may require the addition of an appropriate oil range standard for quantification.

(4) Mineral oil means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors.

(5) The waste oil category applies to waste oil, oily wastes, and unknown petroleum products and mixtures of petroleum and nonpetroleum substances. Analysis of other chemical components (such as solvents) than those listed may be required based on site-specific information. Mixtures of identifiable petroleum products (such as gasoline and diesel, or diesel and motor oil) may be analyzed based on the presence of the individual products, and need not be treated as waste and unknown oils.

(6) When using Method A, testing soil for benzene is required. Furthermore, testing ground water for BTEX is necessary when a petroleum release to ground water is known or suspected. If the ground water is tested and toluene, ethyl benzene or xylene is in the ground water above its respective Method A cleanup level, the soil must also be tested for that chemical. When using Method B or C, testing the soil for BTEX is required and testing for BTEX in ground water is required when a release to ground water is known or suspected.

(7)(a) For DRO releases from other than home heating oil systems, follow the instructions for GRO releases in Footnote (6).

(b) For DRO releases from typical home heating oil systems (systems of 1,100 gallons or less storing heating oil for residential consumptive use on the premises where stored), testing for BTEX is not usually required for either ground water or soil. Testing of the ground water is also not usually required for these systems; however, if the ground water is tested and benzene is found in the ground water, the soil must be tested for benzene.

(8) Testing is required in a sufficient number of samples to determine whether this chemical is present at concentrations of concern. If the chemical is found to be at levels below the applicable cleanup level, then no further analysis is required.

(9) Testing for n-hexane is required when VPH analysis is performed for Method B or C. In this case, the concentration of n-hexane should be deleted from its respective fraction to avoid double-counting its concentration. n-Hexane's contribution to overall toxicity is then evaluated using its own reference dose.

(10) Volatile fuel additives (such as dibromoethane, 1 - 2 (EDB) (CAS# 106-93-4) and dichloroethane, 1 - 2 (EDC) (CAS# 107-06-2)) must be part of a volatile organics analysis (VOA) of GRO contaminated ground water. If any is found in ground water, then the contaminated soil must also be tested for these chemicals.

(11) Methyl tertiary-butyl ether (MTBE) (CAS# 1634-04-4) must be analyzed in GRO contaminated ground water. If any is found in ground water, then the contaminated soil must also be tested for MTBE.

(12)(a) For automotive gasoline where the release occurred prior to 1996 (when "leaded gasoline" was used), testing for lead is required unless it can be demonstrated that lead was not part of the release. If this demonstration cannot be made, testing is required in a sufficient number of samples to determine whether lead is present at concentrations of concern. Other additives and blending compounds of potential environmental significance may need to be considered for testing, including: tertiary-butyl alcohol (TBA); tertiary-amyl methyl ether (TAME); ethyl tertiary-butyl ether (ETBE); ethanol; and methanol. Contact the department for additional testing recommendations regarding these and other additives and blending compounds.

(b) For aviation gasoline, racing fuels and similar products, testing is required for likely fuel additives (especially lead) and likely blending compounds, no matter when the release occurred.

(13) Testing for carcinogenic PAHs is required for DRO and heavy oils, except for the following products for which adequate information exists to indicate their absence: Diesel No. 1 and 2, home heating oil, kerosene, jet fuels, and electrical insulating mineral oils. The carcinogenic PAHs include benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, benzo(k)fluoranthene, benzo(a)anthracene, and benzo(b)fluoranthene.

(14)(a) Except as noted in (b) and (c), testing for the noncarcinogenic PAHs, including the "naphthalenes" (naphthalene, 1-methylnaphthalene, and 2-methyl-naphthalene) is not required when using Method A cleanup levels, because they are included in the TPH cleanup level.

(b) Testing of soil for naphthalenes is required under Methods B and C when the inhalation exposure pathway is evaluated.

(c) If naphthalenes are found in ground water, then the soil must also be tested for naphthalenes.

(15) Testing for PCBs is required unless it can be demonstrated that: (1) the release originated from an electrical device manufactured for use in the United States after July 1, 1979; (2) oil containing PCBs was never used in the equipment suspected as the source of the release (examples of equipment where PCBs are likely to be found include transformers, electric motors, hydraulic systems, heat transfer systems, electromagnets, compressors, capacitors, switches and miscellaneous other electrical devices); or, (3) the oil released was recently tested and did not contain PCBs.

(16) Testing for other possible chemical contaminants may be required based on site-specific information.

(17) The analytical methods NWTPH-Gx, NWTPH-Dx, NWTPH-HCID, VPH, and EPH are methods published by the department of ecology and available on the department's internet web site: http://www.ecy.wa.gov/programs/tcp/cleanup.html.

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

## WSR 07-21-068
### PERMANENT RULES
### DEPARTMENT OF FISH AND WILDLIFE

[Filed October 15, 2007, 9:56 a.m., effective November 15, 2007]

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

Purpose: By amending WAC 220-56-255 Bottomfish protection in coastal recreational fisheries, we will comply with federal fishing regulations adopted by the National Marine Fisheries Service on April 18, 2007 (72 F.R. 19390). The purpose of these rules is to provide protection for overfished rockfish. This action will minimize by-catch of overfished rockfish in offshore waters, and it will provide for increased survivability of released rockfish.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-255 (Amending Order 06-199, filed 8/10/06, effective 9/10/06).

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Adopted under notice filed as WSR 07-18-078 on September 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 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 1, Repealed 0.

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

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

Date Adopted: October 15, 2007.

Phil Anderson
for Jeff Koenings
Director

AMENDATORY SECTION (Amending Order 06-199, filed 8/10/06, effective 9/10/06)

**WAC 220-56-255 Halibut—Seasons—Daily and possession limits.** (1) It is unlawful to fish for or possess halibut taken for personal use except from the areas or in excess of the amounts provided for in this section:

(a) Catch Record Card Area 1: Open May 1 through September 30. By-catch restriction: It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish if the vessel has brought halibut into port or landed halibut.

(b) Catch Record Card Area 2:

(i) Those waters south of the Queets River, north of 47° and east of 124°40'W - Open May 1 through September 30.

(ii) All other waters in Area 2 - Open May 1 through September 30, except closed to fishing for halibut 12:01 a.m. of each Friday through 11:59 p.m. of each Saturday.

(c) Catch Record Card Areas 3 and 4 - Open May 10 through September 30, except closed to fishing for halibut 12:01 a.m. of each Sunday through 11:59 p.m. of each Monday. The following area southwest of Cape Flattery is closed to halibut fishing at all times:

Those waters within an eastward facing "C" shaped closed area defined as: Beginning at 48°18'N. lat.; 125°18'W. long., thence to 48°18'N. lat.; 124°59'W. long., thence to 48°11'N. lat.; 124°59'W. long., thence to 48°11'N. lat.; 125°11'W. long., thence to 48°04'N. lat.; 125°11'W. long., thence to 48°04'N. lat.; 124°59'W. long., thence to 48°00'N. lat.; 124°59'W. long., thence to 48°00'N. lat.; 125°18'W. long., thence to the point of origin.

It is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour as defined by the following coordinates, from May 21 through September 30, on days and times closed to halibut fishing:

48°23.9'N.; 124°44.2'W.
48°23.6'N.; 124°44.9'W.
48°18.6'N.; 124°43.6'W.
48°18.6'N.; 124°48.2'W.
48°10.0'N.; 124°48.8'W.
48°02.4'N.; 124°49.3'W.
47°37.6'N.; 124°34.3'W.
47°31.7'N.; 124°32.4'W.

(d) Catch Record Card Area 5 - Open May 26 through July 31, except closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

(e) Catch Record Card Areas 6 through 13 - Open April 14 through June 20, except closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

(2) Daily limit one halibut taken from state and offshore waters, except Canadian waters. See WAC 220-56-156 for limits on Canadian-origin halibut.

(3) The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit. See WAC 220-56-156 for rules on Canadian-origin halibut possession.

(4) It is unlawful to land halibut outside the catch area in which the halibut were taken, except for Canadian-origin halibut. See WAC 220-56-156 for rules on landing Canadian-origin halibut.

## WSR 07-21-073
### PERMANENT RULES
### OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2007-05—Filed October 15, 2007, 4:23 p.m., effective November 15, 2007]

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

Purpose: Newly enacted RCW 48.20.550 and 48.21.370 require the commissioner to adopt rules that set forth the content of a standard disclosure form that must be used by insur-

ers marketing individual and group fixed payment insurance products. These new rules set forth the content of the required forms.

Statutory Authority for Adoption: RCW 48.02.060, 48.20.550, and 48.21.370.

Adopted under notice filed as WSR 07-17-161 on August 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 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 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 2, Amended 0, Repealed 0.

Date Adopted: October 15, 2007.

Mike Kreidler
Insurance Commissioner

NEW SECTION

**WAC 284-50-440 Standard disclosure form for individual policies—Illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance.** (1) All disability insurers offering individual policies that provide benefits in the form of illness-triggered fixed payments, hospital confinement fixed payments or other fixed payment insurance, must issue a disclosure form in substantially the format and content outlined below. The disclosure form must be provided to all applicants at the time of solicitation and completion of the application form for coverage. Every insurer must have a mechanism in place to verify delivery of the disclosure to the applicant.

(2) The type size and font of the disclosure form must be easily read and be no smaller than 10 point.

(3) The insurer's disclosure form must be filed **for approval** with the commissioner prior to use.

(4) The standard disclosure form replaces any outline of coverage that would otherwise be required for fixed payment policies and must include, at a minimum, the following information:

(Insurer's name and address)

**IMPORTANT INFORMATION ABOUT THE COVERAGE YOU ARE BEING OFFERED**

Save this statement! It may be important to you in the future. The Washington State Insurance Commissioner requires that we give you the following information about fixed payment benefits.

**This coverage is not comprehensive health care insurance and will not cover the cost of most hospital and other medical services.**

This disclosure document provides a very brief description of the important features of the coverage you are considering. It is not an insurance contract and only the actual policy provisions will control. The policy itself will include in detail the rights and obligations of both you and (insurer's name).

This coverage is designed to pay you a fixed dollar amount regardless of the amount that the provider charges. Payments are not based on a percentage of the provider's charge and are paid in addition to any other health plan coverage you may have.

**CAUTION: If you are also covered under a High Deductible Health Plan (HDHP) and are contributing to a Health Savings Account (HSA), before you purchase this policy you should check with your tax advisor to be sure that you will continue to be eligible to contribute to the HSA if you purchase this coverage.**

The benefits under this policy are summarized below.

• Type of coverage:

• Benefit amount:

• Benefit trigger (identify any periods of no coverage such as eligibility or waiting periods):

• Duration of coverage:

• Renewability of coverage:

Policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described above include the following:

(List all exclusions including those that relate to limitations for pre-existing conditions.)

NEW SECTION

**WAC 284-96-550 Standard disclosure form for group coverage—Illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance.** (1) All disability insurers offering group policies that provide benefits in the form of illness-triggered fixed payments, hospital confinement fixed payments or other fixed payment insurance, must issue a disclosure form in substantially the format and content outlined below. The disclosure form must be provided to the master policyholder at the time of solicitation and completion of the application form and to all enrollees at the time of enrollment. Every insurer must have a mechanism in place to verify delivery of the disclosure to the master policyholder and to every enrollee.

(2) The type size and font of the disclosure form must be easily read and be no smaller than 10 point.

(3) The insurer's disclosure form must be filed **for approval** with the commissioner prior to use.

(4) The standard disclosure form replaces any outline of coverage that would otherwise be required for fixed payment policies and must include, at a minimum, the following information:

(Insurer's name and address)

**IMPORTANT INFORMATION ABOUT THE COVERAGE YOU ARE BEING OFFERED**

Save this statement! It may be important to you in the future. The Washington State Insurance Commissioner requires that we give you the following information about fixed payment benefits.

**This coverage is not comprehensive health care insurance and will not cover the cost of most hospital and other medical services.**

This disclosure provides a very brief description of the important features of the coverage being considered. It is not an insurance contract and only the actual policy provisions will control. The policy itself will include in detail the rights and obligations of both the master policyholder and (insurer's name).

This coverage is designed to pay you a fixed dollar amount regardless of the amount that the provider charges. Payments are not based on a percentage of the provider's charge and are paid in addition to any other health plan coverage you may have.

**CAUTION: If you are also covered under a High Deductible Health Plan (HDHP) and are contributing to a Health Savings Account (HSA), you should check with your tax advisor or benefit advisor prior to purchasing this coverage to be sure that you will continue to be eligible to contribute to the HSA if this coverage is purchased.**

The benefits under this policy are summarized below.

• Type of coverage:

• Benefit amount:

• Benefit trigger (identify any periods of no coverage such as eligibility or waiting periods):

• Duration of coverage:

• Renewability of coverage:

Policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described above include the following:

(List all exclusions including those that relate to limitations for pre-existing conditions.)

## WSR 07-21-075
### PERMANENT RULES
### DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 16, 2007, 7:45 a.m., effective November 16, 2007]

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

Purpose: The department is amending WAC 388-444-0025 Food stamp employment and training—Payments for FS E&T related expenses, to allow participants in FS E&T programs to be eligible for dependent care payments for dependent children age zero to twelve years of age as allowed under Title 7 C.F.R. 273.7 (d)(4)(i). Under the current rule, only participants with a dependent child age six through twelve qualifies for dependent care payments.

Citation of Existing Rules Affected by this Order: Amending WAC 388-444-0025.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

Adopted under notice filed as WSR 07-17-108 on August 17, 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 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: October 15, 2007.

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-444-0025 Payments for FS E&T related expenses.** (1) Some of a client's actual expenses needed to participate in the FS E&T program may be paid by the department. Allowable expenses are:

(a) Transportation related costs; and

(b) Dependent care costs for each dependent ((~~six~~)) through twelve years of age.

(2) Dependent care payments are not paid if:

(a) The child is thirteen years of age or older unless the child is:

(i) Physically and/or mentally incapable of self-care; or

(ii) Under court order requiring adult supervision; or

(b) Any member in the food assistance unit provides the dependent care.

(3) Dependent care payments paid by the department cannot be claimed as an expense and used in calculating the dependent care deduction as provided in WAC 388-450-0185.

## WSR 07-21-080
### PERMANENT RULES
## DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed October 16, 2007, 3:45 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The department is repealing all existing sections in chapter 388-76 WAC, Adult family home minimum licensing requirements, and is adopting new sections in chapter 388-76 WAC, Adult family home minimum licensing requirements.

The purpose of the rules are to:

(1) Comply with the Governor's Executive Order 05-03 plain talk;

(2) Simplify language, eliminate the question and answer format, reorganize and renumber the chapter so that the requirements are clearer for adult family home providers to understand;

(3) Clarify issues that have been brought to the attention of the department; and

(4) Update rules to comply with statute changes.

The department is withdrawing WAC 388-76-11000 through 388-76-11045 and has filled [filed] a new preproposal statement of inquiry (CR-101) for the resident protection program with the code reviser in WSR 07-15-026.

The effective date of this rule is January 1, 2008.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-76-535, 388-76-540, 388-76-545, 388-76-550, 388-76-555, 388-76-560, 388-76-565, 388-76-570, 388-76-575, 388-76-580, 388-76-585, 388-76-590, 388-76-59000, 388-76-59010, 388-76-59050, 388-76-59060, 388-76-59070, 388-76-59080, 388-76-59090, 388-76-595, 388-76-600, 388-76-60000, 388-76-60010, 388-76-60020, 388-76-60030, 388-76-60040, 388-76-60050, 388-76-60060, 388-76-60070, 388-76-605, 388-76-610, 388-76-61000, 388-76-61010, 388-76-61020, 388-76-61030, 388-76-61040, 388-76-61050, 388-76-61060, 388-76-61070, 388-76-61080, 388-76-615, 388-76-61500, 388-76-61510, 388-76-61520, 388-76-61530, 388-76-61540, 388-76-61550, 388-76-61560, 388-76-61570, 388-76-620, 388-76-625, 388-76-630, 388-76-635, 388-76-64010, 388-76-64015, 388-76-64020, 388-76-64025, 388-76-64030, 388-76-64035, 388-76-64040, 388-76-64045, 388-76-64050, 388-76-64055, 388-76-645, 388-76-650, 388-76-655, 388-76-660, 388-76-665, 388-76-670, 388-76-675, 388-76-680, 388-76-685, 388-76-690, 388-76-695, 388-76-700, 388-76-705, 388-76-710, 388-76-715, 388-76-720, 388-76-725, 388-76-730, 388-76-735, 388-76-740, 388-76-745, 388-76-750, 388-76-755, 388-76-760, 388-76-76505, 388-76-76510, 388-76-76515, 388-76-76520, 388-76-770, 388-76-775, 388-76-780, 388-76-785, 388-76-790, and 388-76-795.

Statutory Authority for Adoption: RCW 70.128.040.

Other Authority: Chapters 70.128 and 74.34 RCW.

Adopted under notice filed as WSR 07-14-082 on June 29, 2007.

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

A final cost-benefit analysis is available by contacting Roger A. Woodside, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail woodsr@dshs.wa.gov. The cost-benefit analysis was not changed.

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 199, Amended 0, Repealed 97.

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 199, Amended 0, Repealed 97.

Date Adopted: October 16, 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 07-23 issue of the Register.

## WSR 07-21-083
### PERMANENT RULES
## DEPARTMENT OF FISH AND WILDLIFE
[Order 07-256—Filed October 17, 2007, 11:25 a.m., effective November 17, 2007]

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

Purpose: Amend shellfish rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-075.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 07-11-021 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 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 12, 2007.

Susan Yeager
for Jerry Gutzwiler, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 03-28, filed 2/18/03, effective 3/21/03)

**WAC 220-52-075 Shellfish harvest logs.** (1) It is unlawful for any vessel operator engaged in the commercial harvest of crawfish, sea cucumber, sea urchin, scallop, shrimp other than ocean pink shrimp, or squid((~~, or~~)) to fail to obtain and accurately maintain the appropriate harvest log available from the Washington department of fish and wildlife. It is unlawful for any license holder engaged in commercial sand shrimp fishing or operator of mechanical clam digging device to fail to obtain and accurately maintain the appropriate harvest log available from the Washington department of fish and wildlife. ((~~The harvest log must be kept aboard the vessel while the vessel is engaged in harvest or has crawfish, sea cucumbers, sea urchins, shrimp other than ocean pink shrimp, squid, scallops, clams, or sand shrimp aboard. The vessel operator must submit the harvest logs for inspection upon request by authorized department of fish and wildlife representatives. The department's copies of the completed harvest log must be submitted to the department for each calendar month in which fishing activity occurs. State copies must be received within ten days following any calendar month in which fishing activity occurred, except that commercial sea cucumber harvest logs must be received for each month of the season provided for in WAC 220-52-072 regardless of whether harvest activity occurred during the month, and all shellfish harvesters must submit a log that must be received by the tenth day following the termination of commercial fishing activity showing that shellfish harvest has terminated for the year.~~

~~(1)~~)) (2) It is unlawful for any harvest vessel operator or license holder engaged in harvest as described in subsection (1) of this section, to fail to maintain the required harvest log: Aboard the vessel; at the harvest site; when crawfish, sea cucumbers, sea urchins, shrimp other than ocean pink shrimp, squid, scallops, clams, or sand shrimp are aboard during transit of a harvest vessel; or are in possession of the license holder.

(3) It is unlawful for the vessel operator or license holder, engaged in harvest as described in subsection (1) of this section, to fail to submit harvest logs for inspection upon request by department of fish and wildlife officers or authorized employees.

(4) It is unlawful for any vessel operator or license holder, engaged in harvest as described in subsection (1) of this section, to fail to comply with the following methods of logbook submittal and time frames related to harvest logbook submittal:

(a) Within ten days following any calendar month in which fishing occurred, required completed harvest logs must be received by the department; however, vessel operators or license holders may submit logs directly to authorized department employees.

(b) Vessel operators or license holders responsible for submitting logs to the department, as described in subsection (1) of this section, must maintain a copy of all submitted logs for a period of three years following the harvest activity. Copies of harvest logs, which are required to be maintained, must be available for inspection upon request by department of fish and wildlife officers and authorized employees.

(c) Original harvest logs must be maintained and submitted in ascending consecutive order of log serial number.

(5) It is unlawful for any vessel operator or license holder, engaged in harvest as described in subsection (1) of this section, to fail to send completed harvest logs to the appropriate following mailing address, except as provided for in subsection (4)(a) of this section.

For Shrimp Harvest Logbooks:
ATTN: SHRIMP HARVEST MANAGER
Washington Department of Fish and Wildlife
Point Whitney Shellfish Laboratory
1000 Point Whitney Road
Brinnon, WA 98320-9799.

For Crawfish Harvest Logbooks:
ATTN: FISH PROGRAM - CRAWFISH HARVEST MANAGER
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091.

For Sea Urchin and Sea Cucumber Harvest Logbooks:
ATTN: FISH PROGRAM - SEA URCHIN/SEA CUCUMBER HARVEST MANAGER
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091.

For Clam (harvest with mechanical digging devices) Harvest Logbooks:
ATTN: FISH PROGRAM - GEODUCK HARVEST MANAGER
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091.

For Scallop Harvest Logbooks:
ATTN: FISH PROGRAM - SCALLOP HARVEST MANAGER
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091.

For Squid Harvest Logbooks:
ATTN: FISH PROGRAM - SQUID HARVEST MANAGER
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091.

For Coastal Sand Shrimp Harvest Logbooks:
ATTN: SAND SHRIMP HARVEST MANAGER
Washington Department of Fish and Wildlife
P.O. Box 190
Ocean Park, WA 98640-0190.

For Puget Sound Sand Shrimp Harvest Logbooks:
ATTN: SAND SHRIMP HARVEST MANAGER
Washington Department of Fish and Wildlife
P.O. Box 1100
LaConner, WA 98257.

(6) It is unlawful for vessel operators engaged in commercial harvest of shrimp (other than Puget Sound shrimp or sand shrimp) or crawfish with shellfish pot or ring net gear ((~~must~~)) to fail to permanently and legibly record in ink the following information within the following time frames:

(a) Before leaving the catch area where harvest occurred, record the vessel Washington department of fish and wildlife boat registration number, number of pots or ring nets pulled, date pulled, soak time, and gear location ((~~before leaving the catch area where taken, and weights must be recorded upon landing or sale.~~

~~(2) Vessel operators engaged in commercial harvest of shrimp other than ocean pink shrimp with beam trawl or shrimp trawl gear must record the vessel identity, date, location fished, trawl width, Marine Fish-Shellfish Management and Catch Reporting Area, depth fished, latitude and longitude to the nearest hundredth of a minute at the beginning of each tow, tow speed, duration of tow and estimated weight of shrimp of each species caught for each tow before leaving the site where the catch was taken or before commencing a new tow, whichever occurs first.~~

~~It shall be unlawful to fail to permanently record this information into the department-supplied harvest log before leaving each catch site. Harvest logs must be maintained and submitted in ascending consecutive order of harvest log serial numbers. Harvest logs must be submitted for each month in which fishing activity occurs and must be received by the department within ten days following any month in which fishing occurs. The fish receiving ticket serial number must be recorded onto the harvest log at the time of sale, or before leaving the last catch site of the day if the vessel operator holds a wholesale dealer license and is the original receiver of the catch.~~

~~(3) Vessel operators engaged in commercial harvest of sea urchins or sea cucumbers must~~)); and

(b) Immediately after delivery of shellfish to an original receiver, record the weight of all shellfish.

(7) It is unlawful for vessel operators engaged in commercial harvest of shrimp (other than ocean pink shrimp) with beam trawl or shrimp trawl gear, to fail to permanently and legibly record in ink onto the department-supplied harvest log, the following information within the following time frames:

(a) Before commencing a new tow or prior to leaving the site where the catch was taken, record the vessel identity, current date of fishing activity, location fished, trawl width, Marine Fish-Shellfish Management and Catch Reporting Area fished, depth fished, latitude and longitude to the nearest hundredth of a minute at the beginning of each tow, tow speed, duration of tow, and estimated weight of shrimp of each species caught for each tow.

(b) Immediately after delivery of shrimp to an original receiver, or before leaving the last catch site of the day if the operator holds a wholesale fish dealer's license and is the original receiver, record the fish receiving ticket serial number.

(8) It is unlawful for vessel operators engaged in commercial harvest of sea urchins or sea cucumbers to fail to permanently and legibly record in ink the following information within the following time frames:

(a) Before leaving the harvest site, record the vessel identity, date, Marine Fish-Shellfish Catch Reporting Area fished, location fished, depth fished, latitude and longitude to the nearest tenth of a minute or to the nearest second, and the approximate ((~~number~~)) weight in pounds of sea urchins or sea cucumbers ((~~taken before leaving the site where taken and the exact weight must be recorded upon landing or sale.~~

~~(4) Vessel operators engaged in commercial harvest of clams with mechanical digging devices must record the vessel identity, location, and date of harvest before the end of each day's fishing and the weights by clam species must be recorded upon landing or sale.~~

~~(5) Vessel operators engaged in commercial harvest of scallops must~~)) harvested.

(b) Upon landing or delivery to an original receiver, the exact weight of sea urchins, as recorded on the shellfish receiving ticket, must be recorded.

(c) Upon landing or delivery to an original receiver, the exact weight of sea cucumbers, as recorded on the shellfish receiving ticket, and whether or not prelanded processing occurred ("whole-live" or "split-drained"), must be recorded.

(9) It is unlawful for license holders engaged in commercial harvest of clams with mechanical digging devices to fail to permanently and legibly record in ink the following information within the following time frames:

(a) Before the end of each day's fishing and departure from the harvest grounds, record the vessel identity if a harvest vessel is used in harvest operation, exact location by latitude and longitude to the nearest thousandths of a minute (recorded in WGS 84 datum), and date of harvest.

(b) Weight by each clam species in pounds upon landing or delivery to an original receiver.

(c) Weight in pounds of each clam species caught and returned to the harvest grounds.

(10) It is unlawful for vessel operators engaged in commercial harvest of scallops to fail to permanently and legibly record in ink the following information within the following time frames:

(a) Before leaving the location where the catch was taken, record the vessel identity, date, location, and duration of harvest and estimated weight in pounds and species of scallops caught for each tow or dive hour ((~~before leaving the catch area where taken.~~

~~(6) Vessel operators engaged in commercial harvest of squid, except when taken incidental to any other lawful fishery, must record~~)).

(b) Upon landing or delivery to an original receiver, the exact weight in pounds, as recorded on the shellfish receiving ticket, and species of harvested scallops.

(11) It is unlawful for vessel operators engaged in commercial harvest of squid, except when taken incidental to any other lawful fishery, to fail to permanently and legibly record in ink the following information within the following time frames:

(a) Before leaving the Marine Fish-Shellfish Management and Catch Reporting Area where taken, the vessel's Washington department of fish and wildlife boat registration number, gear type, catch area, starting and ending time of fishing, and numbers of other species caught and returned. ((~~Weights of squid must be recorded on landing or sale.~~

~~(7) Vessel operators engaged in commercial harvest of sand shrimp, except when taken incidental to any other lawful fishery, must record~~))

(b) Weight in pounds of squid upon landing or delivery to an original receiver.

(12) It is unlawful for license holders engaged in commercial harvest of sand shrimp, except when taken incidental to other lawful fishery, to fail to permanently and legibly record in ink the following information within the following time frames:

(a) Prior to leaving the harvest site, the location or identification number of the harvest tract, date of harvest, number of trenches pumped, average length and width of trenches (yards), total number of sand shrimp retained (dozens).

(b) At the time of delivery to an original receiver, total number of sand shrimp sold (dozens), and the name of the sand shrimp buyer.

(((~~(8) Vessel operators engaged in commercial harvest of shrimp (other than sand shrimp) using shellfish pot gear in Puget Sound must record~~)) (13) It is unlawful for vessel operators engaged in commercial harvest of shrimp (other than sand shrimp), using shellfish pot gear in Puget Sound, to fail to permanently and legibly record in ink onto the department-supplied harvest logs, the following information within the following time frames:

(a) Prior to leaving the harvest site, the vessel's Washington department of fish and wildlife boat registration number, date, number of pots pulled, pot mesh size, depth fished, soak time, gear location (including latitude and longitude to the nearest hundredth of a minute), species targeted, and weight(s) in pounds of catch ((~~before leaving the site where catch is taken~~)). A separate weight for each species caught and retained must be recorded. When single pots are fished an entry is required for each pot site. When two or more pots are fished on a common ground line the catch site must be recorded at the location of the last pot on the ground line that is pulled. ((~~It shall be unlawful to fail to permanently record this information into the department-supplied harvest log before leaving each catch site. Harvest logs must be maintained and submitted in ascending consecutive order of harvest log serial numbers. Harvest logs must be submitted for each month in which fishing activity occurs and must be received by the department within ten days following any month in which fishing occurs. The fish receiving ticket serial number must be recorded onto the harvest log at the time of sale, or before leaving the last catch site of the day if the vessel operator holds a wholesale dealer license and is the original receiver of the catch.~~))

(b) Immediately after delivery of shrimp to an original receiver, or before leaving the last catch site of the day if the operator holds a wholesale fish dealer's license and is the original receiver, record the fish receiving ticket serial number.

(14) It is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear ((~~must~~)) to fail to report their daily catch by telephone before leaving the last catch site fished each day((~~.~~)), in the following manner:

(a) For harvest in ((~~Crustacean~~)) Shrimp Management ((~~Regions~~)) Areas 1A, 1B, 1C, or 2, reports must be made to the voice recorder at the La Conner district office: 360-446-4345 ext 245.

(b) For harvest in ((~~Crustacean~~)) Shrimp Management ((~~Regions~~)) Areas 3, 4, or 6, reports must be made to the voice recorder at the Point Whitney shellfish laboratory: 360-796-4601 ext 800.

(c) All reports must specify the fisher's name, estimated total number of pounds of each shrimp species in possession, number of pots fished, number of pot pulls (pots multiplied by pulls), the Marine Fish-Shellfish Management and Catch Reporting Area where shrimp were harvested, and the port or name of vessel where the catch will be landed or sold. ((~~The fish receiving ticket reporting requirements of WAC 220-69-240 remain in effect.~~))

(15) Violation of this section as it relates to failing to report required information or failing to submit log books is punishable under RCW 77.15.280 reporting of fish or wildlife harvest. Violation of this section as it relates to knowingly providing false or misleading information is punishable under RCW 77.15.270, providing false information.

## WSR 07-21-085
### PERMANENT RULES
### DEPARTMENT OF FISH AND WILDLIFE

[Order 07-255—Filed October 17, 2007, 11:29 a.m., effective November 17, 2007]

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

Purpose: Amend WAC 232-12-257 Use of decoys and calls.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-257 (Amending Order 06-92, filed 5/8/06, effective 6/8/06).

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 07-09-083 on April 17, 2007.

Changes Other than Editing from Proposed to Adopted Version: None.

Changes, if any, from the text of the proposed rule and reasons for difference:

Under subsections (3) and (4):

Language used to read: (3) On days open to waterfowl hunting, persons using ((~~lands or waters controlled by the~~)) department lands (as defined in WAC 232-13-030) shall not:…

(4) On days closed to waterfowl hunting, persons using ((~~lands or waters controlled by the~~)) department lands (as defined in WAC 232-13-030) shall not place waterfowl decoys except as authorized by permit of the director.

Language now reads: (3) ((~~On days open to waterfowl hunting, persons using lands or waters controlled by~~)) Except

as otherwise authorized by rule of the commission or by contract or agreement with the department, any person placing waterfowl decoys on any area (including water, access areas, roads, and trails) under the ownership, management, lease, or control of the department, shall not:… ~~(4) On days closed to waterfowl hunting, persons using lands or waters controlled by the department shall not~~)); or

(d) Place waterfowl decoys ((~~except as authorized by permit of the director~~)) on days closed to waterfowl hunting.

(((~~(5)~~))) (4) This regulation shall be enforced under RCW 77.15.400.

These changes were made to clarify the rule language and the intent that these rules would apply to both public and private land and may be conditioned under agreements or contracts. In addition, the land use rules no longer address the placement of decoys on department lands.

A final cost-benefit analysis is available by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail preuslmp@dfw.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 0, Repealed 0.

Date Adopted: October 12, 2007.

Susan Yeager
for Jerry Gutzwiler, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 06-92, filed 5/8/06, effective 6/8/06)

**WAC 232-12-257 Use of decoys and calls.** (1) It is unlawful to hunt waterfowl, wild turkeys, or deer with the use or aid of battery-powered or other electronic devices as decoys.

(2) It is unlawful to hunt waterfowl, wild turkeys, or deer with the use or aid of electronic calls.

(3) ((~~On days open to waterfowl hunting, persons using lands or waters controlled by~~)) Except as otherwise authorized by rule of the commission or by contract or agreement with the department, any person placing waterfowl decoys on any area (including water, access areas, roads, and trails) under the ownership, management, lease, or control of the department, shall not:

(a) Place waterfowl decoys prior to 4:00 a.m.;

(b) Allow or permit waterfowl decoys to be unattended or not in their immediate control for a period greater than one hour; ((~~or~~))

(c) Fail to remove waterfowl decoys within two hours after the close of established daily hunting hours((~~.~~

~~(4) On days closed to waterfowl hunting, persons using lands or waters controlled by the department shall not~~)); or

(d) Place waterfowl decoys ((~~except as authorized by permit of the director~~)) on days closed to waterfowl hunting.

(((~~(5)~~))) (4) This regulation shall be enforced under RCW 77.15.400.

## WSR 07-21-097
### PERMANENT RULES
### DEPARTMENT OF REVENUE

[Filed October 18, 2007, 3:29 p.m., effective November 18, 2007]

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

Purpose: To incorporate recent statutory changes into the corresponding rules. Section 73, chapter 241, Laws of 2007, changed the name of a recognized source of open space priorities that is also listed in WAC 458-30-330, sections 24 and 25, chapter 54, Laws of 2007, deleted a subparagraph that contained obsolete text; these changes affect WAC 458-30-700 and 458-30-300 respectively.

Citation of Existing Rules Affected by this Order: Amending WAC 458-30-300 Additional tax—Withdrawal or removal from classification, 458-30-330 Open space plan and public benefit rating system—Authorization and procedure to establish—Adoption—Notice to owner—Valuation, and 458-30-700 Designated forest land—Removal—Change in status—Compensating tax.

Statutory Authority for Adoption: RCW 84.33.140, 84.34.055, and 84.34.108.

Other Authority: RCW 84.34.141 and 84.08.070.

Adopted under notice filed as WSR 07-14-107 on July 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 3, 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 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 3, Repealed 0.

Date Adopted: October 18, 2007.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 01-24-030, filed 11/27/01, effective 12/28/01)

**WAC 458-30-300 Additional tax—Withdrawal or removal from classification.** (1) **Introduction.** This rule outlines the withdrawal and removal procedures, events that trigger removal, and how to calculate the additional property tax ("additional tax"), interest, and penalty that may be imposed because land is withdrawn or removed from classification. When land is withdrawn or removed additional tax and interest are due. A twenty percent penalty is also due when land is removed from classification (see RCW 84.34.-108 and 84.34.070(2)).

(2) Duties of assessor and treasurer. As soon as possible after determining that the land no longer qualifies for classification under chapter 84.34 RCW or the use of the land has changed, the assessor must notify the owner in writing regarding this determination and of his or her intent to remove the land from classification. The assessor may not remove the land from classification until the owner has had an opportunity to be heard on the issue of removal.

(a) The owner has thirty calendar days following the postmark date on the assessor's notice of intent to remove to respond, in writing, to the assessor about the removal of the land from classification. After giving the owner an opportunity to be heard and unless sufficient information or evidence is presented as to why the land should not be removed from classified status, the land will be removed from classification as of the date the land no longer qualified for classification or the use of the land changed.

(b) Within thirty days of removing land from classification, the assessor notifies the owner, in writing, about the reasons for the removal. The owner, seller, or transferor may appeal the removal to the county board of equalization.

(c) Unless the removal is reversed on appeal, the assessor revalues the affected land with reference to its true and fair value on the date of removal from classification. The assessment roll will list the assessed value of the land before and after the removal from classification. Taxes will be allocated to the part of the year to which each assessed value applies; that is, current use and true and fair value.

(d) The assessor computes the amount of additional tax, interest, and penalty, unless the removal is the result of one of the circumstances listed in subsection (5) of this rule.

(e) The assessor notifies the treasurer of the amount of additional tax, interest, and penalty due.

(f) The treasurer mails or gives the owner written notice about the amount of the additional tax, interest, and, if required, penalty due and the date on which the total amount must be paid.

(g) The total amount is due and payable to the treasurer thirty days after the owner is notified of the amount of additional tax, interest, and penalty due.

(3) Amount of additional tax, interest, and penalty. The amount of additional tax, interest, and penalty will be determined as follows:

(a) The amount of additional tax is equal to the difference between the property tax paid on the land because of its classified status and the property tax that would have been paid on the land based on its true and fair value for the seven tax years preceding the withdrawal or removal. And in the case of a removal, the taxes owed for the balance of the current tax year;

(b) The amount of interest, calculated at the same statutory rate charged on delinquent property taxes specified in RCW 84.56.020, is based upon the amount of additional tax determined under (a) of this subsection, starting from the date the additional tax could have been paid without interest until the date the tax is paid; and

(c) A penalty amounting to twenty percent of the additional tax and interest; that is, twenty percent of the total amount computed in (a) and (b) of this subsection. A penalty is not imposed when:

(i) The land has been classified for at least ten years at the time it is withdrawn from classification and the owner submitted a request to withdraw classification to the assessor at least two assessment years prior to the date the land is withdrawn from classification; or

(ii) The use of the land has changed and the change in use was the result of one of the circumstances listed in RCW 84.34.108(6). See subsection (5) of this rule for a detailed list of these circumstances.

(4) **Failure to sign notice of continuance.** Land will be removed from current use classification if a new owner fails to sign the notice of continuance when the classified land is sold or transferred. Additional tax, interest, and penalty will be imposed in accordance with RCW 84.34.108(4) because of this removal. A notice of continuance is not required when classified land is transferred to a new owner who is the heir or devisee of a deceased owner and the new owner wishes to continue classified use (see RCW 84.34.108 (1)(c)). If the heir or devisee elects not to continue classified use, the land will be removed from classification and additional tax, interest, and penalty are due.

(5) **Exceptions.** No additional tax, interest, or penalty will be imposed if the withdrawal or removal from classification was the result of one or more of the following circumstances:

(a) Transfer to a governmental entity in exchange for other land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain or the sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of this power. This entity must have declared its intent to exercise the power of eminent domain in writing or by some other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than an act of the landowner changing the use of the property;

(d) Official action by an agency of the state of Washington or by the county or city in which the land is located disallowing the current use of classified land. For the purposes of this rule, "official action" includes: City ordinances, zoning restrictions, Growth Management Act, Shoreline Management Act, and Environmental Policy Act;

(e) Transfer of land to a church when the land would qualify for a property tax exemption under RCW 84.36.020. Only the land that would qualify for exemption under RCW 84.36.020 is included within this exception. Additional tax, interest, and, if appropriate, the penalty will be assessed upon

the remainder of the land withdrawn or removed from classification;

(f) Acquisition of property interests by public agencies or private organizations qualified under RCW 84.34.210 or 64.04.130 for the conservation purposes specified therein. See subsection (6) of this rule for a listing of these agencies, organizations, and purposes. However, when the property interests are no longer used for one of the purposes enumerated in RCW 84.34.210 or 64.04.130, additional tax, interest, and penalty will be imposed on the owner of the property at that time;

(g) Removal of land granted classification as farm and agricultural land under RCW 84.34.020 (2)(d) because the principal residence of the farm operator or owner and/or housing for farm and agricultural employees was situated on it. This exception applies only to the land upon which the housing is located even if this portion of the agricultural enterprise has not been allocated a separate parcel number for assessment and tax purposes;

(h) Removal of classification after a statutory exemption is enacted that would exempt the land from property tax and the landowner submits a written request to the assessor to remove the land from classification. This exception applies only to newly enacted exemptions that would cause classified land to go from taxable to exempt status. For example, in 1999 the legislature created a new property tax exemption for property used for agricultural research and education programs. Subsequently, the owner of such land requests removal of the land from classification, no additional tax, interest or penalty are imposed because of this new property tax exemption authorized by RCW 84.36.570.

(i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(j) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040;

(k) The sale or transfer of land within two years of the death of an owner who held at least a fifty percent interest in the land if:

(i) The individual(s) or entity(ies) who received the land from the deceased owner is selling or transferring the land; and

(ii) The land has been continuously assessed and valued as classified or designated forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW since 1993. The date of death shown on the death certificate begins the two-year period for sale or transfer; or

(l) ((~~The sale or transfer of classified land between July 22, 2001, and July 22, 2003, if:~~

~~(i) An owner who held at least a fifty percent interest in the land died after January 1, 1991;~~

~~(ii) The individual(s) or entity(ies) who received the land from the deceased owner is selling or transferring the land; and~~

~~(iii) The land has been continuously assessed and valued as classified or designated forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW since 1993. The date of death shown on the death certificate is the date used to determine the deceased owner's date of death; or~~

~~(m)~~)) The result of one of the following changes in classification because of the owner's request:

(i) Reclassification from farm and agricultural land under RCW 84.34.020(2) to: Timber land under RCW 84.34.020(3), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(ii) Reclassification from timber land under RCW 84.34.020(3) to: Farm and agricultural land under RCW 84.34.020(2), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(iii) Reclassification from open space/farm and agricultural conservation land under RCW 84.34.020 (1)(c) to farm and agricultural land under RCW 84.34.020(2) if the land was previously classified as farm and agricultural land; or

(iv) Reclassification from forest land under chapter 84.33 RCW to open space land under RCW 84.34.020(1).

(6) **Land acquired by agencies or organizations qualified under RCW 84.34.210 or 64.04.130.** If the purpose for acquiring classified land is to protect, preserve, maintain, improve, restore, limit the future use of, or conserve the land for public use or enjoyment and the classified land is acquired by any of the following entities, no additional tax, interest, or penalty will be imposed as long as the property is used for one of these purposes:

(a) State agency;

(b) Federal agency;

(c) County;

(d) City;

(e) Town;

(f) Metropolitan park district (see RCW 35.61.010);

(g) Metropolitan municipal corporation (see RCW 35.58.020);

(h) Nonprofit historic preservation corporation as defined in RCW 64.04.130; or

(i) Nonprofit nature conservancy corporation or association as defined in RCW 84.34.250.

(7) **Removal of classification from land that was previously classified or designated forest land under chapter 84.33 RCW.** Land that was previously classified or designated as forest land under chapter 84.33 RCW may be reclassified under chapter 84.34 RCW at the request of the land owner. If such land is subsequently removed from the current use program before the land has been classified under chapter 84.34 RCWfor at least ten assessment years, a combination of compensating tax imposed under chapter 84.33 RCW and additional tax, interest, and penalty imposed under chapter 84.34 RCW is due. RCW 84.33.145 explains the way in which these taxes are to be calculated.

AMENDATORY SECTION (Amending WSR 06-18-011, filed 8/24/06, effective 9/24/06)

**WAC 458-30-330 Open space plan and public benefit rating system—Authorization and procedure to establish—Adoption—Notice to owner—Valuation.** (1) **Introduction.** RCW 84.34.055 enables a county legislative authority to establish an open space plan, public benefit rating system, and valuation schedule for land classified as open space. This section explains the factors that must be considered when such a plan and rating system are established,

includes a nonexclusive list of recognized sources used in determining open space priorities, and outlines the actions required after and effects of the approval of an open space plan and public benefit rating system.

(2) **General authorization.** The county legislative authority may direct the county planning commission to set open space priorities and to adopt, following a public hearing, an open space plan and a public benefit rating system (rating system) for the county. As used in this section, "planning commission" means the county office, commission, or department that is responsible for making planning decisions at the county level. The open space plan must include, but is not limited to, the following:

(a) Criteria to determine the eligibility of land;

(b) A process to establish a rating system; and

(c) An assessed valuation schedule developed by the assessor. This schedule is a percentage reduction of true and fair value based on the rating system.

(3) **A public hearing is required.** At least one public hearing must be held before an open space plan, a public benefit rating system, or an assessed valuation schedule may be approved by the county legislative authority.

(4) **What criteria are used to determine eligibility?** Within the rating system the county legislative authority must include the criteria and elements contained in RCW 84.34.-020 (1)(a). This authority, which approves or denies applications for the classification and reclassification of land as open space, must consider the criteria when it makes its determination.

(a) The rating system must provide a method to rank or rate classified open space land.

(b) The legislative authority must give priority consideration to lands used for buffers planted with or primarily containing native vegetation no later than July 1, 2006, unless buffers of this nature already receive priority consideration in an existing open space plan, rating system, and assessed valuation schedule.

(c) "Priority consideration" as used in this section, may include, but is not limited to, establishing classification eligibility, maintenance criteria, or a rating system for buffers with native vegetation.

(5) **How is an open space plan and rating system developed?** The county planning commission must take all reasonable steps to determine open space priorities or use recognized sources for this purpose, or both.

(a) Recognized sources of open space priorities include, but are not limited to:

(i) The natural heritage data base;

(ii) The state office of historic preservation;

(iii) The ((~~interagency committee for outdoor~~)) recreation and conservation office inventory of dry accretion beach and shoreline features;

(iv) The state, national, county, and/or state registers of historic places;

(v) The shoreline master program; or

(vi) Studies conducted by the parks and recreation commission and by the departments of fisheries, natural resources, and wildlife.

(b) Particular features and sites may be verified by an outside expert in the field and approved by the appropriate state or local agency. This verification is to be sent to the county legislative authority for final approval for inclusion in the open space plan.

(6) **How is an owner of classified open space land notified about the adoption of an open space plan, rating system, and valuation schedule? Can an owner choose not to participate and request removal from the current use program?** Once the county legislative authority adopts an open space plan, rating system, and assessed valuation schedule, the planning commission or other designated agent of the legislative authority must assign a recommended number of priority rating points to all land classified as open space using the adopted rating system. The planning commission or agent will forward this recommendation to the county legislative authority for approval. After the number of priority rating points are assigned and approved, this information will be sent to the assessor. The assessor will determine the new assessed value of the classified open space land based on the number of priority rating points assigned and the adopted assessed valuation schedule. Thereafter, the assessor must notify all owners of such land of the new assessed value of their land in the manner provided in RCW 84.40.045.

(a) Within thirty days of receipt of this notice of the new assessed value, the owner may request that the parcel(s) of land be removed from the open space classification without payment of additional tax, interest, or penalty.

(b) If previously classified open space land does not qualify for classification under the newly adopted open space plan and rating system, the assessor is not to remove the land from the open space classification. This land will retain its status as classified open space land. The assessor will determine the value of this land using the new priority rating system and valuation schedule.

(7) **How does a rating system affect assessed value of classified open space land?** The assessed value of properties classified as open space is determined by a formula using a priority rating system typically consisting of "points." A county generally establishes a list of priority resources based on the definition of open space in RCW 84.34.020(1); these are also known as "open space priorities." Each priority resource is assigned a specific point or number of points. The more priority points the land is entitled to, the larger the reduction in true and fair value.

(a) A parcel of classified open space land may contain a number of priority resources. In such cases, the open space plan and rating system may allow the parcel to receive multiple priority points based on the number of priority resources. This would entitle the parcel to a larger reduction in assessed value.

(b) The priority rating system takes into consideration established priority resources, public access, and/or conservation or historic easements.

(c) **Example.** Let's assume a wetland was designated as a priority resource in the adopted open space plan. A wetland entitles the land to receive three priority points. Each point may represent a ten percent reduction in assessed value (one point equals a ten percent reduction, two points equals a twenty percent reduction, and so on). A parcel with a priority rating of three points would be entitled to a thirty percent reduction in assessed value.

AMENDATORY SECTION (Amending WSR 02-20-041, filed 9/24/02, effective 10/25/02)

**WAC 458-30-700 Designated forest land—Removal—Change in status—Compensating tax.** (1) **Introduction.** This rule describes what events trigger the removal of land from designated forest land status under chapter 84.33 RCW, the procedures followed for removal, and the resulting compensating tax.

(2) **Events triggering the removal of designated forest land status.** The assessor must remove forest land from its designated forest land status when:

(a) The owner submits a written request to remove the owner's land from designated forest land status;

(b) The owner sells or transfers the land to an individual or entity exempt from property tax because of that individual's or entity's ownership;

(c) The assessor determines that the land is no longer primarily devoted to and used for growing and harvesting timber;

(d) The owner has failed to comply with a final administrative or judicial order made because of the violation of the restocking, forest management, fire protection, insect and disease control and forest debris provisions of Title 76 RCW or the rules that implement Title 76 RCW;

(e) Restocking has not occurred to the extent or within the time specified in the application for designation of the land; or

(f) The owner sells or transfers forest land to a new owner who has not signed a notice of continuance, except when the new owner is the heir or devisee of a deceased owner. RCW 84.33.140(5).

(3) **How to retain designated forest land status when the land is sold or transferred.** When designated forest land is sold or transferred, the new owner may retain designated forest land status by filing a signed notice of continuance with the deed. The notice of continuance may be signed as part of the real estate excise tax (REET) affidavit or as a separate form if the county has decided it will require owners to submit both the REET affidavit and an attached separate notice of continuance. If multiple owners own the land, all owners or their agent(s) must sign the notice of continuance. A notice of continuance is not required for a new owner to retain designated forest land status when the new owner inherits the property.

(a) The owner may obtain the notice of continuance form and a real estate excise tax (REET) affidavit from the county. The county assessor's office has the notice of continuance form and the county treasurer's office has the REET affidavit.

The notice of continuance may also be obtained on the internet at http://dor.wa.gov under property tax, "forms."

(b) After the new owner signs the notice of continuance as part of the REET affidavit and, if required, the separate notice, the REET affidavit and notice must be submitted to the assessor for approval. The assessor may also require the owner to submit a timber management plan before approving the notice of continuance.

(i) The assessor signs the REET affidavit and indicates whether the land will or will not qualify to continue as designated forest land.

(ii) An assessor signs the REET affidavit and approves the land for continued classification if:

(A) The owner provides a complete and accurate notice of continuance signed by the new owner demonstrating that the forest land will continue to qualify as designated forest land; and

(B) At the assessor's option, the new owner provides a timber management plan for the property.

(iii) The assessor is allowed up to fifteen days to confirm that the information upon the notice is complete and accurate. The assessor may use this time to confirm that the timber management plan provides:

(A) The correct legal description for the forest land;

(B) The new owner's statement that the forest land is owned by the same person, consists of twenty or more contiguous acres, and is primarily devoted to and used to grow and harvest timber;

(C) A statement about whether the land is used to graze livestock;

(D) A brief description of the timber stands located on the land;

(E) A statement about whether the land has been used in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW; and

(F) If the land has been recently harvested or supports a growth of brush and noncommercial type timber, a description of the owner's plan to restock the forest land within three years.

A timber management plan may contain, but is not required to contain, any other information that the harvester needs for its own business purposes (i.e., a statement of goals for managing the land or identifying resource protection areas on the land (like riparian buffer areas along a stream or an unstable slope) that limit harvesting activities).

(iv) If the assessor determines that the notice of continuance or the timber management plan is not accurate or complete, the owner may resubmit the corrected information to the assessor.

(v) If the assessor determines that the land does not qualify to continue as designated forest land, the assessor removes the land upon the date of the conveyance and provides the owner with a notice of removal containing reason(s) for the removal and the amount of compensating taxes owed.

(c) Once the assessor signs the notice of continuance as part of the REET affidavit and the separate notice of continuance, if required, the notice(s) are then submitted to the treasurer. Before the treasurer can stamp the REET affidavit as approved for recording, the treasurer collects any REET due because of the transfer, and collects all compensating tax if the land does not qualify for continuance as designated forest land because it was denied continuance by the assessor. The county recording clerk must not accept any deeds or other transfer documents unless the treasurer has stamped the REET affidavit.

(d) A notice of continuance is not required when the transfer of the forest land is to a new owner who is an heir or devisee, however, the new owner must continue to meet the requirements of designated forest land to avoid removal from designation. The treasurer determines that a transfer is by

inheritance because the claim for the inheritance exemption is filled out on the REET affidavit with supporting documentation. The treasurer should notify the assessor when forest land has been transferred by inheritance without a notice of continuance.

(4) **Assessor decisions and procedures.** Before removing the land from its designated forest land status, the assessor follows certain procedures and takes into account circumstances that may delay or prevent removal.

(a) The assessor must determine:

(i) The actual area of land to be removed from forest land status;

(ii) Whether the land has been exempted from an unretired special benefit assessment;

(iii) The true and fair value of the area being removed as of January 1st of the year of removal from designation;

(iv) Forest land value for the area to be removed;

(v) The last levy rate that applied for that area; and

(vi) The amount of time the land has been designated and classified as forest land, including the number of days up to the date of removal for the current year of removal.

(b) The assessor may require the owner to provide a legal description of the land area intended for removal when the landowner requests removal of owner's land from designated forest land status.

(c) The remaining land outside of the affected removal area continues to be designated as forest land if the owner retains twenty or more contiguous acres primarily devoted to and used for growing and harvesting timber. If the remaining land fails to meet the forest land definition because there are less than twenty contiguous acres primarily devoted to and used for growing and harvesting timber, the owner may request reclassification as timber land under the open space program in chapter 84.34 RCW.

(d) The assessor must provide the owner with a written notice and an opportunity to be heard by the assessor, or the assessor's deputy, when the assessor intends to remove the land because it is no longer primarily devoted to and used for growing and harvesting timber. RCW 84.33.140 (5)(d). Each county assessor may set his or her own procedure for giving a landowner this notice and opportunity to be heard so long as it is done in a reasonable and consistent manner that ensures due process for each owner.

(e) An assessor may not remove forest land merely because an owner subdivides the land into separate parcels, if contiguous parcels of the subdivided land still add up to at least twenty contiguous acres, remain in the same ownership, and continue to be primarily devoted to and used for growing and harvesting timber. An assessor may ask an owner of designated forest land if the use of the land has changed when the owner subdivides a tract of designated forest land into separate parcels.

(f) If the assessor determines the land is no longer primarily devoted to and used for growing and harvesting timber, but there is a pending acquisition by an entity that would qualify for exemption from compensating tax under subsection (6)(e) of this rule, the assessor must not remove the land from its designated forest land status. RCW 84.33.140 (5)(d)(i). In order to prevent removal, the government entity or other qualified recipient must provide written proof to the assessor of its intent to acquire the land or documentation that demonstrates the transaction will qualify for an exemption from compensating tax under subsection (6)(e) of this rule. The entity acquiring the land must provide this written proof within sixty days of a request by the assessor. Thereafter, once a year, the governmental entity or other recipient must provide the assessor of the county in which the land is located written evidence of its intent to acquire the land. This written evidence must be provided on or before December 31st of each year or at an earlier date if the assessor makes a written request for such information. RCW 84.33.140 (5)(d)(i). Upon the assessor's written request, the information must be provided within sixty days from the date the assessor mails or hands the request to the owner or the postmark date of the request, if later.

(g) The assessor must not remove forest land from its designation if a governmental restriction is imposed on the land that prohibits, in whole or in part, the harvesting of timber.

(i) If only a portion of the forest land is impacted by the governmental restriction, the assessor cannot use the restriction as a basis to remove the remainder of the land from its designated forest land status.

(ii) A governmental restriction includes:

(A) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or

(B) The land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(5) **Removal proceedings.** After determining that a triggering event causing removal has occurred, the assessor must provide timely written notice(s) to the taxpayer. RCW 84.33.140 (5)(d) (written notice and opportunity to be heard), RCW 84.33.140(9) (notice of removal). Upon receiving the notice of removal, the landowner may appeal the removal or apply for reclassification of the land to the open space program under chapter 84.34 RCW. If the owner chooses to appeal the removal, the appeal must be filed within thirty days of the postmark date for the notice or by July 1st of the year of removal, whichever is later. If the owner chooses to apply for reclassification, they must do so within thirty days of the postmark date of the notice.

(a) **When does the land get removed from the designated forest land status?** If the removal is a result of a sale or transfer, the assessor removes the land on the date of sale or transfer provided in the legal conveyance. If the removal is based upon a determination made about the land by the assessor or at the request of the owner, the assessor removes the land on the date shown on the notice of removal mailed to the owner.

(b) **Notice of removal.** The assessor uses the notice of removal to notify the owner that the land has been removed from designated forest land status. Within thirty days of removing land from designated forest land status, the assessor must mail a notice of removal to the owner with the reasons for the removal. The owner, seller, or transferor may appeal the removal to the county board of equalization.

(i) If the property is being removed because the assessor has determined the land is no longer primarily devoted to and used for growing and harvesting timber, the assessor provides

two notices. First, the assessor must notify the taxpayer of his or her intent to remove the property and give the owner an opportunity to be heard. The assessor may require the owner to provide pertinent information about the land and its use in the response to the assessor's first notice. When the assessor determines that the property still does not qualify as designated forest land after the first notice is sent, the assessor mails the owner the second notice, the notice of removal, but only after:

(A) The owner declines the opportunity to be heard;

(B) The owner fails to timely respond to the first notice; or

(C) The assessor has received and considered the owner's timely response to the notice of intent to remove and nevertheless concludes that the property is no longer primarily devoted to growing and harvesting timber.

(ii) If the removal is based upon an owner's request for removal, upon receipt of a request for removal from an owner, the assessor sends the notice of removal to the owner showing the compensating tax and recording fee due.

(iii) The notice provides the reason(s) for removing the land from designation and the date of the removal. RCW 84.33.140(9). The notice includes the compensating tax calculated in rule section (6) and the necessary recording fees to be paid. It also includes the due date for payment, along with the landowner's rights to appeal the removal or the true and fair value at the time of removal, and the owner's right to apply for the land to be reclassified under chapter 84.34 RCW. The county must use the notice of removal form prepared by the department.

(iv) The assessor must also provide written notice of the removal to any local government filing a notice regarding a special benefit assessment under RCW 84.33.210 within a reasonable time after the assessor's decision to remove the land. The assessor may provide a simple statement with the legal description of the land, the name of the landowner, and the date of removal, if he or she includes a copy of the notice sent to the landowner. RCW 84.33.230.

(c) **What happens when an owner chooses to appeal the removal?** Unless the removal is reversed upon appeal, the assessor continues the process to remove the property from designated forest land status. The assessor may choose to delay collection of the compensating tax and recording fee until the appeal is decided. However, if the assessor postpones the collection of the compensating tax and recording fee, the assessor must notify the treasurer to temporarily delay collection. The assessor must also notify the owner that if the determination to remove is upheld, then interest will be due from the date the compensating tax and recording fee were due.

(i) If the removal is reversed upon appeal, the assessor shall reinstate the land as designated forest land, discharge any lien placed against the land, revise any assessments made against the property during the interim, refund the recording fee paid, and refund or cancel any compensating taxes and interest paid or owing.

(ii) If the removal is upheld upon an appeal in which the assessor has delayed collection, the compensating tax and recording fee are due immediately with interest accrued from the date the tax and fee were originally due. Upon receiving notice of the decision upholding the removal, the assessor must immediately notify the treasurer to collect any unpaid compensating taxes, fees, and interest on the land.

(d) **What happens when an owner applies to have the land reclassified under chapter 84.34 RCW?** If an application for reclassification is submitted by the owner within thirty days after the notice of removal has been mailed, the forest land is not removed from classification until the application for reclassification under chapter 84.34 RCW is denied or later removed from classification under RCW 84.34.108. RCW 84.33.145(1).

(i) The assessor processes an application for reclassification in the same manner as it processes an initial application for classification under chapter 84.34 RCW.

(ii) A timber management plan must be filed with the county legislative authority within sixty days of the date the application for reclassification under this chapter or from designated forestland under chapter 84.33 RCW is received. The application for reclassification will be accepted, but may not be processed until this plan is received.

(A) If this plan is not received within sixty days of the date the application for reclassification is received, the application will be denied.

(B) If circumstances require it, the assessor may allow an extension of time for submitting a timber management plan when an application for reclassification is received. The applicant will be notified of this extension in writing. When the assessor extends the filing deadline for this plan, the county legislative authority may delay processing the application until the plan is received. If the timber management plan is not received by the date set by the assessor, the application for reclassification will be automatically denied.

(iii) When the owner sells or transfers land (or a portion of the land) while an application for reclassification is pending, an assessor may accept a notice of continuation, and allow the owner to revise the application for reclassification to reflect the name of the new owner of the property.

(iv) If the application for reclassification under chapter 84.34 RCW is approved, the assessor shall transfer the property to its new classification.

(v) If the application for reclassification under chapter 84.34 RCW is denied, the assessor must record the removal notice and inform the treasurer's office to immediately begin collection of the compensating tax and the recording fee.

(6) **Compensating tax.** Compensating tax is imposed when land is removed from its forest land status. This tax recaptures taxes that would have been paid on the land if it had been assessed and taxed at its true and fair value instead of the forest land value.

(a) **Calculating the compensating tax.** The assessor uses the current year's levy rate, the forest land value, and the true and fair value for the area to be removed from forest land status to calculate the compensating tax. The compensating tax consists of two parts: The recapture of taxes for previous years that the land was classified or designated as forest land, up to a maximum of nine years; and the recapture of taxes for the portion of the current year up to the date of removal in the year the land is removed from designation. RCW 84.33.140 (11).

(i) The compensating tax for the previous years is calculated by determining the difference between the amount of taxes assessed at the forest land value for the removal area and the amount of taxes that would have been paid if the land had been valued at its true and fair value in the year of removal. That difference is multiplied by the number of years the land was classified or designated as forest land up to a maximum of nine years.

(ii) The compensating tax for the portion of the year of removal from January 1st to the date of removal is calculated by determining the difference between the amount of taxes assessed at the forest land value and the taxes that would have been paid if the land had been valued at its true and fair value for the portion of the year up to the removal date.

(b) Formulas for calculating taxes after removal:

(i) Calculation of prior year's compensating tax:

| True and Fair Value of Land (Jan 1st of year removed) | Less | Forest Land Value at time of removal | Multiplied by | Last levy Rate Extended Against Land | Multiplied by | Years (not to exceed 9) | Equals | Compensating Tax |
|---|---|---|---|---|---|---|---|---|
| $_____ | – | $_____ | x | $_____ | x | | = | $_____ |

(ii) Calculation of current year's taxes to date of removal:

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | No. of days designated as forest land | ÷ | 365<br>No. of days in year | | = | | Proration factor (To items (A) and (B)) | |
| (A) | $_____<br>Market value | x | _____<br>Levy rate | x | _____<br>Proration factor | | = | $____ |
| (B) | $_____<br>Forest land value | x | _____<br>Levy rate | x | _____<br>Proration factor | | = | $____ |
| (C) | **Amount of compensating tax for current year ((A) minus (B))** | | | | | | = | **$____** |

(c) The assessor notifies the treasurer of the amount of compensating tax and the due date for the tax by providing the treasurer a copy of the removal notice. Compensating tax is due and payable to the county treasurer thirty days after the assessor mails to the owner the notice of removal informing the owner of the reasons for removal and the amount of compensating tax due. RCW 84.33.140(11). However, when property is sold or transferred, any compensating tax owed must be paid to the county treasurer before recording the conveyance. The county recording authority will not accept any instrument transferring the land, unless the compensating tax was paid or was not owed.

(d) **What happens if the compensating tax is not paid on the due date?** If the compensating tax is not paid by the due date, the tax is considered delinquent. Interest, set at the statutory rate for delinquent property taxes specified in RCW 84.56.020, will accrue against the amount of the outstanding taxes from the due date until the entire amount owing is paid. Unpaid compensating tax and interest becomes a lien on the land. RCW 84.60.020.

(i) This lien attaches at the time the forest land is removed from designation.

(ii) The lien has priority over any recognizance, mortgage, judgment, debt, obligation, or responsibility against the land.

(iii) This lien must be fully paid before any other recognizance, mortgage, judgment, debt, obligation, or responsibility may be charged against the land.

(iv) The lien can be foreclosed upon expiration of the same period after delinquency and in the same manner as liens for delinquent real property taxes are foreclosed under RCW 84.64.050. RCW 84.33.140(12).

(e) **Compensating tax is not imposed on land removed from the forest land designation if the removal resulted solely from any of the following:**

(i) A transfer to a government entity in exchange for other forest land within Washington state;

(ii) A transfer under either the power of eminent domain or upon the threat of eminent domain by an entity with the power of eminent domain that intends to exercise this power. The entity must threaten to exercise eminent domain in writing or demonstrate this threat by some other official action;

(iii) A donation of fee title, development rights, or the right to harvest timber in order to protect, preserve, maintain, improve, restore, limit the future use, or conserve the property for public use or enjoyment (see RCW 84.34.210 and 64.04.130). Provided, this donation is made to a:

(A) State agency;

(B) Federal agency;

(C) County;

(D) City;

(E) Town;

(F) Metropolitan park district (see RCW 35.61.010);

(G) Metropolitan municipal corporation (see RCW 35.58.020);

(H) Nonprofit historic preservation corporation as defined in RCW 64.04.130; or

(I) Nonprofit nature conservancy corporation or association as defined in RCW 84.34.250.

However, when the land is no longer being used for one of the purposes listed above, compensating tax will be imposed on the owner of the land at that time;

(iv) The sale or transfer of fee title to a government entity (see the governmental entities listed above in clause (iii) of this rule section) or a nonprofit nature conservancy corporation as defined in RCW 64.04.130 exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage advisory council under its established natural heritage plan as defined in chapter 79.70 RCW (natural area preserves). However, if the

land is no longer used to protect and conserve the area for state natural area preserve purposes, or fails to comply with the terms of a natural heritage plan, compensating tax will be imposed on the owner of the land at that time;

(v) A sale or transfer of fee title to the state's parks and recreations commission for park and recreation purposes;

(vi) An official action of an agency of the state of Washington or the county or city in which the land is located disallowing the current use of the land. "Official action" includes city ordinances, zoning restrictions, the Growth Management Act, the Shoreline Management Act, and the Environmental Policy Act;

(vii) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(viii) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040;

(ix) In a county with a population of more than one million (i.e., King County), a transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation (as these corporations are defined in RCW 64.04.130) and the property interest being transferred is to:

(A) Protect or enhance public resources; or

(B) Preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment. When the land is no longer being used for any of these purposes, the owner of the land at the time will be required to pay compensating tax. RCW 84.33.140 (12) and (13); or

(x) The sale or transfer of forest land within two years after the death of an owner who held at least a fifty percent interest in the land if:

(A) The individual(s) or entity(s) who received the land from the deceased owner is selling or transferring the land; and

(B) The land has been continuously assessed and valued as classified or designated forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW since 1993. The date of death shown on the death certificate begins the two-year period for sale or transfer((~~; or~~

~~(xi) The sale or transfer of forest land between July 22, 2001, and July 22, 2003, if:~~

~~(A) An owner who held at least a fifty percent interest in the land died after January 1, 1991;~~

~~(B) The individual(s) or entity(s) who received the land from the deceased owner is selling or transferring the land; and~~

~~(C) The land has been continuously assessed and valued as classified or designated forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW continuously since 1993. The date of death shown on the death certificate is the date used to determine the owner's date of death~~)).

(7) **When will the land be assessed at its true and fair value and the taxes become payable?** The land will be assessed at its true and fair value on the date it is removed from forest land status. The assessor revalues the land removed from forest land status with reference to its true and fair value on January 1st in the year of removal. RCW 84.33.140(10). The property tax for the remainder of the year following the date of removal is based on land's true and fair value.

(a) To calculate the increase the assessor must determine the number of days remaining in the year from the date of removal. The increase in property tax is due on the same due date as all other property taxes are due for the year (generally, April 30th and October 1st of the current year. See RCW 84.56.020).

(b) Formula for calculating the increase in property taxes for the remainder of the year in which the land is being removed:

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| (i) | _____ | ÷ | 365 | | = | | | |
| | No. of days from date of removal to the end of the year | | No. of days in year | | | Proration factor for true and fair land value | | |
| (ii) | $_____ | x | _____ | x | _____ | = | $_____ | |
| | Market value | | Levy rate | | Proration factor | | | |
| (iii) | $_____ | x | _____ | x | _____ | = | $_____ | |
| | Forest land value | | Levy rate | | Proration factor | | | |
| (iv) | **Total amount of increased taxes for current year ((ii) minus (iii))** | | | | | = | **$**_____ | |

(c) If the taxes for the year of removal have not yet been billed, the tax should be recalculated based on the true and fair value of the land removed for the portion of the year following the date of removal.

(d) An owner may appeal the true and fair value of the land used to calculate the increase in the remaining current year's taxes or the compensating taxes within thirty days of the notice (or up to sixty days if such time limit has been adopted by the county legislative authority) or on or before July 1st, whichever is later. RCW 84.40.038.

(8) **What happens when forest land reclassified under chapter 84.34 RCW is later removed from that classification before ten years have passed?** If reclassified forest land is later removed, a combination of compensating tax and additional tax will be imposed unless the basis for removal is one of the circumstances listed as exempt from additional tax under RCW 84.34.108(6).

(a) The amount of compensating tax is equal to the difference, if any, between the amount of property tax last levied on the land as forest land and an amount equal to the new true and fair value of the land when removed from classification

under RCW 84.34.108 multiplied by the dollar rate of the last property tax levy extended against the land, multiplied by

(b) A number equal to:

(i) The number of years the land was classified or designated as forest land under chapter 84.33 RCW, if the total number of years the land was classified or designated under chapter 84.33 RCW and classified under chapter 84.34 RCW is less than ten; or

(ii) Ten minus the number of years the land was classified under chapter 84.34 RCW, if the total number of years the land was classified or designated under chapter 84.33 RCW and under chapter 84.34 RCW is at least ten.

## WSR 07-21-116
### PERMANENT RULES
## GAMBLING COMMISSION

[Order 617—Filed October 22, 2007, 2:50 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The gambling commission is rewriting its rules manual using plain English techniques. We anticipate the project will be completed by January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. This filing includes rule changes that were inadvertently missed during the rewrite process as well as some housekeeping changes to correct inconsistent usage of words.

Citation of Existing Rules Affected by this Order: Repealing 5; and amending 44.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-18-084 on September 5, 2007, and published October 9, 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 23, Amended 44, Repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 23, Amended 44, Repealed 5.

Number of Sections Adopted Using Negotiated Rule Making: New 23, Amended 44, Repealed 5; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 22, 2007.

Susan Arland
Rules Coordinator

NEW SECTION

**WAC 230-01-011 Deadlines for submitting items to be included in the commission meeting agenda.** (1) To ensure that the public and the commissioners have sufficient notice of agenda items, we require that items for the commission's monthly meeting agenda be submitted in the format we require and delivered to our administrative office at least fourteen days before the regularly scheduled commission meeting.

(2) Any items submitted after the time frame set forth in subsection (1) of this section must be approved by the commissioners in order to be included on the commission meeting agenda.

(3) We publish the meeting agenda on our web site and with the code reviser's office as explained in WAC 230-01-010.

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

**WAC 230-03-040 Signing the application.** The applicant signs the application under oath and under penalty of perjury under the laws of the state of Washington. This oath affirms that the information on the application and any accompanying materials is accurate and complete.

(1) The person signing the application must be:

(a) The highest ranking officer of a charitable, nonprofit, or profit-seeking corporation, or limited liability company seeking licensure; or

(b) The owner of a sole proprietorship seeking licensure; or

(c) All partners of a partnership or general partner of a limited partnership seeking licensure((~~; or~~

~~(d) The mayor or the mayor's designated representative of an incorporated city or town submitting the application~~)).

(2) The person seeking an individual license and a designated officer of the organization for which the person will work must both sign the application.

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

**WAC 230-03-050 Additional information required from applicants for licensing.** (1) Applicants must give us details or copies of the following information on or attached to their application:

(a) ((~~Articles of incorporation and bylaws; or, if not a corporation, a copy of any bylaws and other documents which set out the organizational structure and purposes of the organization; and~~

~~(b)~~)) The name of the resident agent as required by state law, and the agent's business and home address; and

(((~~c~~))) (b) Internal Revenue Service tax exemption letter, if one is necessary; and

(((~~d~~))) (c) All lease or rental agreements, whether oral or written, between the applicant and the owner of the site where the applicant will conduct gambling activity; and

(((~~e~~))) (d) Any franchise agreements or other agreements, whether written or oral, between the applicant and distributors or manufacturers of equipment or between the applicant and any other person whose agreements relate to gambling activities or gambling equipment; and

(((~~f~~))) (e) All proposed financing, consulting, and management agreements or contracts between applicant and any gambling service supplier; and

(((~~g~~))) (f) Enough personal information to ensure each substantial interest holder is qualified to hold a license or participate in an authorized gambling activity; and

(g) For commercial applicants: Articles of incorporation, limited liability corporation formation, partnership agreement, and other documents which set out the applicant's business structure; and

(h) For charitable and nonprofit organization applicants: Articles of incorporation and bylaws; or, if not a corporation, a copy of any bylaws and other documents which set out the organizational structure and purposes of the organization.

(2) Applicants must also give us any other information we request within thirty days of the request or within any other time frame we provide.

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

**WAC 230-03-085 Denying, suspending, or revoking ((a)) an application, license or permit.** We may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or

(2) Has been convicted of, or forfeited bond on a charge of, or pleaded guilty to a misdemeanor or felony crime involving physical harm to individuals. "Physical harm to individuals" includes any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person; or

(3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or

(4) Has failed to pay gambling taxes to local taxing authorities and the local taxing authority ((must petition)) has petitioned us to take action; or

(5) Is serving a period of probation or community supervision imposed as a sentence for any juvenile, misdemeanor, or felony criminal offense, whether or not the offense is covered under RCW 9.46.075(4); or

(6) Is the subject of an outstanding gross misdemeanor or felony arrest warrant; or

(7) Fails to provide us with any information required under commission rules within the time required, or, if the rule establishes no time limit, within thirty days after receiving a written request from us; or

(8) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by:

(a) Prior activities; or

(b) Criminal record; or

(c) Reputation; or

(d) Habits; or

(e) Associations; or

(((8))) (9) Knowingly provides or provided goods or services to an entity that illegally operates gambling activities.

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

**WAC 230-03-175 Requirements for commercial stimulant businesses.** Businesses must provide evidence for us to determine ((the business')) their qualifications as a commercial stimulant as ((set forth)) required in RCW 9.46.0217. That evidence includes, but is not limited to:

(1) Proof that it is an "established business" as used in RCW 9.46.0217. "Established business" means any business that:

(a) Has been open to the public for sales of food or drink for on-premises eating and drinking for ninety days or more; or

(((a) Provides)) (b) Passes an inspection by us, is ready to conduct food or drink sales, and gives us ((with)) a proposed operating plan which includes:

(i) Hours of operation; and

(ii) Estimated gross sales from each separate activity the business will conduct on the business premises including, but not limited to:

(A) Gross sales from food or drinks sold for "on-premises" eating ((and)) or drinking; and

(B) Gross sales from food or drinks sold "to go"; and

(C) Gross sales from all other business activities; and

(((b) Is ready to conduct food or drink sales; and

(c) Passes an inspection by us; and))

(2) Proof that it is "primarily engaged in the selling of food or drink for consumption on premises" as used in RCW 9.46.070(2). "Primarily engaged in the selling of food or drink for consumption on premises" means that before receiving a gambling license the business has total gross sales of food or drink for on-premises consumption equal to or greater than all other combined gross sales, rentals, or other income-producing activities which occur on the business premises when measured on an annual basis.

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

**WAC 230-03-180 Additional information required for a house-banked card room application.** If you apply for a house-banked card room license, you must provide at least the following as part of your application:

(1) A detailed description, including flow charts, of your planned internal accounting and administrative control system. You must provide the information in the standard format we require; and

(2) A detailed diagram of the planned physical layout of the business premises. The diagram must include at least:

(a) The location of all gambling tables; and

(b) The location of all surveillance cameras; and

(c) The count room; and

(d) The surveillance room; and

(e) The cashier's cage; and

(3) A detailed description of the card games offered for play, including rules of play, and the type of gambling tables operated, including table layouts.

(4) Before you begin card game operations, we perform a preoperational review and evaluation (PORE). You must receive our written approval before operating.

(5) The PORE determines whether:

(a) You have:

(i) An organizational structure that supports your proposed accounting and administrative controls; and

(ii) Controls in place so that you closely monitor the gambling activities and accurately record financial information; and

(iii) Have enough trained staff; and

(b) The physical layout of the card room and supporting functions can handle the proposed accounting and administrative controls.

AMENDATORY SECTION (Amending Order 605, filed 11/29/06, effective 1/1/08)

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

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

(b) Gambling management services; or

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

(i) Once you have financed more than one licensee, you must be a licensed gambling service supplier until all loans with licensees or previous licensees are paid.

(ii) Once you have been a licensed gambling service supplier, you must be licensed as a gambling service supplier again before financing purchases or leases for any licensee; or

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

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

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

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

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

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

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

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

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

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

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

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

(f) Regulated lending institutions.

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|---|---|
| WAC 230-03-001 | "We," "our," and "us" mean the commission and staff. |
| WAC 230-03-051 | Incorporated cities and towns exempt from some information requirements for application. |

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

**WAC 230-05-001 Prorating or refunding of fees.** (1) We may prorate organization license fees when we adjust expiration dates to schedule our workload.

(2) We may adjust expiration dates to end on the same day for organizations licensed for more than one activity. Whenever we adjust license expiration dates under this provision, we may prorate the required fees.

(3) We will not prorate or refund fees when:

(a) You discontinue your gambling activities; or

(b) You voluntarily surrender your license or permit; or

(c) We suspend or revoke your license.

(4) We keep a portion of your application fees whether we deny or administratively close your application or you withdraw it.

(5) If you are a commercial stimulant or a charitable or nonprofit licensee, you ((~~may~~)) have one year from your license expiration to apply for a partial refund of your license fee if your annual gross gambling receipts are less than the minimum for your license class. ((~~We will refund~~)) After our approval, we refund you the difference between the fees you paid and the fees for the license class level you actually met. ((~~You must request the refund within twelve months.~~))

NEW SECTION

**WAC 230-06-002 "We," "our," and "us" mean the commission and staff.** In this title, "we," "our," and "us" mean the designated commission staff. If a rule refers to the powers or duties of the commissioners or the director or director's designee, the rule states specifically "commissioners" or "director or director's designee."

NEW SECTION

**WAC 230-06-004 Defining "consecutively numbered," "consecutive," and "consecutively."** (1) "Consecutively numbered" means a numbering system normally beginning with the number one, increased by one for each unit added to the group, and ending with a number equal to the total number of units in the group.

(2) "Consecutive" and "consecutively" mean one after the other without gaps.

AMENDATORY SECTION (Amending Order 601, filed 8/22/06, effective 1/1/08)

**WAC 230-06-010 Age restrictions for players.** ((~~Licensee~~)) No person must ((~~not~~)) allow anyone under the age of eighteen to participate in gambling activities except:

(1) To play in licensed bingo games when accompanied by an adult member of his((~~/~~)) or her immediate family or a guardian, who is at least eighteen years old((~~,~~)):

(a) "Immediate family" means only the spouse, parents, or grandparents of an individual((~~,~~)); and

(b) "Guardian" means only a court-appointed, legal guardian of an individual; or

(2) To play bingo at agricultural fairs or school carnivals; or

(3) To play amusement games; or

(4) To sell raffle tickets for a charitable or nonprofit organization that:

(a) Has development of youth as a primary purpose; and

(b) Has at least three members or advisors who are at least eighteen years old and who supervise the operation of the raffle; and

(c) Has an adult member or advisor designated as the manager for the raffle.

NEW SECTION

**WAC 230-06-031 Using wheels in promotional contests of chance, fund-raising events, or gambling activities.**

**Promotional contests of chance (PCOCs)**

(1) Operators may use wheels specifically manufactured for a promotional contest of chance (PCOC), whether commercially made or home made.

(2) Operators must not use professionally manufactured wheels made specifically for gambling activities (for example, Big 6 Wheels) in PCOCs unless they receive permission ahead of time from us.

**Fund-raising events**

(3) Operators may use commercially made wheels in gambling activities for fund-raising events.

**Separation of PCOCs from gambling activities and promotions**

(4) No wheel may be used in conjunction with their gambling activities by:

(a) Card room licensees; or

(b) Pull-tab licensees.

**Card rooms, pull-tabs, bingo, raffles**

(5) Licensees and operators must not use professionally manufactured wheels made specifically for gambling activities (for example, Big 6 Wheels) in:

(a) Bingo; or

(b) Card games; or

(c) Pull-tabs.

(6) Operators may use commercially made or home made wheels as part of drawings for prizes, good neighbor prizes, or second element of chance prizes as part of bingo games, as set out in WAC 230-10-280.

(7) Raffle licensees and operators may use:

(a) Other types of wheels, such as paddle wheels, in raffles; and

(b) Commercially made or home made wheels in an alternative drawing format for determining the winner of a raffle. Alternative drawing formats are set out in WAC 230-11-055 and 230-11-060.

AMENDATORY SECTION (Amending Order 601, filed 8/22/06, effective 1/1/08)

**WAC 230-06-035 ((~~Offer no~~)) Credit, loans, or gifts prohibited.** (1) Licensees, employees, or members must not ((~~extend~~)) offer or give credit, ((~~make~~)) loans, or ((~~give~~)) gifts to any person playing in an authorized gambling activity or which makes it possible for any person to play in an authorized gambling activity.

(2) Gifts are items licensees give to their customers. Licensees must not connect these gifts to gambling activities we regulate unless the gifts are:

(a) Gambling promotions; or

(b) Transportation services to and from gambling activities; or

(c) Free or discounted food, drink, or merchandise which:

(i) Costs less than five hundred dollars per individual item; and

(ii) Must not be traded back to you for cash; and

(iii) Must not give a chance to participate further in an authorized gambling activity.

(3) You must collect the price required to participate in the gambling activity in full before allowing someone to participate. Licensees must collect cash, check, gift certificate, gift card, or electronic point-of-sale bank transfer.

(4) If the price paid for the opportunity to play a punch board or pull-tab series is ten dollars or less, licensees may collect the price immediately after the play is completed.

(5) If a charitable or nonprofit organization has a regular billing system for all of the activities of its members, it may use its billing system in connection with the playing of any licensed activities as long as the organization limits play to full and active members of its organization.

(6) Charitable or nonprofit organizations may allow credit cards, issued by a state regulated or federally regulated financial institution, for payment to participate in raffles.

AMENDATORY SECTION (Amending Order 601, filed 8/22/06, effective 1/1/08)

**WAC 230-06-050 Review of electronic or mechanical gambling equipment.** (1) Persons who wish to submit gambling equipment, supplies, services, or games for our review to verify compliance with chapter 9.46 RCW and Title 230 WAC must pay the application deposit before we perform the review. They must also reimburse us for any additional costs of the review.

(2) We may require manufacturers to submit certain electronic or mechanical gambling equipment for review. The equipment must meet technical standards for compliance, accuracy, security, and integrity. To allow for continued testing and training, staff may keep any equipment submitted for review for as long as the equipment remains in play in Washington. The manufacturers must reimburse us for any costs of the review. ((~~We~~)) The commissioners and commission staff are not liable for any damage to equipment while in our possession.

(3) Licensees must operate equipment identical to the version ((~~staff~~)) the director or director's designee approved.

(4) If persons submitting equipment do not agree with the director or director's designee's decision, they may file a petition for declaratory order with the commission to be heard as a full review (*de novo*) by an administrative law judge, according to RCW 34.05.240 and chapter 230-17 WAC.

NEW SECTION

**WAC 230-06-051 Computation of time.** (1) When a period of time is in commission rules, orders, or statute, the period begins to run on the day after the act, event, or default. The last day of the period is included, unless it is a Saturday, Sunday or a legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday or a legal holiday.

(2) When the period is less than seven days, exclude Saturdays, Sundays and legal holidays in the calculation.

(3) This section does not apply to periods of license suspension.

AMENDATORY SECTION (Amending Order 601, filed 8/22/06, effective 1/1/08)

**WAC 230-06-055 Notify law enforcement of gambling activity.** (1) Licensees must notify local law enforcement agencies, in writing, that they have been licensed before they begin to conduct any activity under the license.

(2) Licensees must ((~~tell~~)) notify local law enforcement agencies of the:

(a) ((~~The~~)) Address where they will conduct the gambling activity; and

(b) ((~~The~~)) Type of gambling activity licensed; and

(c) ((~~The~~)) First date they will conduct the gambling activity; and

(d) ((~~The~~)) Proposed schedule for the operation of the gambling activity if they plan to conduct the activity on a regular basis.

(3) Licensees must not conduct the activity until they have made the notification.

AMENDATORY SECTION (Amending Order 601, filed 8/22/06, effective 1/1/08)

**WAC 230-06-065 ((~~Display copies~~)) Displaying of ((~~all~~)) licenses ((~~or have them present on business premises~~)).** (1) Licensees must prominently display originals or copies of all gambling activity licenses or permits we have issued in the gambling area of their business premises.

(2) Licensees must have ((~~these~~)) the licenses and permits ready for inspection by us, other law enforcement personnel, and the public at all times.

(3) Card room employers may choose not to display employee licenses, but must maintain ((~~a copy of~~)) all card room employees' licenses, proof of licensing, or applications if we have not issued a license, on the licensed premises at all times.

NEW SECTION

**WAC 230-06-071 Washington state identification and inspection stamps to be called "I.D. stamps."** We will refer to Washington state identification and inspection stamps as "I.D. stamps" throughout these rules.

NEW SECTION

**WAC 230-06-074 Assistance required for commission inspections.** When we arrive to conduct an inspection, the person or business under review must immediately provide:

(1) All requested documents or equipment; and

(2) A safe place with adequate space where we may perform the inspection; and

(3) Reasonable assistance to us.

AMENDATORY SECTION (Amending Order 601, filed 8/22/06, effective 1/1/08)

**WAC 230-06-110 ((~~Buy, sell, or transfer~~)) Buying, selling, or transferring gambling equipment.** (1) All licensees and persons authorized to possess gambling equipment must closely control the gambling equipment in their possession.

(2) Before selling gambling equipment, licensees must ensure that the buyer possesses a valid gambling license.

(((~~2~~))) (3) Before purchasing gambling equipment, licensees must ensure that the seller possesses a valid gambling license.

(((~~3~~))) (4) Applicants for Class F or house-banked card room licenses may purchase and possess gambling equipment during the prelicensing process, but only after receiving written approval from us.

(((~~4~~))) (5) Licensees may transfer gambling equipment as a part of a sale of a business as long as a condition of the sale is that the buyer receives a gambling license before the sale is complete. Licensees must make a complete record of all gambling equipment transferred in this manner, including ((~~commission identification and inspection services stamp~~

~~numbers~~)) I.D. stamps. Licensees must report these transfers, including a copy of the inventory record, to us.

AMENDATORY SECTION (Amending Order 601, filed 8/22/06, effective 1/1/08)

**WAC 230-06-120 ((~~Sell or transfer~~)) Selling or transferring gambling equipment ((~~to manufacturers or distributors~~)) when no longer licensed.** (1) If we have revoked your operator or distributor license, your license has expired, or you have voluntarily surrendered your license, you may only sell or otherwise transfer gambling equipment to a licensed manufacturer or distributor.

(2) Transfers of gambling equipment in this manner are subject to the following requirements:

(a) The transfer must be complete within thirty days of the date the license became invalid; and

(b) Distributors must use the cash or credit against amounts they owe manufacturers; and

(c) Operators or distributors selling the equipment must report to us within ten days of the transaction a complete inventory of all the gambling equipment transferred, including commission ((~~identification and inspection services~~)) I.D. stamps ((~~numbers~~)); and

(d) Manufacturers or distributors receiving the equipment must prepare a credit memorandum and retain it with their records.

REPEALER

The following section of the Washington Administrative Code is repealed:

| | |
|---|---|
| WAC 230-06-001 | Defining "operator." |

AMENDATORY SECTION (Amending Order 609, filed 4/24/07, effective 1/1/08)

**WAC 230-07-005 Defining "licensees," "licensee," "organizations," and "organization." ((~~defined.~~))** (1) In this ((~~section~~)) chapter of the rules, "licensee" and "licensees" means those charitable or nonprofit organizations which we require to be licensed to conduct gambling activities.

(2) In this chapter, "organization" and "organizations" means:

(a) Licensees; and

(b) All bona fide charitable or nonprofit organizations conducting unlicensed gambling activities authorized by chapter 9.46 RCW.

NEW SECTION

**WAC 230-07-106 Insuring prizes.** (1) We prohibit basing contracts for prize insurance on a percentage of the gambling activity.

(2) We allow prize insurance based on a flat fee or monthly fee.

NEW SECTION

**WAC 230-09-056 Activity reports for fund-raising events.** Fund-raising event licensees must submit an activity report to the commission concerning the operation of the licensed activities of each event. Licensees must complete the report in the format we require and the report must be:

(1) Received at our administrative office or postmarked no later than thirty days after the end of the authorized operating day or days; and

(2) Signed by the licensee's highest ranking executive officer or designee. If someone other than the licensee or an employee prepares the report, the preparer must print his or her name and phone number on the report.

AMENDATORY SECTION (Amending Order 604, filed 10/27/06, effective 1/1/08)

**WAC 230-09-120 Disposable bingo cards at fund-raising events.** (1) Licensees that have a separate bingo license and use disposable bingo cards at the FRE must follow the inventory control procedures for disposable cards in the bingo rules chapter.

(2) Licensees that do not have a separate bingo license must keep all unused disposable cards or packets as part of the FRE record. Licensees may return unused cards or packets to the distributor if there are no breaks in the consecutive card/((~~audit~~)) control numbers. Licensees must receive documentation from the distributor of the total number of cards or packets returned and the beginning and ending card/((~~audit~~)) control numbers.

AMENDATORY SECTION (Amending Order 610, filed 4/24/07, effective 1/1/08)

**WAC 230-10-001 Defining "licensees," "licensee," "organizations," "organization," "operators" and "operator."** (1) In this ((~~section~~)) chapter of the rules, "licensee" and "licensees" means those charitable or nonprofit organizations which we require to be licensed to conduct gambling activities.

(2) In this section of the rules, "organization" and "organizations" means:

(a) Licensees; and

(b) All bona fide charitable or nonprofit organizations conducting unlicensed gambling activities authorized by chapter 9.46 RCW.

(3) In this section of the rules, "operator" and "operators" mean licensees, organizations, and individuals.

AMENDATORY SECTION (Amending Order 610, filed 4/24/07, effective 1/1/08)

**WAC 230-10-030 Bingo card definitions.** For purposes of this title:

(1) "Card" means a unique group and configuration of numbers printed on paper, cardboard, or other material used in bingo games. This is also called a "face."

(2) "Card number" means the number the manufacturer assigns to identify a single card or face. The "card number" is also called a "face" or "perm" number.

(3) "Number" means numeral or symbol printed on the card.

(4) "Collate" means the process of cutting or assembling master sheets or precut sheets of cards from one or more sets

of cards into packets or books for marketing purposes. "Collate" is also called "finish" or "finishing."

(5) "Collation" means a group of packets or books of cards assembled from more than one set of cards.

(6) "Cut" means the layout or orientation of cards or sheets of cards divided from a master sheet of cards. A "cut" may be either square, horizontal, or vertical.

(7) "Disposable bingo card" means a nonreusable paper bingo card manufactured by a licensed manufacturer.

(8) "Duplicate cards" means two or more cards that are imprinted with the same numbers.

(9) "On" means the number of cards imprinted on a sheet. (Example: "Three on.")

(10) "Pack" means a group of cards or sheets of cards collated into a book and each page or sheet is intended to play a separate bingo game, including "on-the-way" games, within a session. This is also called a "packet."

(11) "Product line" means a specific type of card identifiable by unique features or characteristics when compared to other types of cards the manufacturer markets. A "product line" includes all series and all cards within each series the manufacturer identifies.

(12) "((~~Sequentially~~)) Consecutively numbered" means a numbering system normally beginning with the number one, increased by one for each individual unit added to the group, and ending with a number identical to the total number of units assigned to that group.

(13) "Serial number" means a number the manufacturer assigns for identification and tracking purposes to a set of cards. The same number must not identify another set of cards from the same product line, color, border pattern, and series in less than 999,999 occurrences or twelve months, whichever occurs first. If the product line is used as a determining factor for assignment of a serial number, the difference between various product lines must be readily identifiable by observation.

(14) "Series" of cards means a specific group of cards that a manufacturer assigns ((~~sequential~~)) consecutive card numbers. The first and last card numbers in a series typically identify the group of cards. (Example: The "1 to 9000 series.")

(15) "Set" of cards means a specific group of cards from the same product line, which are the same color, border pattern, and imprinted with the same serial number. A "set" of cards may include more than one series of cards.

(16) "Sheet number" means the number the manufacturer assigns to identify an arrangement of more than one card that results from dividing master sheets of cards to help marketing.

(17) "Skip" means the standard spread or difference between card or sheet numbers at different page levels in packs or packets.

(18) "Subset" means a portion of a set of cards or collation of packets that a licensed distributor divides to help marketing.

(19) "Up" means the number of pages or sheets collated into each packet or book of cards. (Example: "Eight up.")

AMENDATORY SECTION (Amending Order 610, filed 4/24/07, effective 1/1/08)

**WAC 230-10-050 Electronically generated bingo cards—Additional requirements.** (1) "Electronically generated bingo cards" means bingo cards for which a licensed manufacturer has predetermined the numbers and the sequence of arrangement and stored them electronically for computer access. Electronically generated bingo cards must:

(a) Meet the requirements for bingo cards; and

(b) Be printed by the licensed bingo operator, during the bingo session on a printer interfaced with the computer; and

(c) If printed before the time of sale, be sold ((~~sequentially~~)) consecutively at each individual sales point, beginning with the lowest card, sheet, or transaction number; and

(d) Have a master verification system that provides a facsimile of each card. The master verification system must display the exact numbers and the location or configuration of numbers on the card.

(2) The bingo licensee must keep cards or sheets of cards not issued ((~~sequentially~~)) consecutively during a session as a part of their daily bingo records.

NEW SECTION

**WAC 230-10-180 Electronic bingo card daubers requirements.** (1) Electronic bingo card daubers must:

(a) Be manufactured by licensed manufacturers; and

(b) Be sold, leased, and serviced by licensed distributors or manufacturers. Operators may perform routine maintenance; and

(c) Have an I.D. stamp from us that was sold to the licensed manufacturer or the operator and attached by the licensed manufacturer, the operator, or us; and

(d) Be unable to modify the computer program which operates the dauber units or the electronic data base which stores the bingo cards; and

(e) Store preprinted bingo cards a player purchases. The electronic images of cards stored in daubers are for player convenience only and are not bingo cards for purposes of this title; and

(f) Use cards that meet all requirements of bingo cards and electronic bingo cards; and

(g) Allow players to input the numbers called; and

(h) Compare input numbers to bingo cards stored in an electronic data base; and

(i) Identify to the player those stored bingo cards that contain the input numbers.

(2) Operators providing electronic daubers must have the cards printed, placed in a master index, and available for on-site inspection at the request of law enforcement agencies, customers, or us.

AMENDATORY SECTION (Amending Order 610, filed 4/24/07, effective 1/1/08)

**WAC 230-10-220 Player selection bingo game card requirements.** (1) Bingo cards used in player selection bingo games:

((~~(1)~~)) (a) Must be printed on two-part, self-duplicating paper to include an original and a duplicate copy. The dupli-

cate copy must be given to the player and the operator retains the original as a part of the daily bingo records; and

((~~(2)~~)) (b) Must include a control system in each set which:

((~~(a)~~)) (i) Identifies that specific set; and

((~~(b)~~)) (ii) Numbers each sheet of cards within a set ((~~sequentially~~)) consecutively; and

((~~(c)~~)) (iii) Allows tracking of the transfer of cards from the point of manufacture to the operator and from the operator to the player; and

((~~(3)~~)) (c) May be produced by unlicensed manufacturers if:

((~~(a)~~)) (i) The primary activity of the manufacturer is producing nongambling products; and

((~~(b)~~)) (ii) The cards meet the general bingo cards requirements; and

((~~(c)~~)) (iii) The licensee assumes responsibility for complying with all requirements for player selection cards; and

((~~(d)~~)) (iv) The invoice transferring these cards includes the beginning and ending card number in addition to meeting all other sales invoice requirements; and

((~~(4)~~)) (d) If electronically generated ((~~cards~~)), may be single copy cards if all information from the cards is either printed on a continuous transaction journal retained in the card generating ((~~device~~)) equipment or stored on the computer hard drive in a data base and printed out at the end of each session.

(2) Operators offering an "instant winner" game under player selection bingo must:

(a) Meet all requirements for awarding bingo prizes; and

(b) Award prizes of not more than twenty-five percent of the total prize pool or two hundred fifty dollars, whichever is less; and

(c) For prizes of two hundred fifty dollars or more:

(i) Have the winner sign the winning card on the back to verify a winner; and

(ii) If using a two-part card, record a neutral player's name and complete address on the back of the original card to verify the winning card was paid.

NEW SECTION

**WAC 230-10-235 Hidden face bingo game requirements.** (1) Hidden face bingo cards must meet the requirements for disposable bingo cards and each card or sheet of cards must:

(a) Be printed, folded, and sealed in a manner that prohibits anyone from viewing or knowing the numbers, configuration of numbers on the card, or the card number before the player opens it; and

(b) Have a separate numbering system that is randomly distributed when compared to the card number imprinted in the "free" space. Manufacturers must use procedures that mix cards or sheets of cards so that:

(i) No consistent relationship exists between the "card numbers" and separate numbering system within a set or subset; and

(ii) No patterns or consistent relationships exist in the location of a specific card number between subsets from different sets; and

(iii) The serial number and the additional card or sheet number must be imprinted on the outside of the cards or sheets of cards and visible for recording without opening the card or sheet of cards; and

(iv) Each set of cards must contain at least six thousand unique faces or patterns of numbers; and

(2) Bingo licensees must:

(a) Use the disposable bingo card receipting method for sales of hidden face bingo cards; and

(b) Meet all inventory requirements for disposable bingo cards and disposable bingo card receipting; and

(c) Comply with rules about sequentially issuing bingo cards to ensure that duplicate cards are not sold during a game. Licensees must sell each complete set or subset of cards before they issue any cards from a different set or subset. Licensees may sell cards from more than one set during a game if care is taken to ensure that no duplicate cards are sold; and

(d) Complete all play during a single session and only use cards that are sold during that session; and

(e) Select and call a new set of numbers for each game or set of games (example: "On the way" games); and

(f) Have a separate display board, visible to the players, for displaying numbers called. The numbers must be displayed until the game is completed. Licensees may use alternative displays if the numbers are displayed on the electronic flashboard during all number selection periods; and

(g) Document and prominently post the requirements for a completed game; and

(3) Licensees offering an "instant winner" game under hidden face bingo must:

(a) Meet all requirements for awarding bingo prizes; and

(b) Award prizes of not more than twenty-five percent of the total prize pool or two hundred fifty dollars, whichever is less; and

(c) For prizes of two hundred fifty dollars or more:

(i) Have the winner sign the winning card on the back to verify a winner; and

(ii) If using a two-part card, record a neutral player's name and complete address on the back of the original card to verify the winning card was paid; and

(4) Players who have paid to participate in the game must be present when the numbers are selected.

AMENDATORY SECTION (Amending Order 610, filed 4/24/07, effective 1/1/08)

**WAC 230-10-305 Gift certificates as bingo prizes.** When issuing gift certificates as bingo prizes, bingo operators must:

(1) Issue the gift certificates ((~~sequentially~~)) consecutively; and

(2) Not exceed fifty dollars per bingo prize in value; and

(3) Not issue gift certificates exclusively for punch boards or pull-tabs; and

(4) Record the value of each gift certificate as a bingo prize in the daily bingo records under the session awarded; and

(5) Keep the bingo prize receipt for the gift certificates as a part of the daily bingo records.

AMENDATORY SECTION (Amending Order 610, filed 4/24/07, effective 1/1/08)

**WAC 230-10-310 Selling gift certificates.** When selling gift certificates, bingo operators must:

(1) Issue the gift certificates ((~~sequentially~~)) consecutively; and

(2) Ensure that the gift certificates are paid for in full at the time of purchase; and

(3) Deposit all funds collected separately into the gambling account within five banking days; and

(4) Include each gift certificate number with the deposit record.

AMENDATORY SECTION (Amending Order 610, filed 4/24/07, effective 1/1/08)

**WAC 230-10-330 ((~~Recordkeeping required~~)) Activity reports for ((~~agricultural fairs,~~)) Class A, B, and C bingo, agricultural fairs, and other organizations.** Licensees must immediately account for all income from bingo games. Class A, B, and C bingo licensees, organizations conducting bingo under the provisions of RCW 9.46.0321, and bingo activities conducted at a qualified agricultural fair must follow the recordkeeping requirements in WAC 230-07-125 or any of the receipting methods for bingo income required for Class D or above licensees.

NEW SECTION

**WAC 230-10-331 Activity reports for Class D and above bingo licensees.** Class D and above bingo game licensees must submit activity reports to the commission. The activity reports must be in the format we require and must:

(1) Cover the periods:

(a) January 1 through March 31; and

(b) April 1 through June 30; and

(c) July 1 through September 30; and

(d) October 1 through December 31 of each year; and

(2) Be received at our administrative office or postmarked no later than thirty days following the end of the reporting period; and

(3) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the licensee or an employee prepares the report, the preparer must print his or her name and business telephone number on the report; and

(4) Submit a report for any period of time their license was valid, even if they had no activity or did not renew.

AMENDATORY SECTION (Amending Order 610, filed 4/24/07, effective 1/1/08)

**WAC 230-10-390 Disposable bingo card method for receipting bingo income required when disposable bingo cards used.** Bingo licensees must use the disposable bingo card method to receipt for bingo income when disposable bingo cards are used. Licensees using the disposable bingo card method to receipt for bingo income must:

(1) Use bingo cards that meet all disposable bingo card requirements; and

(2) Complete the inventory control record; and

(3) Record for each set of cards or sheets intended for playing a single game, including on-the-way games:

(a) Serial number; and

(b) The color and/or border pattern; and

(c) The value of each card or sheet; and

(d) The lowest consecutive card or sheet number issued as a receipt; and

(e) The last card or sheet number issued as a receipt; and

(f) Missing cards or sheets per the manufacturer's packing record; and

(g) The number of cards returned and not issued; and

(h) The number of cards issued as receipts; and

(i) The total gross gambling receipts from all cards issued as receipts; and

(4) Record for each set or collation of packs or packets of cards sold and intended for playing a defined set of games:

(a) The serial number of the top sheet or page of the packet; and

(b) The color and/or border pattern of the top sheet or page of the packet; and

(c) The lowest consecutive card, sheet, or packet number for the first packet issued as a receipt; and

(d) The card, sheet, or packet number of the last or highest packet issued as a receipt; and

(e) The number of packets issued as receipts; and

(f) The number of packets returned and not issued; and

(g) Missing packets per the manufacturer's packing record; and

(h) The value of each packet; and

(i) The total gross receipts from all packets issued as receipts; and

(5) Record each disposable card issued for each type of sale separately. When more than one card or sheet number appears on a sheet of cards, licensees must use the manufacturer's designated control system to determine the beginning and ending number sold. Each time the numbering of the sheets breaks in the set, licensees must make a separate entry in the records; and

(6) ((~~Sequentially~~)) Consecutively issue each disposable card or sheet or packet of cards from the same set at each individual sales point. Licensees may sell these cards, sheets, or packets not issued during a session only at the next bingo session. Otherwise, licensees must retain these cards, sheets, or packets of cards for at least one year; and

(7) Return unsold cards issued to the operator for a linked bingo prize to the linked bingo prize provider. The linked bingo prize provider must store these cards six months or until we have examined and approved them for destruction, whichever is less. Unopened blocks of two hundred fifty cards may be reissued.

AMENDATORY SECTION (Amending Order 610, filed 4/24/07, effective 1/1/08)

**WAC 230-10-420 Ticket method of receipting bingo income.** Bingo licensees may use tickets to document receipts of bingo income. Tickets must be:

(1) Manufactured by a commercial printer and imprinted with:

(a) At least four digit numbers in a ((~~sequential~~)) consecutive series. Class F and above licensees must use tickets with numbers that do not repeat in at least 99,999 occurrences; and

(b) Each ticket on a roll must represent the same dollar value or amount of money; and

(c) Include the name of the licensee operating Class F and above bingo game; and

(2) If used by Class F or above licensees, purchased from a licensed distributor or manufacturer; and

(3) Issued ((~~sequentially~~)) consecutively from each roll, starting with the lowest numbered ticket; and

(4) Accounted for by the licensee. If purchased from a commercial business or licensed distributor, documentation must be on the sales invoice. This invoice, or a photocopy, shall be maintained on the premises and available for inspection. Document the following information on the sales invoice for each roll of tickets purchased:

(a) Name of distributor; and

(b) Name of purchasing licensee; and

(c) Date of purchase; and

(d) Number of rolls of tickets purchased; and

(e) The color, dollar value, total number of tickets, and beginning ticket number for each roll; and

(5) Recorded in the daily records in the format we require; and

(6) Retained by the licensee as a part of the bingo daily records for those not issued as receipts and that bears a number falling below the highest numbered ticket issued during that session and not be used to receipt for any type of income; and

(7) Not be the same color and imprinted with the same ticket number as any other ticket on the premises.

AMENDATORY SECTION (Amending Order 610, filed 4/24/07, effective 1/1/08)

**WAC 230-10-440 Combination receipting method for bingo income requirements.** (1) Bingo licensees using the combination method of receipting for bingo income must follow all requirements for cash register receipting; and

(2) Licensees may sell similar cards used to play for the same prize at a volume discount, but they must record each separate discount price using a separate cash register or sales identification key to provide an audit trail; and

(3) If receipting for the sale of disposable bingo cards, licensees must:

(a) Follow all requirements for disposable bingo card receipting; and

(b) In addition to those requirements, record the following for each session where sets of cards are sold:

(i) The session number and date; and

(ii) The beginning and ending control numbers of the top page of the packets; and

(iii) Adjustments for any missing packets, compared to the manufacturer's packing record; and

(iv) The number of packets distributed to sales points and returned as unsold; and

(v) Total packets sold; and

(vi) The value of each packet; and

(vii) The extended value obtained by multiplying total packets issued times the value of each packet; and

(viii) The cumulative number of packets issued from the series to date; and

(c) ((~~Sequentially~~)) Consecutively issue each disposable card or sheet or packet of cards from the same set at each individual sales point. If sets are divided into subgroups, then licensees must issue packets or sheets of cards within each subgroup ((~~sequentially~~)) consecutively from each subgroup. Licensees may sell these cards, sheets, or packets not issued during a session only at the next bingo session. Otherwise, licensees must retain these cards, sheets, or packets of cards for at least one year; and

(d) Record all required information in the inventory control record; and

(e) Carry forward the totals from the transaction record to the daily bingo summary and reconcile sales against the cash register record; and

(4) If receipting for electronically generated bingo cards, licensees must:

(a) Follow all requirements of electronically generated bingo card receipting; and

(b) Carry forward the totals from the transaction record to the daily bingo summary and reconcile sales against the cash register record; and

(5) If receipting for bonus games, licensees must:

(a) Follow all requirements of ticket receipting; and

(b) ((~~Sequentially~~)) Consecutively issue tickets from each sales point. Licensees must retain tickets from each sales point with control numbers lower than the highest ticket issued at that sales point as a part of the daily bingo records; and

(c) Carry forward the totals from the transaction record to the daily bingo summary and reconcile sales against the cash register record.

AMENDATORY SECTION (Amending Order 610, filed 4/24/07, effective 1/1/08)

**WAC 230-10-445 Linked bingo games ((~~and prizes~~)).** (1) A linked bingo prize provider must request and receive approval from us before allowing a bingo operator to participate in a game that offers a linked bingo prize. ((~~A bingo~~))

(2) Operators must not offer more than one linked bingo game per session or no more than three linked bingo games per day.

(3) The linked bingo prize provider must notify us within seven days when an operator stops participating in linked bingo prize games.

NEW SECTION

**WAC 230-10-447 Prizes in linked bingo prize games.** (1) Operators may have up to forty-eight hours to award a main or bonus prize to the winner(s); and

(2) Linked bingo prize providers may establish a consolation prize amount paid at each participating location. Participating licensees whose sales volume does not meet the minimum set out in WAC 230-10-455(2) may pay a consolation prize that is less than this amount; and

(3) For all linked bingo prize games, a winner must be determined at each premises which sells cards to participate in the game.

NEW SECTION

**WAC 230-10-451 Recordkeeping for linked bingo prize games.** (1) Class A, B, or C bingo licensees participating in linked bingo games must maintain all records required for Class D bingo licensees for all their bingo operations; and

(2) For funds contributed to accrued linked bingo prizes, licensees must modify each bingo game daily record to include, at least:

(a) The amount of the contribution; and

(b) The amount of any consolation prize the licensee paid for a linked bingo prize game; and

(c) The name of the linked bingo prize provider to whom the contribution is made.

NEW SECTION

**WAC 230-10-456 Additional accounting records for linked bingo prize providers.** In addition to other accounting records, linked bingo prize providers must keep records in the format we require for:

(1) Each prize offered; and

(2) Equipment installed at participating licensees' locations that includes at least:

(a) The name and address of the licensee where the equipment is installed; and

(b) A physical description of the equipment and its cost; and

(3) All bingo cards purchased or otherwise obtained, where the cards were distributed, and the date the cards were used; and

(4) Video recording of each drawing in the previous one-year period that shows, at least:

(a) The ball selection process, including the numbers drawn; and

(b) All body movements of the caller.

NEW SECTION

**WAC 230-10-457 Activity reports for linked bingo prize providers.** Linked bingo prize providers must submit activity reports to us twice a year for their sales and services. The activity reports must be in the format we require and must:

(1) Cover the periods:

(a) January 1 through June 30; and

(b) July 1 through December 31; and

(2) Be received at our administrative office or postmarked no later than thirty days following the end of the reporting period; and

(3) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the licensee or an employee prepares the report, the preparer must print his or her name and business telephone number on the report; and

(4) Submit a report for any period of time their license was valid, even if they had no activity or did not renew.

REPEALER

The following section of the Washington Administrative Code is repealed:

| | |
|---|---|
| WAC 230-10-450 | Controlling gambling equipment by linked bingo prize licensees. |

AMENDATORY SECTION (Amending Order 602, filed 9/26/06, effective 1/1/08)

**WAC 230-11-001 Defining "licensees," "licensee," "organizations," and "organization." ((~~defined.~~))** (1) In this chapter, "licensee" and "licensees" means those charitable or nonprofit organizations which we require to be licensed to conduct raffles.

(2) "Organization" and "organizations" means all bona fide charitable or nonprofit organizations conducting unlicensed raffles authorized by chapter 9.46 RCW, including those authorized by RCW 9.46.0209, 9.46.0315 and 9.46.0321.

AMENDATORY SECTION (Amending Order 602, filed 9/26/06, effective 1/1/08)

**WAC 230-11-020 Record information on ticket stub.** If an organization sells raffle tickets to the general public or conducts raffles that do not require the winner to be present at the drawing, the organization must include a stub or other detachable section bearing a number, letter, or symbol matching the number, letter, or symbol on the ticket or object representing the ((~~player's~~)) participant's ticket. The organization's portion must include the participant's name, complete address, telephone number, and other information necessary to notify the winner.

AMENDATORY SECTION (Amending Order 602, filed 9/26/06, effective 1/1/08)

**WAC 230-11-085 Modified and discounted pricing plans for tickets for members-only raffles.** (1) Licensees may use modified ticket pricing plans at members-only raffles when gross revenues do not exceed five thousand five dollars. One type of modified pricing plan is a penny raffle. A penny raffle is a raffle where licensees sell five hundred consecutively numbered tickets. Participants randomly choose tickets and pay the consecutive number of the ticket multiplied by a predetermined cost, for instance, one penny.

(2) In modified pricing plans, licensees may sell tickets to enter a raffle for different values, not to exceed ten dollars for a single ticket, if the licensee:

(a) ((~~Tells~~)) Discloses to the ((~~players~~)) participants the pricing plan before selling them a ticket to participate. The licensee must ((~~tell~~)) disclose to the ((~~player~~)) participant the total number of tickets in the population available and the number of tickets at each price level; and

(b) Allows participants to randomly select their ticket from the population of remaining tickets and pay the amount printed on the ticket they select; and

(c) Establishes records for an adequate audit trail to determine gross gambling receipts; and

(d) Holds no more than two such drawings during a meeting or event; and

(e) Sells multiple tickets to enter one or more drawings as a package and the total price of the package must not exceed twenty-five dollars.

REPEALER

The following section of the Washington Administrative Code is repealed:

| | |
|---|---|
| WAC 230-12-230 | Agreements restricting freedom to buy and sell—Prohibited. |

AMENDATORY SECTION (Amending Order 612, filed 7/16/07, effective 1/1/08)

**WAC 230-13-030 Group 4—Coin or token toss amusement game standards.** In Group 4 games, players toss one or more coins or tokens onto a surface or into a target area to win a prize. In coin or token toss amusement games:

(1) The game must have a clear and unobstructed thirty-six inch vertical airspace above the target area or surface; and

(2) The target or surface must be level and not altered to give an advantage to the operator; and

(3) Any game which has a target area of four square inches or less must award a prize if any part of the coin or token is within the target area. "Four square inches" means a two-inch by two-inch square; and

(4) If the target does not include a more than two-inch by two-inch square area, such as a rainbow or star, a prize must be awarded if any part of the coin or token lands on any portion of the target area.

AMENDATORY SECTION (Amending Order 612, filed 7/16/07, effective 1/1/08)

**WAC 230-13-080 Operating coin or token activated amusement games.** (1) Coin or token activated amusement games must have nonresetting coin-in meters, certified as accurate to within plus or minus one coin or token in one thousand plays, which stop play of the machine if the meter is removed or disconnected when operating at:

(a) Amusement parks; or

(b) Regional shopping malls; or

(c) Movie theaters; or

(d) Bowling alleys; and

(e) Miniature golf course facilities; and

(f) Skating facilities; and

(g) Amusement centers. "Amusement center" means a permanent location whose primary source of income is from the operation of ten or more amusement ((~~devices~~)) games; and

(h) Restaurants; and

(i) Grocery or department stores. A "department or grocery store" means a business that offers the retail sale of a full line of clothing, accessories, and household goods, or a full line of dry grocery, canned goods, or nonfood items plus some perishable items, or a combination of these. A department or grocery store must have more than ten thousand square feet of retail and support space, not including the parking areas; and

(j) Any premises that a charitable or nonprofit organization currently licensed to operate punch boards, pull-tabs, or bingo controls or operates.

(2) All coin or token activated amusement games must have a coin acceptor capable of taking money for one play and may have an additional acceptor to include paper money.

(3) Operators using amusement games that do not return change must have a change-making bill acceptor or the ability to get change in the immediate vicinity of such games. All amusement games using paper money acceptors must either:

(a) Return change; or

(b) Clearly disclose to ((~~the~~)) players before play that change is not returned and ((~~tell~~)) disclose to them where at the location they may get change.

NEW SECTION

**WAC 230-13-169 Activity reports for commercial amusement game licensees.** Commercial amusement game licensees must submit an activity report to the commission. The activity reports must be in the format we require and must:

(1) Cover the periods:

(a) January 1 through June 30; and

(b) July 1 through December 31; and

(2) Be received at our administrative office or postmarked no later than thirty days following the end of the reporting period; and

(3) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the commercial amusement game licensee or its employee prepares the report, then it must provide the preparer's name and business telephone number; and

(4) Be filed even if they do not renew their license. They must file a report for the period between the previous report filed and the expiration date of the license.

AMENDATORY SECTION (Amending Order 614, filed 8/10/07, effective 1/1/08)

**WAC 230-14-040 Maximum number of pull-tabs in a series.** The maximum number of pull-tabs must be no more than:

(1) ((~~Ten~~)) Twenty-five thousand in a series; or

(2) ((~~Six~~)) Ten thousand in a carry-over jackpot series; or

(3) Fifty thousand in progressive jackpot series.

AMENDATORY SECTION (Amending Order 614, filed 8/10/07, effective 1/1/08)

**WAC 230-14-075 Substitute flares.** Manufacturers must make all flares. Operators or distributors must not alter flares, except that substitute flares are allowed if:

(1) The manufacturer, distributor, or operator who changes the original flare and attaches the substitute flare is responsible for ensuring that the substitute flare meets all other requirements for flares; and

(2) Manufacturers, distributors, or operators must permanently deface the original manufacturer's flare and attach the substitute flare to the original.

(3) Distributors or operators may apply manufacturer-produced substitute flares to punch boards and pull-tab series; and

(4) Distributors or operators must place substitute flares only on the upper face or the top of the punch board; and

(5) If distributors or operators convert flares from cash-only prizes to combined merchandise and cash prizes, they must offer at least fifty percent of the total value of the prizes in merchandise; and

(6) Distributors or operators may use substitute flares on punch boards and pull-tab series which offer merchandise or combination merchandise-cash prizes. These flares must use numbers, not symbols, to denote winners. Distributors or operators making substitute flares must:

(a) Select winning numbers from the manufacturer's original flare, or from the manufacturer's designated winning numbers on the punch board; and

(b) Assign the highest valued prize(s) to the lowest available winning number(s); and

(c) Assign the second highest valued prize(s) to the next lowest available winning number(s) and repeat that pattern until they have assigned all prizes based on their value to winning numbers. ((~~Licensed~~)) Distributors may select winning numbers ((~~consecutively~~)) sequentially from the manufacturer's original flare; and

(7) Substitute flares must have the I.D. stamp number and series number permanently recorded in ink on its face.

AMENDATORY SECTION (Amending Order 614, filed 8/10/07, effective 1/1/08)

**WAC 230-14-220 Prize limits for carry-over jackpot pull-tab series.** Operators may use pull-tab series which include carry-over jackpots. Operators must use the following calculations for prizes and prize payouts for carry-over jackpots:

(1) Guaranteed prizes must be sixty percent or more of gross gambling receipts available from the pull-tab series. "Guaranteed prizes" means all prizes available, excluding the contribution amount or carry-over jackpot; and

(2) The manufacturer determines the contribution amount and the method of play and discloses both on the flare; and

(3) The contribution amount for each series must not be more than five hundred dollars; and

(4) An accumulated carry-over jackpot must not be more than ((~~two~~)) five thousand dollars; and

(5) If the carry-over jackpot is awarded, the sum of the advance-level prize and the carry-over jackpot prize combined must not be more than ((~~two~~)) five thousand dollars; and

(6) If the operator carries over the jackpot to a new series, the total of the advance-level prize and the consolation prize must not be more than five hundred dollars.

NEW SECTION

**WAC 230-14-284 Activity reports for punch board and pull-tab licensees.** Punch boards and pull-tab licensees must submit an activity report to the commission. Licensees must complete the report in the format we require and must:

(1) Cover the periods:

(a) January 1 through June 30; and

(b) July 1 through December 31; and

(2) Be received at our administrative office or postmarked no later than thirty days following the end of the reporting period; and

(3) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the punch board and pull-tab licensee or its employee prepares the report, then it must provide the preparer's name and business telephone number; and

(4) Be filed even if they do not renew their license. They must file a report for the period between the previous report filed and the expiration date of the license; and

(5) Unless they are also licensed for Class D or above bingo, charitable and nonprofit licensees must submit a semi-annual activity report for punch boards and pull-tabs; and

(6) Class D or above bingo licensees with a punch board and pull-tab license must report punch board and pull-tab activity, on the combined quarterly report provided by the commission as explained in WAC 230-10-331.

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

**WAC 230-15-035 Requirements for authorized card games.** (1) In order for a game to be authorized, the game must:

(a) Be played with standard playing cards or with electronic card facsimiles approved by the director or the director's designee; and

(b) Offer no more than ((~~two~~)) three separate games with a single hand of cards. We consider bonus features and progressive jackpots separate games. If a player does not have to place a separate wager to participate, we do not consider it a separate game. An example of this is an "envy" or "share the wealth" pay out when another player achieves a specific hand; and

(c) Not allow side bets between players.

(2) Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to comply with rules of a specific game, such as Pinochle or Spanish 21.

(3) Players must:

(a) Compete against all other players on an equal basis for nonhouse-banked games or against the house for house-banked games. All players must compete solely as a player in the card game; and

(b) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager; and

(c) Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:

(i) An insurance wager placed in the game of Blackjack; or

(ii) An "envy" or "share the wealth" wager which allows a player to receive a prize if another player wins a jackpot or odds-based wager; or

(iii) A tip wager made on behalf of a dealer.

(4) A player's win or loss must be determined during the course of play of a single card game.

NEW SECTION

**WAC 230-15-111 Destruction and disposal of gambling chips.** Licensees must submit internal controls to us outlining the procedures for destroying or disposing of gambling logo chips.

(1) Licensees' internal controls must set out the method for destroying logo chips that are damaged or worn. The internal controls must include, at least:

(a) That chips must be destroyed or mutilated in such a way that they are unusable for play; and

(b) The two departments, one of which must be the accounting department, that will be responsible for overseeing chip destruction; and

(c) Only licensed employees may perform chip destruction.

(2) Licensees must record all gambling chips they destroyed on a chip destruction log in the format we require.

(3) If a card room closes, the licensee or former licensee must:

(a) Sell or otherwise transfer gambling equipment to a licensed manufacturer or distributor; or

(b) Destroy the chips according to the established internal controls and provide the chip destruction log to us.

AMENDATORY SECTION (Amending Order 611, filed 4/24/07, effective 1/1/08)

**WAC 230-15-126 Cutting cards in center dealer-dealt games.** In center dealer-dealt games:

(1) After the shuffle, the dealer ((~~must~~)) may offer the cards to a player for a cut. After this initial offer of a cut, the dealer may require any player who asks for a cut to pay a maximum of one dollar; and

(2) Dealers must:

(a) Not cut the cards more than twice during each hand or game; and

(b) Place all the fees for cutting the cards into the pot for that hand or game.

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

**WAC 230-15-135 Wagering limits for nonhouse-banked card games.** Card room licensees must not exceed these wagering limits:

(1) **Poker -**

(a) There must be no more than five betting rounds in any one game; and

(b) There must be no more than four wagers in any betting round, for example, the initial wager plus three raises; and

(c) The maximum amount of a single wager must not exceed ((~~twenty-five~~)) forty dollars;

(2) **Games based on achieving a specific number of points -** Each point must not exceed five cents in value;

(3) **Ante -** No more than the maximum wager allowed for the first betting round for any game, except for Panguingue (Pan). The ante may, by house rule:

(a) Be made by one or more players, but the total ante may not exceed the maximum wager allowed for the first betting round; and

(b) Be used as part of a player's wager;

(4) **Panguingue (Pan) -** The maximum value of a chip must not exceed ten dollars. An ante must not exceed one chip. We prohibit doubling of conditions. Players going out may collect no more than two additional chips for going out from each participating player.

NEW SECTION

**WAC 230-15-141 Additional merchandise or cash prizes for card games.**

**Nonproprietary games.**

(1) Licensees may add additional merchandise or cash prizes to nonproprietary games like Blackjack or Pai Gow. We consider these additional prizes a gambling promotion and they must:

(a) Not be greater than five hundred dollars each; and

(b) Meet all requirements of WAC 230-06-030.

**Proprietary games.**

(2) Licensees must not add additional merchandise or cash prizes to proprietary games without the approval of the company that owns the rights to the games.

(3) To indicate their approval, the owner of the rights to a proprietary game must:

(a) Submit an alternative pay-table that includes the additional or revised prize payout to us for review and approval; or

(b) Send an authorization letter to us allowing the addition of gambling promotions to their game.

(4) Once we approve the changes, the revised pay-tables are available to all card game licensees. The prizes become a part of the game rules and we consider them prize payouts on the game. Because of this, we do not consider the prizes a gambling promotion.

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

**WAC 230-15-300 Using multiplex and quad recording devices in required surveillance.** (1) Licensees must not use multiplexing and quad recording devices for required surveillance, except that they may use:

(a) Multiplexing or quad recording devices on entrances and exits to the card room; and

(b) Quad recording devices to record the movement of drop boxes between tables and the count room.

(2) "Multiplex recording" means combining multiple video inputs into a single signal by cycling through the separate video inputs with the view rotating among different cameras in a predetermined order, recording each video input

((~~sequentially~~)) consecutively in the cycle. Multiplex recording does not provide continuous recording of each video input because the amount of time lapse in the cycle depends on the number of video inputs.

(3) "Quad recording" means four separate video inputs that record continuously and combine into a single signal displayed on one monitor with a view of each video input.

NEW SECTION

**WAC 230-15-475 Tips from players and patrons to card room employees.** (1) House-banked card game licensees may allow selected employees to accept tips from players or patrons.

(2) If licensees allow house-banked card game dealers to accept tips, licensees must ensure that tips are controlled so that only authorized employees receive tips, that tips are properly accounted for, and that tips are maintained separately from all other gambling funds.

(3) Cage cashiers may accept tips. They must locate their tip containers outside the cage enclosure. Players or patrons must deposit the tips directly into the container. A shift or floor supervisor, security, or an accounting manager who does not work as a cashier must verify the tips cage cashiers receive.

(4) Employees directly concerned with management, supervision, accounting, security, or surveillance must not ask for, accept, or share any tip originating from players or patrons.

(5) House-banked card game licensees must:

(a) Establish and implement procedures for the accounting of tips received by authorized card room employees.

(b) Fully document the procedures in their internal controls and describe in detail any methods used to allocate tips.

(c) Establish procedures necessary to ensure that the floor supervisor and surveillance observe card room employees accepting tips. Procedures must include an overt display of received tips, for example tapping the table with the tip before placing it in the tip container.

(6) Employees must:

(a) Drop all tips into a locked tip container which prevents the removal of tips except by unlocking the container. Tips may be accumulated on the table, exchanged into higher denomination chips, and then deposited into the tip container. Tip containers must remain under camera coverage of the closed circuit television system at all times; and

(b) Keep all tips received or pool them with tips of all card room employees according to the licensee's internal controls; and

(c) Redeem all tips received under surveillance at the cashier's cage; and

(d) Accurately report all tips to their employer as described in the licensee's internal controls.

(7) Licensees may determine whether employees must retain or pool tips among employees. Employees must redeem all pooled tips under surveillance at the cashier's cage, count room, or a gaming table.

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

**WAC 230-15-485 ((~~Standards for~~)) Electronic facsimiles of cards allowed.** (1) House-banked card game licensees may use electronic card facsimiles approved by the director or the director's designee in house-banked card games ((~~if the system:~~

~~(a) Produces accurate facsimiles of one or more standard deck(s) of cards; and~~

~~(b) Randomly shuffles the cards before each round of play or shoe loading; and~~

~~(c) Contains a backup system that records and displays at least five previous rounds of play; and~~

~~(d) Meets the surveillance requirements for cards explained in WAC 250-15-280; and~~

~~(e) Contains security protocols which prevent unauthorized access; and~~

~~(f) Is designed to prevent the player from playing against the device; and~~

~~(g) Allows testing of the computer software; and~~

~~(h) Operates only under card room internal controls specific to each system; and~~

~~(i) Is tested by a licensed game testing laboratory for compliance with these requirements; and~~

~~(j) Meets any additional technical requirements we require.~~

~~(2) Card room employees must operate the system.~~

~~(3) The manufacturer must pay the costs of laboratory testing~~)).

(2) Card room employees must operate the system.

NEW SECTION

**WAC 230-15-491 Limiting payouts to dealers for tip or "toke" wagers for odds-based payouts.** (1) A "toke" is a wager made by a player as a tip for the dealer and it is treated as a separate bet.

(2) House-banked card game licensees may:

(a) Establish a separate, individual limit on the amount of the payout on a toke for odds-based payouts within the requirements of WAC 230-15-490; and

(b) Restrict the types of wagers tokes are allowed on and the amounts of tokes.

(3) Tokes are not included in the calculation of the player or table aggregate payout limits.

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

**WAC 230-15-520 Requirements for fill/credit slips.** (1) Each fill/credit slip must be a ((~~sequentially~~)) consecutively prenumbered three-part form in the format we require. We may authorize use of a computer based accounting system which includes a nonrepeating ((~~sequential~~)) consecutive numbering system, which fulfills the controls and safeguards of the manual system. House-banked card game licensees must:

(a) Control and account for each series of fill/credit slips they receive; and

(b) Ensure the fill/credit slip dispenser is secured in the cashier's cage; and

(c) Keep each series of fill/credit slips in a locked dispenser that will permit an individual fill/credit slip in the series and its copies to be written on simultaneously while still located in the dispenser, and will discharge the original and duplicate while the triplicate remains in a continuous, unbroken form in the dispenser; and

(d) Use the forms in ((~~sequential~~)) consecutive order and account for all forms; and

(e) Assign an accounting department employee to be responsible for controlling and accounting for the unused supply of fill/credit slips, placing fill/credit slips in the dispensers, and removing the triplicate copy from the dispensers. Only the accounting department employee may have access to the forms in the dispenser.

(2) If there is a paper jam, the licensee may allow a security department employee access to the dispenser to clear it.

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

**WAC 230-15-535 Closing tables.** When closing tables, house-banked card game licensees must follow these steps:

(1) The floor supervisor and the dealer assigned to the gambling table must count the gambling chips and coins. The surveillance department must monitor and record the entire count and closure process.

(2) The floor supervisor assigned to the gambling table must record the chips and coins counted on a table inventory slip.

(3) Licensees must use ((~~sequentially~~)) consecutively prenumbered three-part forms for table inventory slips. Table inventory slips must be in the format we require and have three parts:

(a) The original (the closer); and

(b) The duplicate (the opener); and

(c) The triplicate (which is transported by security to accounting).

(4) The floor supervisor and the dealer assigned to the gambling table must sign the table inventory slip, confirming the information recorded at the time of closing.

(5) After both the dealer and floor supervisor have signed the closer, the dealer must deposit the closer in the drop box attached to the table. The dealer must place the opener face up in the chip tray, arranged so that it is clearly visible. Then the floor supervisor must lock the clear chip tray cover. The chip trays must be under recorded surveillance at all times.

(6) A security department employee must take the triplicate of the table inventory slip to the accounting department.

(7) If an error is made on the closer, the preparer must write "VOID" on all copies of the form and forward them to the accounting department.

(8) If the locked chip trays are transported to the cashier's cage at the end of each gambling day, a cage cashier must determine that all locked chip trays have been returned to the cage and are adequately secured.

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

**WAC 230-15-670 Keeping a master key control box.** (1) House-banked card game licensees may keep a master key control box with access strictly limited to the owner(s), general manager, or other ((~~authorized~~)) person(s) authorized by the owner.

(2) Keys in this key control box may include:

(a) Extra keys for the department key boxes and restricted areas; and

(b) Other keys included in the licensee's approved internal controls.

## WSR 07-21-119
### PERMANENT RULES
## DEPARTMENT OF LICENSING

[Filed October 23, 2007, 8:16 a.m., effective November 23, 2007]

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

Purpose: Rule making is required to allow spouses of deceased recipients of the Purple Heart medal to purchase and retain Purple Heart license plates.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96A-057 Purple Heart license plates.

Statutory Authority for Adoption: RCW 46.01.110.

Other Authority: RCW 46.12.270 and 46.16.276.

Adopted under notice filed as WSR 07-17-042 on August 9, 2007.

Changes Other than Editing from Proposed to Adopted Version: Subsection (2)(b) clarification was made by adding the words "who was wounded" after the word "person."

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 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: October 23, 2007.

Glen Ball
for Julie Knittle
Assistant Director
Vehicle Services

AMENDATORY SECTION (Amending WSR 02-16-071, filed 8/6/02, effective 9/6/02)

**WAC 308-96A-057 Purple Heart license plates.** (1) **Under what authority does the department issue Purple**

**Heart license plates?** The department issues Purple Heart license plates, under the authority of RCW 46.16.305 as written prior to 1990. Washington state law allowed the department to issue special license plate series denoting the age or type of vehicle or denoting special activities or interest, status, or contribution or sacrifice for the United States, the state of Washington, or citizens of the state of Washington, of a registered owner of that vehicle. The Washington legislature amended the law in 1990 allowing the department to continue issuing special license plates authorized under the law as it was before it was amended.

(2) **Who may receive Purple Heart license plates?** Any Washington resident who:

(a) Has been awarded a Purple Heart medal by any branch of the United States Armed Forces, including the Merchant Marines and the Women's Air Forces Service Pilots or spouse if the recipient is deceased;

(b) Was wounded or is the spouse of a person who was wounded during one of this nation's wars or conflicts identified in RCW 41.04.005; and

(c) Is an owner, co-owner, lessee, or co-lessee of a vehicle requiring two license plates; or

(d) The spouse of a deceased recipient of a Purple Heart medal.

(3) **What documentation does a Purple Heart recipient or spouse of a deceased recipient need to submit to obtain Purple Heart license plates?** Purple Heart recipients or spouse of a deceased recipient applying for these license plates must submit:

(a) An application for Purple Heart license plates; and

(b) A copy of the armed forces document showing the recipient was awarded the Purple Heart medal.

(c) The surviving spouse of a deceased Purple Heart medal recipient may be issued a special Purple Heart license plate. In addition to confirm eligibility, the surviving spouse must submit the following:

(i) A copy of the death certificate of the deceased Purple Heart medal recipient; and

(ii) An affidavit that the applicant is not currently married.

(4) **May the spouse of a deceased Purple Heart recipient keep the Purple Heart license plates?** Yes. To keep the Purple Heart license plates the surviving spouse must provide:

(a) A copy of the Purple Heart recipient's death certificate; and

(b) An affidavit that the spouse has not remarried; and

(c) If the surviving spouse remarries, the Purple Heart special license plate is invalid and must be removed from the vehicle.

(5) **When I am required to replace my Purple Heart license plate, will I receive the same license plate number((/)) and letter combination?** Yes. ((~~Upon request you will receive replacement~~)) If the vehicle owner requests and pays the fees in RCW 46.16.233, the Purple Heart license plates will be replaced with the same number/letter combination as shown on the vehicle computer record.

## WSR 07-21-120
### PERMANENT RULES
## DEPARTMENT OF LICENSING

[Filed October 23, 2007, 8:19 a.m., effective November 23, 2007]

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

Purpose: Rule making is required to remove references to the requirement to present an unexpired driver's license when applying for a title. RCW 46.16.010 requires presentation of an unexpired driver's license only for initial and renewal registrations.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-030.

Statutory Authority for Adoption: RCW 46.01.010.

Adopted under notice filed as WSR 07-17-131 on August 20, 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: October 23, 2007.

Julie Knittle
Assistant Director
Vehicle Services

AMENDATORY SECTION (Amending WSR 05-23-135, filed 11/22/05, effective 1/3/06)

**WAC 308-56A-030 Owner name and address—Recorded on the vehicle record((—Registration))—Application for certificate of ownership.** (1) **What registered owner and lien holder or secured party information is required on the vehicle record((—registration—)) and application for certificate of ownership (title)?**

The vehicle record((, ~~registration~~)) and application for certificate of ownership (title) must include:

(a) The name of each registered owner (natural person or business) of the vehicle and, if the vehicle is subject to a lien or other security interest, the name of each secured party;

(b) The registered owner's primary residence street address (at the choice of the registered owner, a mailing address if different from the residence address can also be given); and

(c) The primary secured party's mailing address.

(2) ((~~**Is there other information I am required to provide before I can obtain a certificate of ownership (title) or registration?**~~

~~Yes. Before the department can issue a certificate of ownership (title) or registration, one of the following, in addi-~~

~~tion to the requirement listed in subsection (1) of this section, must be provided for each registered owner that is a natural person:~~

~~(a) Presentation of an unexpired Washington state driver's license; or~~

~~(b) Certification that he or she is:~~

~~(i) A Washington resident who is a natural person and does not operate a motor vehicle on public roads; or~~

~~(ii) Exempt from the requirement to obtain a Washington state driver's license under RCW 46.20.025.~~

~~(3)~~)) **What does primary residence mean for a registered owner who is a natural person or a business?**

(a) In the case of a natural person, it means the person's true, fixed and permanent home in Washington. This does not include secondary or vacation homes where a vehicle is garaged or used. The department will presume that a registered owner's primary residence is the same as the address used in driver's license records or voter registration records.

(b) In the case of a business, it means the principal place in Washington from which the licensed trade or business of the registered owner is directed, managed, or conducted. Businesses with multiple Washington licensed business locations should use the licensed business location where the service vehicles owned and operated by the business are directed, managed, garaged, stored or maintained.

(((~~4~~))) (3) **Do the addresses for the application for certificate of ownership, and vehicle record ((~~and registration~~)) need to conform to United States Postal Service (USPS) standards?**

Yes. USPS address standards must be used on all vehicle records, ((~~registrations,~~)) and certificates of ownership.

(((~~5~~))) (4) **Are there exceptions to the requirement to provide a primary residence street address?**

Yes. Exceptions will be made for:

(a) Persons who are exempt by law from paying motor vehicle excise tax or fees.

(b) Vehicles ((~~that are~~)) exempt by law from motor vehicle excise tax or fees.

(c) Natural persons who are homeless; defined as someone with no housing.

(d) Other exceptions may apply as determined appropriate by the director or his or her designee.

~~(((6) **Will the department renew a vehicle registration if the registered owner does not provide a primary residence street address?**~~

~~No. The registered owner's primary residence street address is required for vehicle registration renewals unless an exception specified in this section is met.~~

~~(7)~~)) (5) **What will the department do if presented with documentation or other information to indicate there may be an error in the primary residence street address provided?**

The department will flag the vehicle record and the registered owner will be required, prior to the time of next renewal, to:

(a) Show a residential utility bill, driver license or other documentation that verifies the primary residence street address; and

(b) Complete and sign a declaration under penalty of perjury on a form developed by the department.

(((~~8~~))) (6) **Can more than one address be shown on the vehicle record or application if there are multiple registered owners with different addresses?**

No. The department can store the primary residence address and separate mailing address (if applicable) for only one of the registered owner(s).

(((~~9~~))) (7) **Can more than one address be shown on the vehicle record or application if there is more than one secured party?**

No. Only one address for the primary secured party will be shown on the vehicle record.

(((~~10~~))) (8) **Is the applicant or registered owner required to certify the truth of the address information contained in the application for certificate of ownership or vehicle renewal?**

No. The applicant or registered owner will only be required to complete and sign a declaration under penalty of perjury on a form developed by the department when the department has been presented with documentation or other information to indicate there may be an error in the address information provided and the vehicle record has been flagged.

(((~~11~~))) (9) **What is the penalty if the applicant or registered owner provides false address information?**

A person providing false residency information is guilty of a gross misdemeanor punishable by a fine of five hundred twenty-nine dollars.

(((~~12~~))) (10) **Is my residence address subject to public disclosure?**

Where both a mailing address and a residence address are recorded on the vehicle record and are different, only a mailing address will be disclosed. Both addresses will be disclosed in response to requests from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.

## WSR 07-21-128
### PERMANENT RULES
### DEPARTMENT OF FISH AND WILDLIFE

[Order 07-266—Filed October 23, 2007, 3:16 p.m., effective November 23, 2007]

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

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-20-010, 220-20-021, 220-33-001, 220-33-020, 220-36-031, and 220-40-031.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 07-13-046 on June 14, 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 6, Repealed 0.

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

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

Date Adopted: October 13, 2007.

Susan Yeager
for Jerry Gutzwiler, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 07-04-030, filed 1/29/07, effective 3/1/07)

**WAC 220-20-010 General provisions—Lawful and unlawful acts—Salmon, other fish and shellfish.** (1) It shall be unlawful to take, fish for, possess or transport for any purpose fish, shellfish or parts thereof, in or from any of the waters or land over which the state of Washington has jurisdiction, or from the waters of the Pacific Ocean, except at the times, places and in the manners and for the species, quantities, sizes or sexes provided for in the regulations of the department.

(2) It shall be unlawful for any person to have in possession or under control or custody any food fish or shellfish within the land or water boundaries of the state of Washington, except in those areas which are open to commercial fishing or wherein the possession, control or custody of salmon or other food fish or shellfish for commercial purposes is made lawful under a statute of the state of Washington or the rules and regulations of the commission or director, unless otherwise provided.

(3) ((~~It shall be lawful to~~)) A person may fish for, possess, process and otherwise deal in food fish and fish offal or scrap for any purpose, provided((~~:~~)) that it shall be unlawful to use any of the following listed species for purposes other than human consumption or fishing bait:

| | |
|---|---|
| Pacific halibut | (*Hippoglossus stenolepis*) |
| Pacific herring (except as prescribed in WAC 220-49-020) | (*Clupea harengus pallasi*) |
| Salmon | |
| Chinook | (*Oncorhynchus tshawytscha*) |
| Coho | (*Oncorhynchus kisutch*) |
| Chum | (*Oncorhynchus keta*) |
| Pink | (*Oncorhynchus gorbuscha*) |
| Sockeye | (*Oncorhynchus nerka*) |
| Masu | (*Oncorhynchus masu*) |
| Pilchard | *(Sardinops sagax)* |

Except as provided for in WAC 220-88C-040

(4) It shall be unlawful for any person to fish for fish or shellfish while in possession in the field of fish or shellfish that are in violation of the harvest regulations for the area being fished. This regulation does not apply to vessels in transit.

(5) It shall be unlawful for the owner or operator of any commercial food fish or shellfish gear to leave such gear unattended in waters of the state or offshore waters unless said gear is marked.

(a) Shellfish pot, bottom fish pot, set line and set net gear must be marked with a buoy to which shall be affixed, in a visible and legible manner, the department approved and registered buoy brand issued to the license, provided that:

(i) Buoys affixed to unattended gear must be visible on the surface of the water except during strong tidal flow or extreme weather conditions.

(ii) When two or more shellfish pots are attached to a common ground line, the number of pots so attached must be clearly labeled on the required buoy.

(b) It is unlawful to operate any gill net, attended or unattended, unless there is affixed, within five feet of each end of the net, a buoy, float, or some other form of marker, visible on the ((~~corkline~~)) cork line of the net, on which shall be marked in a visible, legible and permanent manner the name and gill-net license number of the fisher.

(c) It shall be unlawful at any time to leave a gill net unattended in the commercial salmon fishery.

(6) It shall be unlawful to place any commercial food fish or shellfish gear in any waters closed to commercial fishing, provided((~~:~~)) that this provision shall not apply to reef nets or brush weirs or to gear being tested under supervision of the department. In addition, ((~~provided further that~~)) it shall be unlawful to take, fish for or possess food fish with any type of commercial fishing gear in the waters of Carr Inlet north of north latitude 47°20', from August 15 through November 30, except as provided in chapter 220-47 WAC.

(7) It shall be unlawful for the owner or operator of any fishing gear to refuse to submit such gear to inspection in any manner specified by authorized representatives of the department.

(8) It shall be unlawful for any person taking or possessing fish or shellfish taken from any of the waters or beaches of the Columbia River, the state of Washington, or the Pacific Ocean, for any purpose, to fail to submit such fish or shellfish for inspection by authorized representatives of the department.

(9) It shall be unlawful for any person licensed by the department to fail to make or return any report required by the department relative to the taking, selling, possessing, transporting, processing, freezing and storing of fish or shellfish, whether taken within the jurisdiction of the state of Washington or beyond, or on Indian reservations or usual and accustomed Indian fishing grounds.

(10) It shall be unlawful to take, fish for ((~~or~~)), possess ((~~or to~~)), injure, kill, or molest fish in any fishway, fish ladder, fish screen, holding pond, rearing pond, or other fish protective device, or to interfere in any manner with the proper operation of such fish protective devices.

(11) It shall be unlawful to club, gaff, ((~~shoot with firearm, crossbow, bow and arrow or compressed air gun,~~)) snag, snare, dip net, harass, spear, stone, or otherwise molest, injure, kill ((~~or~~)), destroy, or shoot with a firearm, crossbow, bow and arrow, or compressed air gun, any fish or shellfish or

parts thereof, or for any person to attempt to commit such acts, or to have any fish, shellfish or parts thereof so taken in possession, except as provided for in this subsection:

(a) ((~~It shall be lawful to~~)) A person may use a dip net or club in the landing of fish taken by personal-use angling, unless otherwise provided; and ((~~it shall be lawful to~~)) a person may use a gaff in the landing of tuna, halibut and dogfish, and a harpoon in the landing of halibut, in all catch record card areas.

(b) ((~~It shall be lawful to~~)) (i) A person may use a dip net, gaff, or club in the landing of food fish or shellfish taken for commercial purposes, except that it is unlawful to use a fish pew, pitchfork, or any other instrument that will penetrate the body of the ((~~food~~)) fish or shellfish ((~~while sorting commercial catches during the act of discarding those fish~~)) that are not going to be retained or are unlawful to possess.

(ii) It is unlawful under any circumstance to use a device that penetrates the body of a sturgeon whether legal to retain or not.

(c) ((~~It shall be lawful to~~)) A person may use a spear in underwater spear fishing, as provided for in WAC 220-56-160.

(d) ((~~It shall be lawful to~~)) A person may use a bow and arrow or spear to take carp, as provided for in WAC 220-56-280.

(e) ((~~It shall be lawful to~~)) A person may snag herring, smelt, anchovies, pilchard, sand lance, and squid when using forage fish jigger gear or squid jigs.

(f) ((~~It shall be lawful to~~)) A person may shoot halibut when landing them with a dip net, harpoon or gaff.

(12) It shall be unlawful to take or possess, for any purpose, any fish or shellfish smaller or larger than the lawful minimum or maximum size limits prescribed by department rule. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish ((~~and~~)).

(13) It shall be unlawful to allow ((~~undersized~~)) salmon or sturgeon or fish unlawful to retain that are entangled in commercial nets to pass through a power block or onto a power reel or drum.

(((~~13~~))) (14) It shall be unlawful to possess, aboard any vessel engaged in commercial fishing or having commercially caught fish aboard, any food fish or shellfish in such condition that its species, length, weight or sex cannot be determined if a species, species group or category, length, weight, or sex limit is prescribed for said species ((~~and~~)). In addition, it is unlawful to possess food fish or shellfish mutilated in any manner such that the natural length or weight cannot be determined if a length or weight limit is prescribed for said species.

(((~~14) It shall be lawful to~~)) (15) It shall be unlawful to possess for any purpose any fish or shellfish in excess of catch or possession limits prescribed by department rule. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish.

(16) A person may possess, transport through the waters of the state, or land, dressed sablefish ((~~"dressed" is~~)) as defined by WAC 220-16-330((~~)~~)).

(((~~15) It shall be lawful to~~)) (17) A person may possess, transport through the waters of the Pacific Ocean, or land, dressed salmon caught during a lawful commercial salmon troll fishery, provided that frozen Chinook salmon, dressed, heads off, shall be 21-1/2 inches minimum, and frozen coho salmon dressed, heads off, shall be 12 inches minimum, measured from the midpoint of the clavicle arch to the fork of the tail.

(((~~16) It shall be lawful to~~)) (18) A person may possess, transport through the waters of the Pacific Ocean, or land, dressed halibut if allowed by International Pacific Halibut Commission (IPHC) rules and such fish meet any IPHC size requirements.

(((~~17~~))) (19) It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department.

(((~~18~~))) (20) It shall be unlawful for any permit holder to fail to comply with all provisions of any special permit or letter of approval issued to him under the authority of the director, or to perform any act not specifically authorized in said document or in the regulations of the commission or director.

(((~~19~~))) (21) It shall be unlawful to use, place or cause to be placed in the waters or on the beaches or tidelands of the state any substance or chemical used for control of predators or pests affecting fish or shellfish or other aquatic marine organisms, without first having obtained a special permit to do so from the director.

(((~~20~~))) (22) It shall be unlawful to test commercial fishing gear, except as follows:

(a) Bellingham Bay - inside and northerly of a line from Governor's Point to the south tip of Eliza Island to Point Frances, in waters 10 fathoms and deeper.

(b) Boundary Bay - north of a line from Birch Point to Point Roberts, and south of the international boundary, in waters 10 fathoms and deeper during times not under ((~~IPSFC~~)) control of the Pacific Salmon Commission.

(c) San Juan Channel - within a 1-mile radius of Point Caution during times not under ((~~IPSFC~~)) control of the Pacific Salmon Commission.

(d) Port Angeles - inside and westerly of a line projected from the east tip of Ediz Hook through buoy C "1" to the mainland.

(e) Port Gardner - within a 2-mile radius of the entrance to Everett breakwater, in waters 10 fathoms and deeper.

(f) Central Puget Sound - between lines from Meadow Point to Point Monroe, and Skiff Point to West Point, in waters 50 fathoms and deeper.

(g) East Pass - between lines from Point Robinson true east to the mainland, and from Dash Point to Point Piner, in waters 50 fathoms and deeper.

(h) Port Townsend - westerly of a line from the Coast Guard station in Port Townsend to Walan Point to Kala Point, in waters 10 fathoms and deeper.

(i) All tows or sets are limited to 20 minutes, exclusive of setting and retrieving time.

(j) All testing is to be accomplished between 8:00 a.m. and 4:00 p.m.

(k) ((~~Codends~~)) Cod ends of trawl nets must be left open, all hooks of set line gear must be unbaited, and no lures or baited hooks shall be used with jig or troll gear.

(l) Any and all incidentally caught fish and shellfish must be returned to the waters immediately, and no fish or shellfish are to be retained aboard the vessel at any time during a gear test operation.

(m) It shall be unlawful for any person conducting such gear testing operations to fail to notify the fish and wildlife enforcement office in Olympia prior to testing.

(((~~(21)~~))) (23) It is unlawful for any person or corporation either licensed by the department or bringing fish or shellfish into the state to fail to comply with the directions of authorized department personnel related to the collection of sampling data or material from fish or shellfish. It is also unlawful for any such person or corporation to fail to relinquish to the department, upon request, any part of a salmon or other fish containing coded-wire tags, including but not limited to, the snouts of those salmon that are marked by having clipped adipose fins.

(((~~(22)~~))) (24) It is unlawful for any person to possess live bottom fish taken under a commercial fishery license.

(((~~(23)~~))) (25) It is unlawful for any person to use chemical irritants to harvest fish, shellfish or unclassified marine invertebrates except as authorized by permit issued by the department.

(26) The lower Columbia River, Grays Harbor and Willapa Bay are closed to commercial sturgeon fishing, except as provided by emergency rule of the director. Sturgeon taken incidentally during an open commercial salmon fishing period may be retained for commercial purposes as described by department rule.

AMENDATORY SECTION (Amending WSR 07-04-030, filed 1/29/07, effective 3/1/07)

**WAC 220-20-021 Sale of commercially caught sturgeon, bottomfish and halibut.** (1) It is unlawful for any person while engaged in commercial fishing for sturgeon, bottomfish or halibut to:

(a) Keep sturgeon smaller or greater than the size limits provided for in WAC 220-20-020, keep more than one sturgeon for personal use, or keep more than the equivalent of one daily limit of sport caught bottomfish for personal use. Any lingcod to be retained for personal use taken east of the mouth of the Sekiu River must be greater than 26 inches in length and may not exceed 40 inches in length. All commercially taken sturgeon, bottomfish, and halibut retained for personal use must be recorded on fish receiving tickets.

(b) Sell any sturgeon, bottomfish, or halibut taken under such license to anyone other than a licensed wholesale dealer within or outside the state of Washington, except that a person who is licensed as a wholesale dealer under the provisions of RCW 77.65.280 may sell to individuals or corporations other than licensed wholesale dealers.

(c) ((~~Sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of any sturgeon taken under such license prior to the time that the sturgeon is sold under subsection (1)(b) of this section.~~)) Remove from the body cavity of the sturgeon any eggs or roe prior to the time the sturgeon is sold to a wholesale dealer licensed under RCW 77.65.280.

(2) It is unlawful for any wholesale dealer licensed under RCW ((~~75.28.300~~)) 77.65.280 to purchase or attempt to purchase sturgeon eggs from sturgeon taken by any person licensed to take sturgeon for commercial purposes under chapter 77.65 RCW if the sturgeon eggs have been removed from the body cavity of the sturgeon prior to the sale of the sturgeon.

(3) It is unlawful to purchase, sell, barter or attempt to purchase, sell, or barter any sturgeon eggs taken from sturgeon caught in the Columbia River below Bonneville Dam.

(4) It is unlawful to remove either the head or tail from a sturgeon prior to the time the sturgeon is sold to a wholesale dealer licensed under RCW 77.65.280 and delivered to a fish processing plant.

AMENDATORY SECTION (Amending Order 88-86, filed 9/2/88)

**WAC 220-33-001 General provision—Commercial fishing regulated.** (1) It is unlawful to fish for food fish in the lower Columbia River for commercial purposes or to possess food fish taken from those waters for commercial purposes, except as provided in this chapter.

(2) In the Columbia River downstream of Bonneville Dam and in the select areas (described in WAC 220-22-010), it shall be lawful to have onboard a commercial fishing vessel more than one licensed net, each of the lawful size or length prescribed for a single net as long as the net or nets are of legal size for the fishery, or the net or nets has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length.

(a) When specifically authorized by the director, nets not lawful for use at that time and area may be onboard the boat if properly stored.

(b) A properly stored net is defined as a net on a drum that is fully covered by tarp (canvass or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

AMENDATORY SECTION (Amending Order 00-146, filed 8/17/00, effective 9/17/00)

**WAC 220-33-020 Sturgeon.** It is unlawful to fish for sturgeon in the lower Columbia River for commercial purposes or to possess sturgeon taken from those waters for commercial purposes, except as provided in this section:

**Gear**

(1) ((~~Gill net gear may be used to fish for sturgeon if it does not exceed 1,500 feet in length along the cork line, it is not constructed of monofilament webbing, its mesh size does not exceed 9 3/4 inches, and it does not have a lead line weighing more than two pounds per fathom of net as measured on the cork line.~~

(2) ~~From December 1 through March 31 it is lawful for sturgeon fishers to have salmon or smelt gill nets aboard while fishing for sturgeon.~~

~~**Fishing periods**~~

~~(3) The lower Columbia River is closed to commercial sturgeon fishing, except as provided by emergency rule of the director. Sturgeon taken incidentally during an open commercial salmon fishing period may be retained for commercial purposes.~~)) It is unlawful to use a gill net to fish for sturgeon if the net exceeds 1,500 feet in length along the cork line.

(2) It is unlawful to use a gill net to fish for sturgeon with mesh size larger than 9 3/4 inches.

(3) It is unlawful to use a gill net to fish for sturgeon if the lead line weighs more than two pounds per fathom of net as measured on the cork line, provided that it is lawful to have a gill net with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through the Tongue Point Select Area, and it is also lawful to have additional weights and anchors attached directly to the lead line in the Deep River, Blind Slough, Knappa Slough and South Channel Select Areas.

(4) From December 1 through March 31 it is lawful for sturgeon fishers to have smelt or salmon gill nets aboard while fishing for sturgeon.

**General**

(((~~(4) Sturgeon smaller or greater than the size limits provided for in WAC 220-20-020 may not be retained for commercial purposes and shall be returned immediately to the water. All sturgeon in transit must not have the head or tail removed.~~))

(5) A person engaged in commercial fishing may retain one sturgeon of legal commercial length for personal use.

(((~~(6) Sturgeon eggs may not be removed from the body cavity of the sturgeon prior to the time the sturgeon is sold to a wholesale dealer licensed under RCW 75.28.300.~~

~~(7) The head or tail may not be removed from a sturgeon prior to the time the sturgeon is sold to a wholesale dealer licensed under RCW 75.28.300 and delivered to a fish processing plant.~~

~~(8) A sturgeon carcass with head and tail removed and retained at a fish processing plant must be at least 28 inches in length.~~

~~(9) It is unlawful to gaff sturgeon.~~))

AMENDATORY SECTION (Amending Order 90-77, filed 8/24/90, effective 9/24/90)

**WAC 220-36-031 Grays Harbor—Season and gear—Sturgeon.** It is unlawful to fish for or possess sturgeon taken for commercial purposes from Marine Fish-Shellfish Management and Catch Reporting Area 60B except at those times((~~,~~)) and with ((~~the~~)) such gear as provided by emergency rule of the director, and subject to the provisions of this section:

(((~~(1)~~))) It is unlawful to take sturgeon by angling from any vessel that is engaged in commercial sturgeon fishing, has been engaged in commercial sturgeon fishing that same day, or has commercially caught sturgeon aboard.

(((~~(2) It is unlawful to retain sturgeon not of lawful size, as provided for in WAC 220-20-020(1), and all sturgeon in transit must not have head or tail removed.~~

~~(3) It is lawful to retain for commercial purposes sturgeon taken incidental to any lawful commercial salmon fishery in any Grays Harbor Salmon Management and Catch Reporting Area except it is unlawful to retain white sturgeon taken prior to August 1st.~~))

AMENDATORY SECTION (Amending Order 91-13, filed 4/2/91, effective 5/3/91)

**WAC 220-40-031 Willapa Bay—Seasons and lawful gear—Sturgeon.** It is unlawful to fish for or possess sturgeon taken for commercial purposes from Marine Fish-Shellfish Management and Catch Reporting Area 60C except at those times((~~,~~)) and with ((~~the~~)) such gear as provided by emergency rule of the director, and subject to the provisions of this section:

(((~~(1)~~))) It is unlawful to take sturgeon by angling from any vessel that is engaged in commercial sturgeon fishing, has been engaged in commercial sturgeon fishing that same day, or has commercially caught sturgeon aboard.

(((~~(2) It is unlawful to retain sturgeon not of lawful size, as provided for in WAC 220-20-020(1), and all sturgeon in transit must not have head or tail removed.~~

~~(3) It is lawful to retain for commercial purposes sturgeon taken incidental to any lawful commercial salmon fishery in any Willapa Bay Salmon Management and Catch Reporting Area except it is unlawful to retain white sturgeon taken prior to August 1st.~~))

## WSR 07-21-133
### PERMANENT RULES
### DEPARTMENT OF HEALTH

[Filed October 23, 2007, 4:29 p.m., effective December 1, 2007]

Effective Date of Rule: December 1, 2007.

Purpose: The proposed rules create a retired volunteer medical worker license classification; set conditions limiting when licensees may practice under this license; set requirements to obtain and renew the license; and establish continuing competency requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 246-12-010.

Statutory Authority for Adoption: RCW 18.130.050 and 18.130.360.

Adopted under notice filed as WSR 07-14-129 on July 3, 2007, and WSR 07-14-158 on July 5, 2007.

A final cost-benefit analysis is available by contacting Susan Gragg, Program Manager, Department of Health, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-4941, fax (360) 236-2406, e-mail susan.gragg@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 6, Amended 1, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 1, Repealed 0.

Date Adopted: October 23, 2007.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

**WAC 246-12-010 Definitions.** (1) "Business": A business is an adult family home provider owned by a corporation regulated under chapter 18.48 RCW; a pharmaceutical firm regulated under chapter 18.64 RCW; or a nursing pool regulated under chapter 18.52C RCW; or a health care assistant regulated under chapter 18.135 RCW.

(2) "Credential": A credential is a license, certification, or registration issued to a person to practice a regulated health care profession. Whether the credential is a license, certification or registration is determined by the law regulating the profession.

(3) "Declaration": A declaration is a statement signed by the practitioner on a form provided by the department of health for verifying continuing education, AIDS training, or other requirements. When required, declarations must be completed and signed to be effective verification to the department.

(4) "Disciplinary suspension": The regulatory entity places the credential in disciplinary suspension status when there is a finding of unprofessional conduct. Refer to the Uniform Disciplinary Act (RCW 18.130.160).

(5) "Local organization for emergency services or management": Has the same meaning as that found in RCW 38.52.010.

(6) "Mandated suspension": The department of health places the credential in mandated suspension status when a law requires suspension of a credential under certain circumstances. This suspension is nondiscretionary for the department of health. Examples of mandated suspension are default on a student loan and failure to pay child support. The practitioner may not practice while on mandated suspension. The credential must be returned to active status before the practitioner may practice. See Part 6 of this chapter.

(((~~(6)~~))) (7) "Practitioner": A practitioner is an individual health care provider listed under the Uniform Disciplinary Act, RCW 18.130.040.

(((~~(7)~~))) (8) "Regulatory entities": A "regulatory entity" is a board, commission, or the secretary of the department of health designated as the authority to regulate one or more professions or occupations in this state. Practitioner health care practice acts and the Uniform Disciplinary Act (UDA) designate whether it is a board, commission, or the secretary of the department of health which has the authority to adopt rules, discipline health care providers, and determine requirements for initial licensure and continuing education requirements.

The regulatory entity determines whether disciplinary action should be taken on a credential for unprofessional conduct. These actions may include revocation, suspension, practice limitations or conditions upon the practitioner.

(((~~(8)~~))) (9) "Renewal": Every credential requires renewal. The renewal cycle is either one ((~~year or~~)), two, or three years, depending on the profession.

(((~~(9)~~))) (10) "Secretary": The secretary is the secretary of the department of health or his or her designee.

(((~~(10)~~))) (11) "Status": All credentials are subject to the Uniform Disciplinary Act (UDA) regardless of status. A credential status may be in any one of the following:

(a) Most credentials are in **"active"** status. These practitioners are authorized to practice the profession. These practitioners need to renew the credential each renewal cycle. See Part 2 of this chapter.

(b) The department of health places the credential in **"expired"** status if the credential is not renewed on time. While in expired status, the practitioner is not authorized to practice. Practice on an expired status is a violation of law and subject to disciplinary action. See Part 2 of this chapter.

(c) A practitioner may place the credential in **"inactive"** status if authorized by the regulatory entity. This means the practitioner is not practicing the profession. See Part 4 of this chapter.

(d) A practitioner may place the credential in **"retired active"** status if authorized by the regulatory entity. This means the practitioner can practice only intermittently or in emergencies. See Part 5 of this chapter.

## PART 12
## RETIRED VOLUNTEER MEDICAL WORKERS

NEW SECTION

**WAC 246-12-400 Who qualifies for an initial retired volunteer medical worker license?** (1) To be eligible for a retired volunteer medical worker license, a person must:

(a) Have held a license issued by a disciplining authority under RCW 18.130.040 that was in active status within the ten years prior to an initial application for a retired volunteer medical worker license;

(b) Have no restrictions on their ability to obtain an active license; and

(c) Be currently registered as a volunteer emergency worker with a local organization for emergency services or management.

(2) A person is not eligible for a retired volunteer medical worker license if they hold any current license issued by a disciplining authority under RCW 18.130.040.

NEW SECTION

**WAC 246-12-410 How to obtain an initial retired volunteer medical worker license.** (1) To obtain an initial retired volunteer medical worker license, a person must:

(a) Meet the requirements in WAC 246-12-400;

(b) Submit an application on forms approved by the secretary; and

(c) Submit proof of current registration as a volunteer emergency worker with a local organization for emergency services or management.

(2) There is no application fee.

(3) The retired volunteer medical worker's initial license expires on the person's third birthday after issuance and may be renewed as provided in WAC 246-12-430.

NEW SECTION

**WAC 246-12-420 When can you practice and what can you do?** (1) A retired volunteer medical worker can practice only when:

(a) There is a declared emergency, disaster, or authorized training event that has been given a mission number by the department of emergency management; and

(b) The local organization for emergency services or management, or designee, has activated the retired volunteer medical worker.

(2) A retired volunteer medical worker can only:

(a) Work the duties assigned;

(b) Work up to, but not exceed the scope of practice under their prior active license; and

(c) Work under an assigned supervisor.

(3) A health care facility is not obligated to use any retired volunteer medical worker.

NEW SECTION

**WAC 246-12-430 How to renew your retired volunteer medical worker license.** (1) To renew a retired volunteer medical worker license, you must:

(a) Submit a written declaration stating you have met the continuing competency requirements defined in WAC 246-12-440; and

(b) Submit proof of current registration as a volunteer with a local organization for emergency services or management.

(2) There is no renewal fee.

(3) A retired volunteer medical worker license must be renewed every three years.

(4) Prior to the expiration date, courtesy renewal notices are mailed to the address on file. Practitioners should return the renewal notice when renewing their license. Failure to receive a courtesy renewal notice does not relieve or exempt the retired volunteer medical worker license renewal requirement.

NEW SECTION

**WAC 246-12-440 Continuing competency.** (1) A retired volunteer medical worker must complete the following requirements every three years to renew their license:

(a) Basic first-aid course;

(b) Bloodborne pathogens course; and

(c) CPR course.

(2) A retired volunteer medical worker must submit a signed declaration to verify they meet the continuing competency education requirements.

(3) Local organizations for emergency services or management that register retired volunteer medical workers may require additional training, such as incident command system (ICS) or national incident management system (NIMS).

NEW SECTION

**WAC 246-12-450 How to return to active status.** A licensed retired volunteer medical worker may return to active status as provided in WAC 246-12-040.

## WSR 07-21-142
### PERMANENT RULES
## DEPARTMENT OF CORRECTIONS

[Filed October 24, 2007, 9:34 a.m., effective November 24, 2007]

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

Purpose: Establish rules to prohibit and establish sanctions for sexual contact between inmates and employees of the department.

Statutory Authority for Adoption: RCW 72.01.090.

Other Authority: RCW 72.09.225.

Adopted under notice filed as WSR 07-19-064 on September 17, 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 6, 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 6, Amended 0, Repealed 0.

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

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

Date Adopted: October 24, 2007.

H. W. Clarke
Secretary

### Chapter 137-79 WAC

### SEXUAL MISCONDUCT BY STATE EMPLOYEES, CONTRACTORS

NEW SECTION

**WAC 137-79-010 Purpose.** The purpose of this chapter is to specify penalties for contractors and employees of the department who engage in sexual intercourse or sexual contact with inmates.

NEW SECTION

**WAC 137-79-020 Definitions.** As used in this chapter, the following items shall have the following meanings:

(1) "Secretary" shall mean the secretary of the department of corrections.

(2) "Department" shall mean the department of corrections.

(3) "Inmate" shall mean a person committed to the custody or under the supervision of the department, including but not limited to persons residing in a correctional institution or facility and persons released on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

(4) "Sexual intercourse":

(a) Has its ordinary meaning and occurs upon any penetration, however slight; and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes; and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(5) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

(6) "Contractor" includes all subcontractors of a contractor.

(7) "Suspend" shall mean placing the employee on home assignment with pay.

NEW SECTION

**WAC 137-79-030 Sexual contact prohibited.** Sexual intercourse or sexual contact between an employee of the department or an employee of a department contractor and an inmate is strictly prohibited, provided that the termination provisions of this chapter shall not be invoked if the sexual intercourse or sexual contact is against the employed person's will.

NEW SECTION

**WAC 137-79-040 Sanctions.** (1) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between an employee and an inmate has occurred, notwithstanding any rule adopted under chapter 41.06 RCW the secretary shall immediately suspend the employee.

(2) The secretary shall immediately institute proceedings to terminate the employment of any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(3) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between the employee of a contractor and an inmate has occurred, the secretary shall require the employee of a contractor to be immediately removed from any employment position which would permit the employee to have any access to any inmate.

(4) The secretary shall disqualify for employment with a contractor in any position with access to an inmate, any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(5) The secretary, when considering the renewal of a contract with a contractor with whom the secretary has taken action under subsection (3) or (4) of this section, shall require the contractor to demonstrate that there has been significant progress made in reducing the likelihood that any of its employees will have sexual intercourse or sexual contact with an inmate. The secretary shall examine whether the contractor has taken steps to improve hiring, training, and monitoring practices and whether the employee remains with the contractor. The secretary shall not renew a contract unless he or she determines that significant progress has been made.

(6) For the purposes of RCW 50.20.060, a person terminated under this section shall be considered discharged for misconduct.

NEW SECTION

**WAC 137-79-050 Release of records.** (1) The department may, within its discretion or upon request of any member of the public, release information to an individual or to the public regarding any person or contract terminated under this section.

(2) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the public.

(3) Except as provided in chapter 42.56 RCW, or elsewhere, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section. Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as may otherwise be provided by law.

NEW SECTION

**WAC 137-79-060 Hearing procedure.** Hearings under this chapter shall follow the disciplinary hearing processes referenced in the collective bargaining agreement (CBA) applicable to the employee or in Title 357 WAC if the employee is not represented.

## WSR 07-21-156
### PERMANENT RULES
## GAMBLING COMMISSION
[Filed October 24, 2007, 11:59 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The gambling commission is rewriting its rules manual using plain English techniques. We anticipate the project will be completed by January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. Any substantive changes made to rules related to hearings are identified on the summary below which outlines the changes. This new chapter incorporates rules that relate to hearings.

### Overview of Chapter 230-17 WAC, Hearing Rules Changed

SUBSTANTIVE RULE CHANGES:

**Post-1/1/2008 WAC 230-17-005 Issuing notice of administrative charges.**
**Pre-1/1/2008 WAC 230-50-030 Adjudicated proceedings—Hearings—Interpreter—Timing.**

We added the language "short and plain statement" to subsection (1) of this rule at the request of stakeholders. Our administrative charges already contain a "short and plain" statement of the case. We have also removed a great deal of language that is redundant with chapter 34.05 RCW, the Administrative Procedure Act. One of our goals in the rule simplification project has been to not repeat statutes.

**Post-1/1/2008 WAC 230-17-010 Requesting and scheduling a hearing.**
**Pre-1/1/2008 WAC 230-50-010 Adjudicative proceedings—Hearings.**

We propose removing the phrase "or a facsimile thereof" from the language of the rule because we send a copy of the form we require as required by chapter 34.05 RCW.

We've changed the time requirements in subsection (2)(a) from twenty days to twenty-three days because the court rules call for a twenty-three day time limit for response by mail.

We also changed subsection (4)(b) to allow for agreements between parties to extend the ninety day limit for sending out the notice of hearing. This change makes clear that if parties agree, put it in writing, and make it part of the permanent record of the proceeding, they may extend the ninety day period.

NEW **Post-1/1/2008 WAC 230-17-015 Settlements encouraged.**

We already try to settle as many cases as possible when the agency's needs can be met. This new rule encourages parties to settle cases without the need for an adjudicative hearing.

**Post-1/1/2008 WAC 230-17-020 Prehearing conferences.**
**Pre-1/1/2008 WAC 230-50-610 Adjudicated proceedings settlement conferences and prehearing conferences.**

The subject matter experts requested that we add in new language concerning discovery deadlines and scheduling a settlement conference or hearing to the list of what should be done at a prehearing conference. We also struck the word "expert" from our description of the witnesses which is consistent with the model rules.

**Post-1/1/2008 WAC 230-17-025 Appointment of administrative law judge or "presiding officer."**
**Pre-1/1/2008 WAC 230-50-020 Adjudicated proceedings—Appointment of administrative law judge.**

We removed language about the model rules from this rule. The former language stated that model [rules] were to be followed "as applicable." This implied that we **must** apply model rules when, in actuality, chapter 34.05 RCW states that agencies should use the model rules, but may choose which ones to use at their discretion.

**Post-1/1/2008 WAC 230-17-030 Methods of service in adjudicative proceedings.**
**Pre-1/1/2008 WAC 230-50-190 Adjudicated proceedings—Service of process—Method of service.**

We struck language concerning service by telegraph, since this type of service has fallen out of use. We also added service by fax to the commission's "legal division" with same-day mailing of copies. These changes seem to look forward to the future methods of service that are most likely to continue.

**Post-1/1/2008 WAC 230-17-035 When service of notices, orders, and documents is complete.**
**Pre-1/1/2008 WAC 230-50-200 Adjudicated proceedings—Service of process—When service complete.**

We struck the language concerning service by telegraph, since this type of service has fallen out of use. We also added service by fax to the commission['s] "legal division" with same-day mailing of copies. These changes seem to look forward to the future methods of service that are most likely to continue.

**Post-1/1/2008 WAC 230-17-040 Filing documents for adjudicative proceedings.**
**Pre-1/1/2008 WAC 230-50-210 Adjudicated proceedings—Service of process—Filing with agency.**

We designated where to send process per RCW 34.05.010(6). We also changed the wording of the rule to highlight that we only accept service at our administrative offices in Lacey.

**Post-1/1/2008 WAC 230-17-045 Who can appear in a representative capacity at hearings.**
**Pre-1/1/2008 WAC 230-50-060 Adjudicated proceedings—Appearance and practice before the commission—Who may appear.**

We added to this rule because the requirements about appearance at hearings covered in RCW 34.05.428 are somewhat vague. We also added the presiding officer into the list so they can also decide whether someone can appear at a hearing.

**Post-1/1/2008 WAC 230-17-050 Standards of ethical conduct.**

We added to this rule because the requirements about appearance at hearings covered in RCW 34.05.428 are somewhat vague.

**Post-1/1/2008 WAC 230-17-055 Issuing, quashing, and responding to subpoenas.**
**Pre-1/1/2008 WAC 230-50-225 Adjudicated proceedings—Discovery.**
**Pre-1/1/2008 WAC 230-50-230 Adjudicated proceedings—Subpoenas, issuance, service, fees, quashing and enforcement.**
**Pre-1/1/2008 WAC 230-50-700 Continuances.**

We changed two portions of the current rule:

1. The length of time parties have to issue subpoenas; and

2. The proof of process service.

For issuing subpoenas, we lengthened the time to issue to ten days. For proof of service, we added that servers must either sign an affidavit or a declaration under penalty of perjury; this follows the model rules of chapter 10.08 WAC.

We discovered while researching this rule that we don't have the statutory authority to allow *pro ses* to issue subpoenas, so we built in a way for the *pro se* to request a subpoena from the presiding officer if it is needed.

We also moved a subsection of **WAC 230-50-700 Continuances**, concerning hearings continued for the introduction of further evidence into this rule because it dealt with the issuing of subpoenas.

**Post-1/1/2008 WAC 230-17-060 Official notice.**
**Pre-1/1/2008 WAC 230-50-500 Official notice—Matters of law.**

We made several changes to this rule. The first of those is to remove the phrase "practitioners before its bar" from subsection (4). This phrase doesn't seem to add any clear duty or explicit order to what will be given official notice. In its place, we added language suggested by the subject matter experts about recognizing the "contents of licenses and certifications."

We also added a separate subsection (5) mentioning the state-tribal compact system: "A Washington tribe's compact with the state of Washington and any appendices or amendments to it."

**Post-1/1/2008 WAC 230-17-065 Depositions and interrogatories.**
**Pre-1/1/2008 WAC 230-50-300 Adjudicated proceedings—Depositions and interrogatories—Right to take.**
**Pre-1/1/2008 WAC 230-50-310 Depositions and interrogatories in contested cases—Scope.**
**Pre-1/1/2008 WAC 230-50-320 Depositions and interrogatories in contested cases—Officer before whom taken.**

We removed the language from the current rule that states, "Depositions shall be taken only in accordance with this rule and the rules on subpoenas" because it contradicts other deposition rules and statutes.

**Post-1/1/2008 WAC 230-17-070 Notice and length of depositions.**
**Pre-1/1/2008 WAC 230-50-330 Adjudicated proceedings—Depositions and interrogatories—Notice.**

We added the records custodian as an example to subsection (2)(c): "If the name is not known, a general description sufficient to identify the person or the particular class or group to which he or she belongs (for example, "records custodian")." This clarifies what we mean by a "general description" in the rule.

**Post-1/1/2008 WAC 230-17-075 Protective orders.**
**Pre-1/1/2008 WAC 230-50-340 Depositions and interrogatories in contested cases—Protection of parties and deponents.**

We removed the majority of this rule. It is dense and confusing to the reader. The rewritten form of the rule allows for a very broad range of protective orders to be issued by the presiding officer in an administrative hearing.

**Post-1/1/2008 WAC 230-17-080 Stipulations.**
**Pre-1/1/2008 WAC 230-50-530 Stipulations and admissions of record.**

We added a definition of stipulation to the rule. The subject matter experts recommended the definition to make the legal language more clear to readers who are not trained in legal matters.

**Post-1/1/2008 WAC 230-17-085 Initial orders.**
**Pre-1/1/2008 WAC 230-50-550 Adjudicated proceedings—Initial or final order.**

We propose removing large portions of the old rule because RCW 34.05.461 covers the requirements for entering initial orders.

**Post-1/1/2008 WAC 230-17-115 Expert witnesses.**
**Pre-1/1/2008 WAC 230-50-650 Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses.**
**Pre-1/1/2008 WAC 230-50-670 Expert or opinion testimony and testimony based on economic and statistical data—Supporting data.**

We reworded the rule because the old rule was not consistent with the restrictions in RCW 42.52.080.

**Post-1/1/2008 WAC 230-17-130 Settlement conferences.**
**Pre-1/1/2008 WAC 230-50-610 Adjudicated proceedings settlement conferences and prehearing conferences.**

We made two changes to this rule:

1. We removed language allotting who can attend settlement conferences because it didn't match actual practice during these conferences.

2. We changed subsection (7) to state that the results of the settlement conference only have to be recorded if a settlement is reached.

**Post-1/1/2008 WAC 230-17-135 Continuances.**
**Pre-1/1/2008 WAC 230-50-700 Continuances.**

We added in a definition of what a "continuance" was at the suggestion of the subject matter experts.

**Post-1/1/2008 WAC 230-17-140 Petitions for reconsideration of a final order.**
**Pre-1/1/2008 WAC 230-50-562 Final orders—When and how to file a petition for reconsideration of a final order.**

We added subsection (2) to this rule so that a party may file a response to a petition for reconsideration. Parties don't usually do this, but it gives them the option. The subject matter experts suggested it.

**Post-1/1/2008 WAC 230-17-150 Use of brief adjudicative proceedings (BAPs).**

**Pre-1/1/2008 WAC 230-50-010 Adjudicative proceedings—Hearings.**

We removed language about when brief adjudicative proceedings (BAPs) may be held for several reasons:

BAPs were intended to cover relatively simple cases, so, for instance, we added language to subsection (1)(d) that BAPs would be used "where that is the only alleged violation in the administrative charges" because failure to pay taxes is not usually a "stand-alone" charge, and so would need to be handled in a regular administrative hearing, not a BAP.

We removed some language because the information, like that for withdrawal of approved card game covered in card game rules chapter 230-15 WAC, is now covered in other chapters.

Further, we removed language about stipulations in subsection (6)(e) because when parties stipulate to facts and charges, these cases are often settled in the settlement conference without the need for a hearing at all.

Also we removed the language that discussed processes that we don't have anymore, for instance we no longer deny applications for higher bingo license classes as explained in subsection (6)(f).

**Post-1/1/2008 WAC 230-17-165 Summary suspensions.**

**Pre-1/1/2008 WAC 230-50-012 Summary suspensions.**

We propose adding a definition of summary suspension to the rule. We have also changed some of the language in the rule to more closely mirror the vocabulary used in RCW 9.46.075 and 9.46.158.

**Post-1/1/2008 WAC 230-17-170 Petition and hearing for stay of the summary suspension.**

**Pre-1/1/2008 WAC 230-50-015 Stay of summary suspension.**

We removed the phrase "upon service" in subsection (6) of the current rule because we intend to leave some flexibility for the administrative law judge to make an oral ruling and follow it with a written ruling.

**Post-1/1/2008 WAC 230-17-175 Review of initial orders to stay a summary suspension.**

**Pre-1/1/2008 WAC 230-50-018 Review of orders on stay.**

We changed the time to request a review of initial orders to stay a summary suspension from "twenty-one days" to "twenty days." Elsewhere in the chapter, we have used "ten days" and "twenty days" to maintain some consistency in the periods for responses or filings.

**Post-1/1/2008 WAC 230-17-190 Information required on a petition.**

**Pre-1/1/2008 WAC 230-50-800 Petitions for rule making, amendments, or repeal.**

**Information required on a petition.**

We removed the list in subsection (3) of the current rule because the information about what should be discussed in the rule petition is set out in RCW 34.05.330 (4)(a)-(i).

**Post-1/1/2008 WAC 230-17-195 Locating petition for rule-making form.**

**Pre-1/1/2008 WAC 230-50-800 Petitions for rule making, amendments, or repeal.**

We added the website address for the commission as another location from which petitioners may get a copy of the petition for rule-making form.

**Post-1/1/2008 WAC 230-17-200 Submitting a petition.**

**Pre-1/1/2008 WAC 230-50-800 Petitions for rule making, amendments, or repeal.**

We added e-mailing the rules coordinator as another way a person may submit a petition for rule making.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-17-069 on August 13, 2007, and published September 5, 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 41, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 41, 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 41, Amended 0, Repealed 0.

Date Adopted: October 15, 2007.

Susan Arland
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed because they are duplicative of RCW requirements:

| | |
|---|---|
| WAC 230-50-080 | Solicitation of business unethical. |
| WAC 230-50-100 | Appearance by former employee of commission or former member of attorney general's staff. |
| WAC 230-50-160 | Adjudicated proceedings—Service of process—By whom served. |
| WAC 230-50-170 | Service of process—Upon whom served. |
| WAC 230-50-180 | Service of process—Service upon parties. |
| WAC 230-50-350 | Depositions and interrogatories in contested cases—Oral examination and cross-examination. |

| | |
|---|---|
| WAC 230-50-360 | Depositions and interrogatories in contested cases—Recordation. |
| WAC 230-50-370 | Depositions and interrogatories in contested cases—Signing attestation and return. |
| WAC 230-50-380 | Depositions and interrogatories in contested cases—Use and effect. |
| WAC 230-50-390 | Adjudicated proceedings—Depositions and interrogatories—Fees of deponents—Costs of deposition. |
| WAC 230-50-400 | Depositions upon interrogatories—Submission of interrogatories. |
| WAC 230-50-410 | Depositions upon interrogatories—Interrogation. |
| WAC 230-50-420 | Depositions upon interrogatories—Attestation and return. |
| WAC 230-50-520 | Presumptions. |
| WAC 230-50-580 | Adjudicated proceedings—Hearings—Forms. |
| WAC 230-50-800 | Petitions for rule making, amendments, or repeal. |

## Chapter 230-17 WAC

## HEARING RULES

## ADJUDICATIVE PROCEEDINGS

NEW SECTION

**WAC 230-17-001 Administrative charges and adjudicative proceedings.** If we bring administrative charges against anyone, we give an opportunity for an adjudicative proceeding (hearing). We give the opportunity for a hearing to:

(1) Applicants to determine whether to deny the application; and

(2) Licensees to determine whether to suspend or revoke the license if they held a license at the time we issued charges against them; and

(3) Applicants for approval of pull-tab dispensers to determine whether to deny approval of the dispenser.

NEW SECTION

**WAC 230-17-005 Issuing notice of administrative charges.** The director or director's designee issues a notice of administrative charges. We serve the applicant, licensee, or permittee with the notice. The notice must include:

(1) A short and plain statement of the matters the agency asserts; and

(2) A request for hearing form; and

(3) A form to request an interpreter at the hearing for persons with limited English skills or hearing impairment; and

(4) The maximum penalty.

NEW SECTION

**WAC 230-17-010 Requesting and scheduling a hearing.** (1) Applicants, licensees, or permittees may request a hearing using the form we provide.

(2) We must receive the request from the applicant, licensee, or permittee at our administrative office within:

(a) Twenty-three days after we mail by regular mail the notice of administrative charges; or

(b) Twenty days after they receive by certified mail the notice of administrative charges; or

(c) Twenty days after we personally serve the notice of administrative charges.

(3) If applicants, licensees, or permittees do not file requests in the time required, then they waive their right to a hearing. They are in default, as defined in RCW 34.05.440, and the commissioners may take action against them up to the maximum penalty stated in the notice of administrative charges.

(4) The director, director's designee, or the presiding officer of the hearing must issue a notice of hearing which meets the requirements of RCW 34.05.434(2).

(a) The notice must be issued within ninety days from the date on which we receive the request from the licensee, applicant, or permittee, unless all parties agree to or the presiding officer orders an extension beyond the ninety days.

(b) Any change of the ninety-day requirement must be:

(i) In writing; and

(ii) Made a part of the permanent record of the proceeding.

NEW SECTION

**WAC 230-17-015 Settlements encouraged.** After charges have been issued, we encourage parties' efforts to settle without the need for an adjudicative hearing.

NEW SECTION

**WAC 230-17-020 Prehearing conferences.** The presiding officer, on his or her own motion or on the motion of one of the parties, may direct the parties to appear at a specified time and place for a prehearing conference to consider:

(1) Identifying and simplifying the issues; and

(2) Amending pleadings, if necessary; and

(3) Obtaining stipulations of facts and of documents; and

(4) Limiting the number of witnesses; and

(5) Setting discovery deadlines or resolving discovery disputes; and

(6) Scheduling a settlement conference before an administrative law judge; and

(7) Scheduling the hearing date; and

(8) Resolving any other matter that may aid in the outcome of the proceeding.

NEW SECTION

**WAC 230-17-025 Appointment of administrative law judge or "presiding officer."** (1) The commissioners hereby appoint the office of administrative hearings to assign an administrative law judge (ALJ), called the "presiding officer," to preside at all hearings which result from administrative charges, unless:

(a) The commissioners, by their own order, declare their intent to preside at a specific proceeding; or

(b) The proceeding is an appeal of an initial order issued by an ALJ.

(2) All hearings must be conducted in compliance with Title 230 WAC and chapter 34.05 RCW.

NEW SECTION

**WAC 230-17-030 Methods of service in adjudicative proceedings.** Parties must serve all orders, notices, and other documents by:

(1) Personal service; or

(2) First class, registered, or certified mail; or

(3) Telefacsimile (fax) to the commission's legal division, and same-day mailing of a copy of the faxed document; or

(4) Commercial parcel delivery service.

NEW SECTION

**WAC 230-17-035 When service of notices, orders, and documents is complete.** Service of notices and other documents is complete when served by:

(1) **Personal service -** which means actual, physical delivery to:

(a) The person; or

(b) The designated agent of the person; or

(c) Anyone over the age of eighteen residing at the residence of:

(i) The person; or

(ii) A corporate officer; or

(d) If represented, the attorney representing the person.

(2) **Mail -** which means deposit in the United States mail with proper postage and properly addressed; service is complete on the third day after mailing, excluding the date of mailing; or

(3) **Telefacsimile (fax) -** which means faxing to the commission's legal division, with confirmation of the transmission, and the same day deposit of a copy of the faxed document in the United States mail, with proper postage and properly addressed; service is complete on the third day after mailing, excluding the date of mailing; or

(4) **Commercial parcel delivery service -** which means delivery to the parcel delivery service, when properly addressed and all charges are paid.

NEW SECTION

**WAC 230-17-040 Filing documents for adjudicative proceedings.** (1) We consider required documents "filed" on receipt of the documents at our administrative office accompanied by proof of service on all parties required to be served.

(2) Delivery to our administrative office when we are not present to receive the documents in person does not constitute lawful service of documents for any matter under our jurisdiction.

(3) When a party is filing a document with the commission, the attorney general's office must also be served.

NEW SECTION

**WAC 230-17-045 Who can appear in a representative capacity at hearings.** The following persons may appear in a representative capacity at hearings or other legal proceedings:

(1) Individuals representing themselves or their business (*pro se*); and

(2) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington; and

(3) Attorneys entitled to practice before the highest court of record of any other state, if Washington attorneys are permitted to appear before administrative agencies of the other state, and if not otherwise prohibited by our state law; and

(4) Interpreters for persons with a limited understanding of the English language or hearing impaired persons; and

(5) Other persons the commissioners may allow, if a party shows a necessity or a hardship that would make it unduly burdensome to have one of the representatives set out above.

NEW SECTION

**WAC 230-17-050 Standards of ethical conduct.** (1) Anyone appearing in proceedings before the commission in a representative capacity must conform to the standards of ethical conduct the courts of Washington require of attorneys.

(2) If the person does not conform to these standards, the commission may decline to allow that person to appear before them.

NEW SECTION

**WAC 230-17-055 Issuing, quashing, and responding to subpoenas.** (1) The commission and the attorney for a party may issue subpoenas according to the requirements of RCW 34.05.446. Unrepresented (*pro se*) parties may request the presiding officer to issue for them such subpoenas as are necessary to enable them to fairly present their case. Every subpoena must:

(a) State the name of the commission; and

(b) State the title of the adjudicative proceeding; and

(c) Command the persons to whom they are addressed to attend and give testimony, produce books, records, documents, or things under their control at a specified time and place.

(2) All parties must serve their subpoenas on all other parties at least ten days before the specified time for appearance or document production.

(3) Any person eighteen years of age or older may serve subpoenas by showing and reading the subpoenas to witnesses, or by giving them a copy of the subpoena, or by leaving a copy at their residence.

(4) When anyone other than an officer authorized to serve process performs service, the server must make proof of service by affidavit or a declaration under penalty of perjury.

(5) If a party makes a motion at or before the time stated for compliance in the subpoena, the presiding officer may:

(a) Quash or modify an unreasonable and oppressive subpoena; or

(b) Order the person who issued the subpoena to pay the reasonable cost of producing the books, papers, documents, or tangible things.

(6) Parties may seek judicial enforcement of subpoenas under RCW 34.05.588.

(7) Witnesses must attend and provide requested testimony or documents at the specified time and place.

(8) During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the presiding officer may at his or her discretion continue the hearing and:

(a) Set the hearing ahead to a certain date; and

(b) Subpoena, or allow a party to subpoena, additional argument or evidence.

NEW SECTION

**WAC 230-17-060 Official notice.** The commission or the presiding officer may officially notice, on request made before or during a hearing or on its own motion, at least:

(1) **Federal law.** The Constitution; congressional acts, resolutions, records, journals and committee reports, decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the federal register; and

(2) **State law.** The Constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; decisions of administrative agencies of the state of Washington, executive orders and proclamations by the governor; and all rules, orders and notices filed with the code reviser; and

(3) **Governmental organization.** Organization, territorial limitations, officers, departments, and general administration of the government of the state of Washington, the United States, the several states and foreign nations; and

(4) **Agency organization.** The commission's administration, officers, personnel, official publications, and contents of licenses and certifications; and

(5) **Tribal compact.** A Washington tribe's compact with the state of Washington for Class III gaming and any appendices or amendments to it.

NEW SECTION

**WAC 230-17-065 Depositions and interrogatories.** (1) Parties may take testimony by deposition on oral examination (deposition) or written questions (interrogatories) for use as evidence in the administrative hearing.

(2) Parties must depose persons in the same manner, and before the same officers, authorized by the Washington civil rules for superior court, unless otherwise agreed in writing by the parties.

(3) Witnesses may be subpoenaed to attend a deposition or produce documents.

(4) Parties may only depose a commissioner, the director, deputy director, or an assistant director if they apply to the presiding officer and show good cause that circumstances prevent the statements or depositions of other staff members from revealing the information, evidence, or details needed.

(5) Unless otherwise ordered, the person being deposed may be examined about any matter to the same extent that the Washington civil rules for superior court allow.

NEW SECTION

**WAC 230-17-070 Notice and length of depositions.** (1) Parties wishing to depose someone must give notice of at least seven days in writing to all parties.

(2) The notice for the deposition must state:

(a) Time and place of the deposition; and

(b) The name and address of each person to be deposed, if known; or

(c) If the name is not known, a general description sufficient to identify the person or the particular class or group to which he or she belongs (for example: "Records custodian").

(3) If a party makes a motion, the presiding officer may lengthen or shorten the time for notice of the deposition.

(4) If the parties agree in writing, depositions may be taken before any person, at any time or place, on any notice, and in any manner, and may be used as otherwise allowed by these rules.

NEW SECTION

**WAC 230-17-075 Protective orders.** After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the commission or its designated hearing officer may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed, the deposition shall be opened only by order of the commission, or that business secrets or secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the commission, or the commission may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the commission or its designated hearing officer may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it

shall be resumed thereafter only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

NEW SECTION

**WAC 230-17-080 Stipulations.** A "stipulation" means an agreement among parties intended to establish one or more operative facts in a proceeding.

(1) Parties may stipulate to all or any portion of the facts of the case.

(2) Parties may file the stipulation in writing or enter it orally into the record.

(3) A stipulation, if the presiding officer accepts it, is binding on the stipulating parties. The parties may present the stipulation as evidence at the hearing.

(4) The presiding officer may reject the stipulation or require proof of the stipulated facts, despite the parties' agreement to the stipulation.

NEW SECTION

**WAC 230-17-085 Initial orders.** (1) Initial orders must be entered in accordance with RCW 34.05.461(3).

(2) An initial order becomes the final order unless a party files a petition for review of the initial order as explained in WAC 230-17-560.

NEW SECTION

**WAC 230-17-090 Petitions for review and cross appeals of initial orders.** (1) RCW 34.05.464 governs the review of initial orders.

(2) Any party to an adjudicative proceeding may file a petition for review of an initial order. Parties must file the petition for review with us within twenty days of the date of service of the initial order unless otherwise stated. Parties must serve copies of the petition to all other parties or their representatives at the time the petition for review is filed.

(3) Petitions must specify the portions of the initial order the parties disagree with and refer to the evidence in the record on which they rely to support their petition.

(4) Any party to an adjudicative proceeding may file a reply to a petition for review of an initial order. Parties must file the reply with us within thirty days of the date of service of the petition and must serve copies of the reply to all other parties or their representatives at the time the reply is filed.

(5) Any party may file a cross appeal. Parties must file cross appeals with us within ten days of the date the petition for review was filed with us.

(6) Copies of the petition or the cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed.

(7) After we receive the petition or appeal, the commissioners review it at a regularly scheduled commission meeting within one hundred twenty days and make a final order.

NEW SECTION

**WAC 230-17-095 Admissibility criteria for evidence.** (1) Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness.

(2) If not allowing evidence to be admitted, the presiding officer must give consideration to, but is not bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury in the superior courts of the state of Washington.

NEW SECTION

**WAC 230-17-100 Tentative admission, exclusion, discontinuance, and objections to evidence.** (1) When an objection is made to the admissibility of evidence, the evidence may be received subject to a later ruling.

(2) The presiding officer may, in his or her discretion, with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued.

(3) Parties objecting to the introduction of evidence must state the precise grounds of such objection at the time such evidence is offered.

NEW SECTION

**WAC 230-17-105 Excerpts from documentary evidence.** (1) When parties rely only on portions of a document, the offering party must:

(a) Prepare the pertinent excerpts; and

(b) Adequately identify them; and

(c) Supply copies to the presiding officer and the other parties, with a statement indicating the purpose for which the excerpts will be offered.

(2) The offering party must make the whole original document available for examination and for use by all parties. However, only the excerpts must be received in the record.

NEW SECTION

**WAC 230-17-110 Documentary evidence.** (1) When requested for cause, the presiding officer may:

(a) Require that parties submit all documentary evidence to the other parties sufficiently in advance so that they may study and prepare cross-examination and rebuttal evidence.

(b) Reject documentary evidence not submitted in advance if the party offering it cannot show that there was good cause for failing to submit it sooner.

(2) Unless a party files a written objection before the hearing, the authenticity of all documents submitted in advance is accepted. Parties may later file a challenge of authenticity if they show good cause for failing to file a written objection.

NEW SECTION

**WAC 230-17-115 Expert witnesses.** (1) The presiding officer, where practicable, must encourage all parties to agree

on the identity and number of witnesses who are to give expert testimony by:

(a) Selecting one or more to speak for all parties; or

(b) Limiting the number for each party.

(2) If the parties cannot agree, the presiding officer must require them to submit written statements to all parties with the names, addresses, and qualifications of their respective expert witnesses on a date determined by the presiding officer sufficiently in advance of the hearing to allow the other parties to investigate the witness' qualifications.

(3) The presiding officer must require parties to submit the underlying data for statements and exhibits they provide sufficiently in advance of the hearing to allow the other parties to cross examine the expert witness(es) at the hearing. However, the presiding officer must restrict to a minimum placing the data in the record.

(4) No former employees of our agency may appear, except with the director's or director's designee's permission, as expert witnesses on behalf of other parties in a proceeding involving a matter that was under consideration by the agency when the former employee was employed by the commission.

NEW SECTION

**WAC 230-17-120 Written sworn statements by expert witnesses.** The presiding officer must encourage all parties to agree that:

(1) For expert testimony, and all testimony based on economic or statistical data, all parties will submit written sworn statements in advance of the hearing by a date the presiding officer sets; and

(2) A party may object to the written statements on any grounds, except that the testimony is not presented orally; and

(3) A party may cross examine witnesses if the party makes a request sufficiently in advance of the hearing to allow the witness(es) to be present.

NEW SECTION

**WAC 230-17-125 Noncompliance with rules on expert witnesses or written statements.** If expert witnesses or written statements on economic or statistical data do not meet the requirements of WAC 230-17-650 or 230-17-660, the presiding officer may receive them as evidence only if the party can clearly show good cause.

NEW SECTION

**WAC 230-17-130 Settlement conferences.** (1) Any party to an adjudicative proceeding may request a settlement conference, with or without an administrative law judge (ALJ), to discuss a possible settlement of the case.

(2) If a settlement is reached, it must be a written order to be signed by all parties and the presiding officer.

NEW SECTION

**WAC 230-17-135 Continuances.** (1) "Continuance" means a postponement or an extension of time after a notice of hearing or commission review has been issued.

(2) Parties may agree to a continuance.

(3) If the parties do not agree to a continuance, the person requesting the continuance must:

(a) Notify the presiding officer and the other party why a continuance is needed; and

(b) Present this request as soon as the person:

(i) Receives the notice of the hearing or commission review; or

(ii) Knows the reasons requiring the continuance.

(4) The presiding officer will consider whether the request was made promptly and may grant a continuance for good cause shown, or on his or her own motion.

(5) During a hearing, if it appears consistent with the public interest or in the interests of justice that further testimony or argument should be considered, the presiding officer may continue the hearing and set the date to introduce additional argument or evidence. This oral ruling is final notice of a continued hearing.

NEW SECTION

**WAC 230-17-140 Petitions for reconsideration of a final order.** (1) A party may file a petition for reconsideration of a final order. The presiding officer administers petitions for reconsideration according to RCW 34.05.470.

(2) A party may file a response to the petition for reconsideration. Parties must file responses with us within ten days of the date the petition was filed with us.

(3) If the petition is received at least fifteen business days before the next regularly scheduled commission meeting, we schedule the petition to be heard at that next meeting.

(4) If the petition is received less than fifteen business days before that next meeting, we schedule the petition at the following regularly scheduled meeting.

NEW SECTION

**WAC 230-17-145 Stays of final orders.** (1) Any party may petition the commission for a stay of a final order in accordance with RCW 34.05.467.

(2) For purposes of this rule, the commission hereby delegates to the director the authority to deny a stay or issue a temporary stay until the reviewing court can rule on a permanent stay. The decision of the director denying a stay is not subject to judicial review.

**BRIEF ADJUDICATIVE PROCEEDINGS (BAPs)**

NEW SECTION

**WAC 230-17-150 Use of brief adjudicative proceedings (BAPs).** (1) Presiding officers must use brief adjudicative proceedings (BAPs) for:

(a) Stays of summary suspension; and

(b) Denying or revoking extended operating hours for:

(i) Card games; and

(ii) Bingo; and

(c) Charitable or nonprofit licensee appealing a denial of a request for waiver of significant progress requirements; and

(d) Failure to pay required gambling taxes, where that is the only alleged violation in the administrative charges; and

(e) When the penalty we are requesting is a suspension of seven days or less; and

(f) When the parties stipulate to using a BAP.

(2) If we conduct a BAP, we may conduct them telephonically and, therefore, the notice of hearing will not set a place of the hearing.

(3) Any party to the BAP may request to appear in person and, in those cases, a place will be set and all parties notified.

NEW SECTION

**WAC 230-17-155 Discovery limitations in brief adjudicative proceedings.** (1) In all brief adjudicative proceedings, discovery must be limited to requests for written reports and supporting documents relevant to the charges.

(2) Interrogatories and depositions are not allowed.

## SEIZURE HEARINGS

NEW SECTION

**WAC 230-17-160 Hearings when gambling devices are seized.** (1) We follow the processes explained in RCW 9.46.231 when we seize gambling devices.

(2) The item seized is forfeited to the state unless a claimant is able to prove the device is:

(a) Not a gambling device; or

(b) An antique gambling device as defined by RCW 9.46.235.

## SUMMARY SUSPENSION HEARINGS

NEW SECTION

**WAC 230-17-165 Summary suspensions.** (1) "Summary suspension" means immediately taking a license or permit from a person or organization which prevents them from operating or conducting gambling activities.

(2) The commission delegates its authority to the director to issue an order to summarily suspend any license or permit if the director determines that a licensee or permittee has performed one or more of the actions identified in RCW 9.46.075 as posing a threat to public health, safety, or welfare.

(3) The commission deems the following actions of a licensee or permittee constitute an immediate danger to the public safety and welfare:

(a) Failing or refusing to comply with the provisions, requirements, conditions, limitations, or duties imposed by chapter 9.46 RCW or any rules adopted by the commission; or

(b) Knowingly causing, aiding, abetting, or conspiring with another to cause any person to violate any of the laws of this state or the rules of the commission; or

(c) Obtaining a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake; or

(d) Being convicted of, or forfeiting of a bond on a charge of, or having pled guilty to:

(i) Forgery; or

(ii) Larceny; or

(iii) Extortion; or

(iv) Conspiracy to defraud; or

(v) Willful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses; or

(vi) Bribing or otherwise unlawfully influencing a public official or employee of any state or the United States; or

(vii) Any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude; or

(e) Allowing any person who has been convicted of, or forfeited bond on, any of the offenses included under (d) of this subsection, to participate in the management or operation of any activity regulated by the commission without written approval ahead of time from the commission or its director; or

(f) Being subject to current prosecution or pending charges, or appealing a conviction, for any of the offenses included under (d) of this subsection; or

(g) Denying the commission or its authorized representatives, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted or failure to promptly produce for inspection or audit any book, record, document, or item required by law or commission rule; or

(h) Making a misrepresentation of, or failure to disclose, a material fact to the commission; or

(i) Having pursued or pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management, or execution of an activity for financial gain; or

(j) Being a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel in such a manner which creates probable cause to believe that the association is of such a nature as to be inimical to the policy of chapter 9.46 RCW or to the proper operation of the authorized gambling or related activities in this state. For the purposes of this section, career offender is defined as any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain utilizing such methods as are deemed criminal violations of the public policy of this state. A career offender cartel is defined as any group of persons who operate together as career offenders; or

(k) If a charitable or nonprofit organization, being deemed to be operating bingo primarily for gambling purposes and continuing to use program funds to subsidize the operation of gambling activities.

(4) An order of summary suspension takes effect immediately on service unless stated otherwise in the order of summary suspension.

NEW SECTION

**WAC 230-17-170 Petition and hearing for stay of the summary suspension.** (1) When the director summarily suspends a license or permit, the affected licensee or permittee may petition for a "stay of suspension" as explained in RCW 34.05.467 and 34.05.550(1).

(2) We must receive the petition in writing within fifteen days of service of the summary suspension.

(3) Within seven days of receipt of the petition, the presiding officer holds a hearing. If an administrative law judge is not available, the chairperson of the commission designates a commissioner to be the presiding officer. If the parties agree, they may have a continuance of the seven-day period.

(4) At the hearing, the only issues are whether the presiding officer:

(a) Should grant a stay; or

(b) Modify the terms of the suspension.

(5) Our argument at the hearing consists of the information we used to issue the summary suspension and we may add any information we find after we order the suspension.

(6) At the hearing, the licensee or permittee has the burden of demonstrating by clear and convincing evidence all of the following:

(a) The licensee or permittee is likely to prevail upon the merits of the evidence at hearing; and

(b) Without relief, the licensee or permittee will suffer irreparable injury. For purposes of this section, elimination of income from licensed activities must not be deemed irreparable injury; and

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public safety or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(7) The initial stay of the summary suspension order whether given orally or in writing takes effect immediately unless stated otherwise.

NEW SECTION

**WAC 230-17-175 Review of initial orders to stay a summary suspension.** (1) Any party may petition the commissioners for review of an initial order to stay a summary suspension. The commissioners must receive the request for review in writing within twenty days of service of the order. If no party requests a hearing review within twenty days of service, the order becomes final for purposes of RCW 34.05.467.

(2) If we receive a timely petition for review, the commissioners will consider the petition at the next regularly scheduled meeting of the commission.

(a) The matters considered on review are limited to the record of the stay hearing; and

(b) A commissioner who acted as presiding officer is not disqualified from considering the petition for review, unless a party demonstrates grounds for disqualification under the conditions set out in RCW 34.05.425; and

(c) The commissioners' decision is effective immediately, unless otherwise stated, and is final as set out in RCW 34.05.467.

(3) The outcome of the petition for review does not affect any future administrative hearing about their license or permit.

## PETITIONS FOR DECLARATORY ORDERS

NEW SECTION

**WAC 230-17-180 Petitions for declaratory orders.** (1) Any person may petition the commission for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. The petition must set forth facts and reasons on which the petitioner relies to show:

(a) That uncertainty necessitating resolution exists; and

(b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory option; and

(c) That the uncertainty adversely affects the petitioner; and

(d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

(2) Within fifteen days after receipt of a petition for a declaratory order, the commission must give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable.

(3) Within thirty days after receipt of a petition for a declaratory order, the commission, in writing, must do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances; or

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition and give reasonable notification to the person(s) of the time and place for such hearing and of the issues involved; or

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(4) The time limits of subsection (3)(b) and (c) of this section may be extended by the commission for good cause.

(5) The commission may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(6) A declaratory order has the same status as any other order entered by the commission in an adjudicative proceeding. Each declaratory order must contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

(7) Any person petitioning the commission for a declaratory order pursuant to RCW 34.05.240 must generally adhere to the following form for such purpose.

(a) At the top of the page must appear the wording "before the Washington state gambling commission." On the left side of the page below the foregoing, the following caption must be set out: "In the matter of the petition of (name of petitioning party) for a declaratory order." Opposite the foregoing caption must appear the word "petition."

(b) The body of the petition must be set out in numbered paragraphs. The first paragraph must state the name and address of the petitioning party. The second paragraph must state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs must set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs must contain the prayer of the petitioner. The petition must be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(c) The original must be filed with the commission. Petitions must be on white paper, either 8-1/2" x 11" or 8-1/2" x 13" in size.

## RULE-MAKING PROCEDURES

NEW SECTION

**WAC 230-17-185 Petitions for rule making.** (1) Any person may petition the commission to adopt, change, or repeal a rule in Title 230 WAC. The petition must contain enough information so the commissioners and the public can understand the proposal.

(2) All persons must follow the requirements explained in RCW 34.05.330 for petitions for rule making.

NEW SECTION

**WAC 230-17-190 Information required on a petition.** (1) If not submitted on standard forms, petitions for rule making must follow the requirements of RCW 34.05.330(4) and include:

(a) Commission name; and

(b) The reasons for:

(i) Adopting a new rule; or

(ii) Amending an existing rule; or

(iii) Repealing an existing rule.

(2) When someone is:

(a) Proposing a new rule, the petition should include:

(i) The text of the proposed rule; and

(ii) A description of the new rule requirements; and

(iii) A description of the effects of the new rule.

(b) Amending a rule, the petition should include:

(i) Title and number of the rule, for example, "WAC 230-03-040 Signing the application"; and

(ii) The text of your proposed rule change; and

(iii) A description of the effects of changing the rule.

(c) Requesting repeal of a rule, your petition should include:

(i) Title and number of the rule; and

(ii) A description of the effects of repealing the rule.

NEW SECTION

**WAC 230-17-195 Locating petition for rule-making form.** Petitioners may get a "petition for rule-making form" from:

(1) The office of financial management; or

(2) Our administrative office during regular business hours; or

(3) Our web site at www.wsgc.wa.gov.

NEW SECTION

**WAC 230-17-200 Submitting a petition.** (1) Petitioners must fax, e-mail, or mail petitions for rule change to the rules coordinator at our administrative office.

(2) We consider a petition submitted when we receive it at our administrative office.